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Wolfgang Zellner/Randolf Oberschmidt/Claus Neukirch/Katri Kemppainen (Eds.)  
Comparative Case Studies on the Effectiveness of the  
OSCE High Commissioner on National Minorities

**Jekaterina Dorodnova**

Challenging Ethnic Democracy:  
Implementation of the Recommendations of the  
OSCE High Commissioner on National Minorities  
to Latvia, 1993-2001

Working Paper 10

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## List of Abbreviations

### *International*

CBSS	Council of Baltic Sea States
CoE	Council of Europe
CSCE	Conference for Security and Co-operation in Europe (OSCE)
CSO	Committee of Senior Officials (OSCE)
EBRD	European Bank for Reconstruction and Development
ECMI	European Centre for Minority Issues
ECHR	European Convention of Human Rights and Fundamental Freedoms
EU	European Union
FCPNM	Framework Convention on the Protection of National Minorities
FIER	Foundation on Inter-Ethnic Relations
HCNM	High Commissioner on National Minorities (OSCE)
ICCPR	International Covenant on Civil and Political Rights
IFSH	Institut für Friedensforschung und Sicherheitspolitik Hamburg
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organization
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OSCE	Organisation for Security and Co-operation in Europe
PHARE	Poland and Hungary Action for the Reconstruction of the Economy (EU)
RFE/RL	Radio Free Europe/Radio Liberty
SSR	Soviet Socialist Republic
UN	United Nations
UNDP	United Nations Development Programme
US	United States
USA	United States of America
USD	United States Dollar
USSR	Union of Soviet Socialist Republics
WWII	World War Two

### *Republic of Latvia*

FHRUL	For Human Rights in the United Latvia
LNHRO	Latvian National Human Rights Office
LVL	Latvijas lats [Latvian Lat]
MFA	Ministry of Foreign Affairs
MK	Ministru Kabinets (Cabinet of Ministers)
MNIL	Movement for the National Independence of Latvia
MP	Member of Parliament
NPLLT	National Programme for Latvian Language Training
RL	Republic of Latvia
SIF	Society Integration Foundation

## Editor's Preface

With the present series "Comparative Case Studies on the Effectiveness of the OSCE High Commissioner on National Minorities," we are publishing the results of five country studies on Estonia, Latvia, Ukraine, Macedonia and Romania of the project "On the Effectiveness of the OSCE Minority Regime. Comparative Case Studies on the Implementation of the Recommendations of the High Commissioner on National Minorities (HCNM) of the OSCE". A comparative analysis on the differing success rates and conditions of the High Commissioner's facilitation and mediation efforts in these countries will follow.

The High Commissioner project was a challenging and fascinating task for several reasons. First, we had to deal with a new instrument of crisis prevention, one of the most innovative developments resulting from the international community's reaction to the shocking and, for most of us, surprising new reality of inter-ethnic conflict and war after the end of the East-West confrontation. When the High Commissioner's mandate was adopted, there was little experience with how to deal with this kind of conflict. And when we started the project in 1999, there was no empirical in-depth analysis on the High Commissioner's work. Thus, we found a rather empty field and had to start from scratch.

Second, we had the privilege to take a closer look at the work of Max van der Stoep, the first incumbent of this new institution. When he took office, nearly everything that today makes the High Commissioner - sufficient funds, advisers, working instruments, contacts, experience - was not yet in place. It was fascinating to follow the straight-forward way in which this great European statesman used the raw material of the mandate and his experience of a whole life devoted to peace and human rights to frame the institution of the High Commissioner as we know it today: an established and overall respected institution of European crisis prevention. Max van der Stoep and his advisers in The Hague have shown vivid interest in our project; they have encouraged us and have always been ready to answer our questions. We are very grateful for all their help.

Third, it was a great pleasure for us to work with a team of young, motivated and talented academics in the countries analysed: with Dr. Teuta Arifi in Macedonia, Jekaterina Dorodnova in Latvia, István Horváth in Romania, Dr. Volodymyr Kulyk in Ukraine, and Margit Sarv in Estonia. They not only collected and analysed piles of materials in eight languages to draft reports into a ninth one, but more importantly, they enriched the project with their specific experiences, avenues of access and points of view to an extent which would have never been achievable without them. We want to thank all of them for years of work and devotion.

We are also very grateful to Klemens Büscher, who worked with the project's Hamburg staff from the beginning of 1999 to mid-2000. The project owes very much to his superb expertise and analytical skills. And we want to warmly thank Kim Bennett, Jeffrey Hathaway, Katri Kemppainen and Veronica Trespalacios who have polished hundreds of pages of English-language text written by non-native speakers.

Last, but by no means least, we are especially grateful to the Deutsche Forschungsgemeinschaft, whose generous grant, first of all, enabled us to carry out this demanding and rewarding research.

Hamburg, November 2003  
The editors



## Preface and Acknowledgements

This study represents a detailed analysis of the involvement of the High Commissioner on National Minorities (HCNM) of the Organization for Security and Co-operation in Europe (OSCE) in Latvia from 1993 until 2001. The study attempts to trace the processes that determined and accompanied the issuance and implementation (or non-implementation) of the HCNM's recommendations to the Latvian authorities during this period. This is done with the purpose of assessing the effectiveness of the High Commissioner's activities by establishing the degree to which his involvement has influenced the decision-making processes and the formulation of minority-related policies in Latvia with the purpose of conflict prevention. Conclusions as to the overall effectiveness of the HCNM's activities and the role of this OSCE instrument in preventing conflicts and easing tensions related to the position of minorities will be drawn on the basis of the comparative analysis using the theoretical framework and the hypothetical suggestions developed previously.<sup>1</sup>

The study is limited to the term of office of the former Dutch Foreign Minister, the first High Commissioner on National Minorities of the OSCE, Max van der Stoep. The ultimate objective of the project is to provide policy recommendations as to the further development and enhancement of the effectiveness of the institution of the High Commissioner on National Minorities of the OSCE.<sup>2</sup>

Latvia was among the first countries to which the High Commissioner directed his attention immediately after the establishment of his office in December 1992.<sup>3</sup> The Latvian citizenship policy that aimed at disenfranchising those who settled in the country during the Soviet period, mostly Russian-speakers, was preoccupying from the point of view of its implications for ensuring the smooth transition to democracy and the overall stability in the country. The situation was classified as a case falling under the High Commissioner's mandate, according to which the HCNM is "an instrument of conflict prevention at the earliest possible stage" who "will provide 'early warning' and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO."<sup>4</sup>

The sense of extreme uncertainty among the Russian-speaking population in 1992-1994 as to its future status in Latvia, and the harsh rhetorical reactions to the Latvian citizenship policy by the Russian Federation, which appeared to have assumed the role of an external homeland<sup>5</sup> for the Russian-speakers and accused Latvia of mass human rights violations, pointed, at least theoretically, to the possibility of conflict. This seemed particularly troubling to a number of observers in both Latvia and the West considering the presence of Russian troops on Latvian territory, which by the time of the High Commissioner's initial involvement had not yet been completely withdrawn.<sup>6</sup>

The OSCE (CSCE at that point) had the capacity for successful mediation as an organisation that both Latvia and Russia viewed as a friendly international actor. Membership in the CSCE/OSCE, in addition to an utmost openness towards international organisations in general, formed part of Latvia's policy of return to the international community after the Soviet period. The involvement of the HCNM was, thus, not hindered by the Latvian government, particularly considering the fact that the

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<sup>1</sup> For the theoretical and conceptual framework of the project, see: Zellner 1999.

<sup>2</sup> On the discussion of the OSCE HCNM, see, for example: Bloed, (ed.) 1994.

<sup>3</sup> On the HCNM's involvement in the Baltic States, see: Zaagman 1999. On the involvement of international diplomacy in Estonia and Latvia, see Birckenbach 1997.

<sup>4</sup> OSCE High Commissioner on National Minorities (Mandate), Articles 2-3. Full text as contained in the Helsinki Document 1992, Decisions, Chapter II, available in: Foundation on Interethnic Relations 1997, p. 85. CSO – Committee of Senior Officials (replaced by the Senior Council as a result of the Budapest Follow-Up Meeting, 5-6 December 1994, when the Conference on Security and Cooperation in Europe (CSCE) officially became the Organization for Security and Cooperation in Europe (OSCE)).

<sup>5</sup> Brubaker 1996, p. 61.

<sup>6</sup> On Baltic security issues, see: Joenniemi and Prikulis (eds.) 1994; Lejins and Bleiere (eds.) 1996.

CSCE/OSCE was actively involved in overseeing the process of Russian troop withdrawal and the dismantling of the Skrunda radar station—the last remaining Russian operational military object on Latvia's territory. For Russia, which after 1991 found itself in a deep crisis related to the country's international status, the CSCE/OSCE was also important for reasons of international self-assertion. Russia seemed to have invested hopes in its historical ties with the CSCE/OSCE, and expected that the organisation would support its stance on the issue of the Russian-speaking minority in Latvia.

Time showed that the High Commissioner could not prevent the disenfranchisement of the majority of the Russian-speakers in Latvia, as the decision upon this issue had been taken and the arguments of the Latvian side had been internationally accepted already before his intervention. One line of argument is that this was a conscious Western strategy aimed at disempowering Russia.<sup>7</sup> While an automatic recognition of all legal residents of Latvia at the time of independence as citizens was the solution that Russia preferred and even demanded, Western actors were careful to differentiate their approach to the problem from that chosen by Russia. The HCNM had to accept the idea of a gradual naturalisation of those not granted citizenship, and attempted to accelerate this process by advocating a speedy naturalisation in his initial recommendations. Although the Latvian Saeima (Parliament) rejected his 1993-1994 recommendations and adopted a Citizenship Law that left only negligible possibilities for the Russian-speaking non-citizens to naturalise, the HCNM followed up on the issue and was one of the principal causal factors behind the change of the Citizenship Law in 1998 that opened the access to naturalisation to all of the non-citizens, regardless of their age or place of birth. The High Commissioner was also very closely involved in the process of bringing the controversial Law on the State Language, adopted in late 1999, in line with Latvia's obligations under international law, as well as in the drafting process of the Language Regulations of the Cabinet of Ministers that meant to guide the implementation of the Law.

Looking back at the time of the HCNM's initial involvement, the possibility of an outbreak of a violent ethnic conflict in Latvia at that stage seems unrealistic for several reasons. Firstly, the ethnically diverse Russian-speaking group was not consolidated on the basis of ethnic origin, and did not play the role of a nationalist movement. During the Soviet times, the Russian-speakers had no incentives for organising themselves as a minority demanding recognition and, in fact, did not even think of themselves as of a minority. Secondly, an irredentist sentiment towards Russia among the Russian-speakers has been largely absent, because the majority of those without citizenship identified strongly with Latvia as they had been born in Latvia or lived there for several decades. Finally, the Russian-speaking group was divided politically, with a large percentage supporting democratic reforms. The majority of the group was, therefore, unlikely to resort to illegal, let alone armed struggle against the Latvian state.

Contrastingly, some observers have pointed to the Latvian voluntary, arms-bearing military organisations such as *Zemessardze* as a troubling factor in the circumstances of the presence of the Russian troops in Latvia. However, provocative actions that could have led to a confrontation between the two were contained.<sup>8</sup> Russia's dissatisfaction with the Latvian policies towards the Russian-speakers manifested itself mostly in occasional rhetorical "sabre rattling", but it is evident that Russia had no means, nor desire, to pursue an aggressive military policy in the Baltic states. Russia tried but failed to preserve its political influence in the Baltics, but this did not mean that it was ready to resort to military means in Latvia. Quite importantly, such a policy would not have found support among the affected Russian-speakers themselves, nor among the Russian citizens.<sup>9</sup>

The tensions and the probability of their escalation were, nevertheless, in place in 1993-1994, and the HCNM's interference was vital in that situation. The HCNM's methods of involvement, his excellent international reputation and his capacity to mobilise political support for his recommendations from other influential international actors has resulted in important changes in the Latvian

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<sup>7</sup> See: Poleschuk 2001.

<sup>8</sup> Tsilevich, 1992, *Vozmozhen li v Latvii vooruzhennii konflikt?* [Is an Armed Conflict Possible in Latvia?], in: SM Segodnja, 28-29 October, in: Tsilevich 1993, p. 244.

<sup>9</sup> Social surveys data can be found in: Rose 19956a, question 59. This issue is also discussed in: Dorodnova 2000, pp. 31-32.

minority policy. That policy slowly evolved from being directed at the political and economic exclusion of the Russian-speakers to being directed at their gradual political and social integration, at least at the declaratory level. Although, as will be shown in the sections below, the HCNM's recommendations were rarely implemented in their initial form and the final result agreed upon by the Latvian decision-makers usually represented complex compromises resulting from a long process of negotiations over a specific issue, the overall involvement of the HCNM in Latvia can be regarded as a success. Minority issues in Latvia have been widely internationalised and the outside monitoring of the situation, particularly by the EU, has become more extensive. Attempts to tighten the policy towards the Russian-speakers have been somewhat smoothed thanks to the efforts of the High Commissioner, whose main objective was to achieve that the adopted regulations did not go beyond the limits set by international law. Of outmost importance, however, is the emerging realisation in Latvia for the necessity of dialogue between its two ethnolinguistic communities.

This study is structured according to the main issue areas addressed by the High Commissioner; citizenship, naturalisation and language, but other issue areas are also analysed. Chronologically, the activities of the HCNM in Latvia may be subdivided into three periods: 1) adoption of the Citizenship Law (1993-1994); 2) liberalisation of the Citizenship Law, which included the abolition of the "windows" system, the drafting of the provision on stateless children and the simplification of the naturalisation procedures (1995-1998); and 3) adoption of the new Law on the State Language and the Cabinet of Ministers' Language Regulations (1998-end of 2000). This chronology determines the structure of this study. In the conclusion, the HCNM's operational, normative and substantive effectiveness will be analysed.

The terms "Russian-speakers" and "Russophones" are used interchangeably in this study, and refer to those non-Latvians whose native language is Russian (according to the latest census data, just over 36 per cent of the total population).<sup>10</sup> The term "Russians" is rarely used and refers to the ethnic Russians only (29.6 per cent).<sup>11</sup> The term "non-Latvians" is used to denote all those persons whose ethnic origin is not Latvian (over 40 per cent) and the term "non-citizens" refers to those persons who neither hold Latvian citizenship nor that of any other state (presently 514,298 persons or about 22 per cent).<sup>12</sup> The majority of the non-citizens are Russian-speakers.

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<sup>10</sup> Central Statistical Bureau of Latvia. 2000 Census data, available at: [www.csb.lv/Satr/atsk2.htm](http://www.csb.lv/Satr/atsk2.htm).

<sup>11</sup> Ibid.

<sup>12</sup> Regularly updated data available at the Latvian State Naturalisation Board's website: [http://www.np.gov.lv/index.php?en=fakti\\_en&saite=residents.htm](http://www.np.gov.lv/index.php?en=fakti_en&saite=residents.htm).

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## Chapter 1 Historical and Political Background of the HCNM's Involvement

The restoration of Latvia's independence in 1991 brought with itself the establishment of a new political order that has been described by a number of authors as an ethnic democracy or ethnocracy,<sup>13</sup> meaning that democratic arrangements favour one ethnic group, usually the majority, in a multiethnic society. This arrangement is a product of historical and demographic grievances of the Latvians, as well as that of elite struggles for power and economic resources. The ethnocratic arrangement was reached following independence by means of citizenship and language policies that deeply affected the Russian-speaking minority formed in Latvia predominantly during the Soviet years. In view of the harsh criticism of these policies by the Russian Federation and security concerns of the West in this connection, the situation was addressed by international organisations, among them the Organization for Security and Co-operation in Europe (OSCE). The OSCE High Commissioner on National Minorities (HCNM) addressed the conflict between the Latvian government and the Russian-speaking minority by offering compromise solutions acceptable to both parties. While, as a result of the exclusionary citizenship policy, the legislative power lay almost entirely in the hands of one of the parties in the conflict, the HCNM attempted to smooth the most radical initiatives of those who had recently been granted that power by issuing a number of recommendations to the government. However, the predominant ethnocratic stance of Latvian policy-makers has not been easy to shake. For an understanding of the reasons for this stance, a brief historical overview is required before a detailed account of the High Commissioner's involvement can be pursued.

### *1.1 Independence and Annexation*

The Latvians are descendants of the Baltic tribes of Kurši, Līvi and Zemgāli, which had inhabited the territory of present-day Latvia before having coalesced into a single ethnic group. The nation has developed a strong sense of cultural and linguistic identity in spite of and in opposition to centuries of foreign domination that often included assaults on their ethnic survival, expressed in the form of cultural, linguistic and physical harassment. In the course of history, the Latvians have experienced over seven centuries of German feudalism, long years of Swedish and Polish dominance and almost two centuries of Russian imperial rule. At the end of the 19<sup>th</sup> century, an elite of Latvian intellectuals laid the groundwork for the first national awakening of the Latvians. This process culminated in the proclamation of an independent Latvian state in 1918, in the midst of war, revolution and the collapse of the Russian Empire. In spite of having slid into a comparatively moderate dictatorship by Kārlis Ulmanis in 1934, the country had achieved a high level of economic development by 1940, when it was illegally annexed by the USSR.<sup>14</sup>

The years of the First Republic are remembered by Latvians as a period of relative prosperity. The sense of having lost their independent state to the totalitarian Soviet regime under tragic circumstances may help to explain the zeal with which they have embarked on the restoration of their independence. The strong anti-Russian sentiment that has accompanied this process and manifested itself in the policies that disadvantaged Russians or those who speak Russian in the newly independent Latvia is explained by the fact that, over the past several decades, the Latvian identity has crystallised in opposition to everything Soviet. Many Latvians, consciously or not, have chosen to make no distinction between "Soviet" and "Russian". This attitude has been fomented by the radical nationalist political forces that have invariably represented the Russian-speaking minority as an illegitimate or semi-legitimate legacy of the oppression.

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<sup>13</sup> See Smith 1996, pp. 199-216; Linz and Stepan, 1996b, p. 430; Kolstø, (ed.) 1999, p. 296; Nørgaard et al 1996, p. 213.

<sup>14</sup> For the accounts on the history of Latvia in English, see, for example: Rauch 1974; Misiunas and Taagepera 1983; Hiden and Salmon 1991; Lieven 1993.

The anti-Russian argument has allowed politicians riding on the ethno-nationalist wave to consolidate considerable public support, particularly in the circumstances of the mounting frustration in society at the economic hardships that followed Latvia's break-off from the USSR. As Nørgaard observed in the mid-1990s with regard to Estonia and Latvia, "[t]he more or less implicit goal is to create nation-states where between one-third and one-half of the Soviet-era immigrants must be induced to leave the countries, while the remainder would be assimilated into the national cultures."<sup>15</sup> This goal has been supported by Latvians who argue that Russian-speakers in Latvia are collectively responsible for the forced annexation of 1940 (officially referred to in Latvia as occupation), Stalin's deportations of Latvians to Siberia, forced collectivisation of property, irrational industrialisation that caused serious environmental degradation, as well as Slavic migration into Latvia that considerably altered the ethnic composition of the country by reducing the percentage of ethnic Latvians from 77 per cent in 1935 to 52 per cent in 1989 (see table below).

Latvia's annexation followed the secret territorial protocols of the Molotov-Ribbentrop Pact signed on August 23, 1939, by the Foreign Ministers of Germany and the USSR, which left the Baltic states in the Soviet sphere of influence. Anticipating the forthcoming events, Hitler retrieved most of the German minority from Latvia: around 63,000 Latvian Germans left the country in 1939. The USSR, on its part, forced Latvia (as well as Estonia and Lithuania) into signing the Defence and Mutual Assistance Pact in October 1939, allowing 30,000 Soviet soldiers to enter the country. In June 1940, the USSR followed up with an ultimatum demanding a change of the Latvian government as well as the free entry of unlimited troops to secure strategic objects on Latvian territory. President Ulmanis was allowed only eight hours for reflection and, faced with the complete lack of support from the international community, capitulated. The Soviet authorities formed a puppet government in Latvia loyal to Moscow and staged fictitious elections to the People's Assembly, whose fabricated results showed an unconditional support for the Communist Party. The previously planned request of the representatives of the newly elected Assembly to join the USSR was immediately fulfilled.<sup>16</sup> Until the early 1990s, the West *de facto* accepted this annexation, being unwilling to aggravate relations with Moscow.

Following the 1940 annexation, the Stalinist regime immediately did away with the Latvian political and intellectual elite by deporting 14,693 persons to Siberia in June 1941, an event that left a deep imprint on the memory on the Latvians.<sup>17</sup> The Nazi occupation that followed (1941-1944) brought more grief in spite of the hopes of some Latvians that the German intervention would save them from Stalinist terror.<sup>18</sup> Nazi Germany had its own plans regarding Latvia. The majority of the population was to be eliminated and only a small part of the fittest was to be assimilated. One of the darkest chapters of the period of the Nazi occupation of Latvia is the almost total extermination of the Jewish minority that represented roughly five per cent of the country's population at that time.<sup>19</sup> As a result of WWII, Latvia's population decreased by one third. Over 100,000 Latvians fled to the West to establish strong and well-organised diaspora communities in, e.g., the USA, Canada, Australia, Germany and Venezuela that would play an important role in the future independence movement, both ideologically and financially.<sup>20</sup>

The re-installation of Soviet power after the war brought more terror to Latvia as over 40,334 persons, among them Latvia's successful private farmers, were deported in order to speed up the collectivisation campaign. The Latvian guerrilla movement known as the *Forest Brothers* tried to hinder these developments by assaulting the new regime until the early 1950s but, having had almost no impact upon the course of events, opted for other forms of opposition. As Dreifelds points out,

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<sup>15</sup> Nørgaard et.al, p. 188.

<sup>16</sup> Dreifelds 1996, pp. 32-33.

<sup>17</sup> Ibid.

<sup>18</sup> Muiznieks 1993, in: Bremmer and Taras (eds.) 1993, p. 184.

<sup>19</sup> Dreifelds mentions the figure of 70 000 Jews killed. Op, cit, pp. 36-40. On the Holocaust in Latvia, see: Ezergailis 1996.

<sup>20</sup> On diaspora communities, see: <http://www.latviansonline.com>. One of the most outstanding Latvian diaspora organisations is the World's Free Latvians Federation, available at: <http://www.pblla.lv>

the sizeable guerrilla movement that fought without any foreign support represents "another index of the depth of antagonism felt by Latvians toward the forcible loss of independence."<sup>21</sup>

## 1.2 The Post-Stalin Era

After Stalin's death and with Khrushchev's (and later Brezhnev's) accession to power, the brutal grip of repression was loosened in the whole of the USSR, including Latvia. The regime, nevertheless, assured itself of staffing the Republic's leadership with pro-Soviet individuals, many of whom were Russified Latvians who had been born or educated in the USSR, and who had little emotional attachment to Latvia. Muižnieks speaks of the ethnic hierarchy "with Russians or Russified *latovichi* ruling over the indigenous Latvians."<sup>22</sup> This reality has, undoubtedly, left its imprint upon the popular attitudes towards Russians that sharpened towards independence.

As part of the Soviet nationalities policy, and due to the industrialisation and the general labour deficit in the post-war Latvia, large numbers of persons, mostly of Slavic origin and of various educational backgrounds, were encouraged or instructed to move to Latvia from other Soviet Republics such as Russia, Belarus and Ukraine. Table 1 shows the change of ethnic composition of Latvia between 1920 and 2000 (the year of the first post-independence census). During the Soviet period, the share of non-Latvian groups, especially that of ethnic Russians, Ukrainians and Belarusians increased considerably. The Russians have been present in Latvia throughout history, forming a minority of roughly ten per cent in the inter-war period. This fact is not surprising, as the Baltic and Slavic tribes had historically inhabited adjoining territories and Russians had moved or fled into Latvia from the 17<sup>th</sup> century onwards. The largest numbers of Russians, however, moved to Latvia in the 1950-1980s. It is important to note that Ukrainians and Belarusians, the second and third largest Slavic groups in Latvia, were linguistically Russified, partly by choice and partly because there was no infrastructure available in the Soviet republics for maintaining a wide range of ethno-cultural identities through educational or religious establishments. Education was available in either Latvian or Russian, and the majority of Slavs chose Russian-language instruction.<sup>23</sup>

Table 1: Ethnic Composition of Latvia, 1920-2000 (in per cent)

Ethnicity	1920	1935	1959	1970	1979	1989	1994	2000
Latvians	72.76	77.0	62.0	56.8	53.7	52.0	54.2	57.7
Russians	7.82	8.8	26.6	29.8	32.8	34.0	33.1	29.6
Belarusians	4.74	1.4	2.9	4.0	4.5	4.5	4.1	4.1
Poles	3.42	2.6	2.9	2.7	2.5	2.3	2.2	2.5
Ukrainians	n.a.	0.1	1.4	2.3	2.7	3.4	3.1	2.7
Lithuanians	1.6	1.2	1.5	1.7	1.5	1.3	1.3	1.4
Jews	4.99	4.9	1.7	1.6	1.1	0.9	0.5	0.4
Germans	3.64	3.3	0.1	0.2	0.1	0.1	0.1	0.1
Estonians	0.55	0.4	0.2	0.2	0.1	0.1	0.1	0.1
Roma	n.a.	0.2	0.2	0.2	0.2	0.3	0.3	0.3
Others	1.0	0.2	0.5	0.6	0.8	1.0	1.0	1.1
Total (in thousands)	1 596	1 951	2 094	2 364	2 503	2 667	2 566	2 375

Sources<sup>24</sup>

Geographically, the Russian-speakers are spread around the whole Latvian territory, predominating in urban areas and forming majorities in nearly all larger Latvian cities, including the capital, Riga. This is explained by the concentration of economic activity close to big cities, which is where the

<sup>21</sup> Dreifelds 1996, pp. 40-43.

<sup>22</sup> Muiznieks 1993, p. 185.

<sup>23</sup> For an account of the history of the Russians in Latvia, see: Volkovs 1996.

<sup>24</sup> Sources: for 1920: Muiznieks 2000, p.7; for 1935-1994: Dreifelds 1996, p. 148; for 2000: Central Statistical Bureau of Latvia (data of the 2000 population census): [www.csb.lv/Satr/atsk2.htm](http://www.csb.lv/Satr/atsk2.htm).

Soviet government also constructed the majority of block apartment buildings and dormitories. Within several years after arrival, the migrants coming from outside of Latvia could apply for such housing. Though having a similar impact on the society at large, Soviet housing policies were viewed by Latvians as discriminating against them, as the perception that the new arrivals enjoyed better living conditions was easily formed. This perception further contributed to the often intolerant attitudes towards the non-Latvians around and after independence, and may help to shed some light upon the difficulties in the post-independence inter-ethnic relations, including the policy of citizenship and privatisation.

### *1.3 Language and Education in Soviet Latvia*

Both Russian and Latvian were official languages in Latvia during the Soviet years. As Russian was the official language of the USSR, a good command of Russian became one of the coping skills all Latvians had to acquire under the Soviet authorities. For those who moved to Latvia from elsewhere and did not speak Latvian, the knowledge of Russian was usually sufficient. It is important to note that the Russian-speakers who moved to Latvia under the Soviet era generally did not think of themselves as immigrants, as they moved within what they considered to be one country. Therefore, the migrants faced no pressure of cultural or linguistic adjustment to the host "republic". On the contrary, it was the Latvians who had to adjust by learning the Russian language. Because of this necessity, in 1989 the majority of Latvians could speak Russian, while only around 22 per cent of the Russians in Latvia claimed proficiency in Latvian. This "asymmetric bilingualism", where only Latvians were bilingual, was not resolved, as there were no incentives of pursuing the policy of "reciprocal bilingualism" in Latvia that would ensure that both Latvians and non-Latvians would have good knowledge of both languages.<sup>25</sup>

The Soviet language policy of "asymmetrical bilingualism" created a situation where the non-Latvians had neither the necessity nor the adequate opportunities for acquiring a solid command of Latvian. Russian schools generally speaking offered poor Latvian-language instruction. The methodology was underdeveloped, there was a constant lack of teachers of Latvian, and the subject itself was more or less optional. The Russian-speakers' poor knowledge of the Latvian language has widely been pointed out by the Latvian politicians as proof of the laziness of the Russians and their disrespect towards the Latvian culture. This is, however, a perception that the majority of the Russian-speakers find incorrect. Graham Smith has found in his 1993 survey that Russian-speakers generally do not admit the view that they are to blame for their poor knowledge of Latvian; rather, they consider it a product of historical circumstances beyond their control.<sup>26</sup>

Linguistic and educational separateness contributed to inter-ethnic separation during the Soviet era. At the time, one could clearly identify differences between Latvians and the Russian-speakers in terms of their cultural traditions, language and, to a certain extent, levels of religiousness. The Latvians have always emphasised their ethnic identity and attached major importance to maintaining their folk traditions as well as religious values. In the case of the Russian-speakers, the identity was often blurred, its ethnic component being substituted by the territorial one. They could rarely identify with Latvian folklore traditions and were generally less religious. Most of those who did maintain the faith in spite of the Soviet atheist propaganda belonged to the Orthodox tradition, while the Latvians have been predominantly Lutheran. Alongside educational establishments being segregated, working teams were also often exclusively either Latvian or Russian-speaking. However, exceptions to the above-mentioned forms of separations did exist. A number of "bi-stream" schools and universities housed both Latvian and Russian-speakers in the same building, although teaching was separated according to language. A rather high percentage of inter-ethnic marriages (around 30 per cent, about double that of Estonians) also contributed to the interaction.<sup>27</sup>

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<sup>25</sup> Karklins 1994, p. 151.

<sup>26</sup> Smith, Aasland and Mole 1994, in: Smith (ed.) 1994, p. 194.

<sup>27</sup> Dreifelds 1996, p. 161-163.



#### 1.4 The Independence Movement

With time, the Latvians came to feel threatened by the increasing percentage of the non-Latvian population in Latvia and the growing influence of the Russian language in the republic. The perceptions of being discriminated against and being disadvantaged, of not being respected culturally and linguistically, the indignation over the Soviet industries harmful to the Latvian environment and the general preoccupation over the possibility of becoming a minority in their own historical land culminated in the second half of the 1980s when Gorbachev's policy of *glasnost* allowed the Latvians to finally voice their long-endured grievances. In a very short time, *glasnost* facilitated a mobilisation of mass protests against the Soviet system.<sup>28</sup>

The project of restoring independence was, initially, not openly discussed but rather contemplated by many Latvians, particularly those of the diaspora. The first issues brought to the top of the agenda for criticism in Latvia (as in many other USSR republics, including Russia) were those of environmental degradation. As Muiznieks correctly observes, this was a topic of key importance, particularly in the aftermath of the Chernobyl catastrophe. It was also a relatively safe topic from the political point of view, as it could consolidate people of different ideological stances.<sup>29</sup> Initially, the protests were not explicitly nationalist in form, and could count on the participation of the reform-minded Russian-speakers living in Latvia. Very soon, however, the initially ethnically neutral environmentalism started taking on an unequivocally nationalist character. The legitimacy of the Soviet annexation of Latvia began to be put to question with increasing frequency by the so-called "informal organisations". One of them, the radical nationalist *Helsinki '86* openly advocated the restoration of independence, called international attention to the illegitimate character of Soviet rule in Latvia and organised the first "calendar demonstrations" to commemorate the 1918 declaration of Latvia's independence, the 1941 deportations of the Latvians, and the signing of the Molotov-Ribentropp Pact in 1939. The activities of *Helsinki '86* predetermined the creation of the mass nationalist movement in Latvia, which was led by the Latvian intelligentsia, namely the Artists' Union and the Writers' Union. Mixing nationalist and liberal democratic demands and not calling for full independence, these Unions were viewed as more legitimate by the authorities.

The key event that marked a major consolidation of the intelligentsia into a mass nationalist force and the one where "ethnic polarization began [...] as Russian-speakers heard the pent-up grievances of Latvians for the first time"<sup>30</sup> was the Forum of the Writers' Union in March 1988. At the Forum, Russian chauvinism and the privileged status of the Russian language were condemned, the events of 1940 were for the first time publicly termed "occupation", and the groundwork for the subsequent creation of the Popular Front was implicitly laid (membership of the Popular Front reached over 100,000 by October 1988).<sup>31</sup> The resolution adopted by the participants demanded decentralisation and spoke of "sovereignty" for Latvia within the USSR, implying more autonomy and control over the natural resources, in addition to the recognition of national symbols and citizenship. In spite of having made democratic demands that would benefit all Latvian residents, the primary nationalist leitmotif of the resolution, including the demand to pass a law that would grant Latvians a majority vote in representative bodies at all levels and promote the voluntary return of immigrants to their places of origin, quite understandably alarmed the Russian-speakers residing in Latvia.<sup>32</sup> The resolution spoke of the preservation and renewal of the Latvian nation, the granting of the official status to Latvian and the strict control of migration processes into the republic.<sup>33</sup> Complete independence became the Popular Front's objective in May 1989, which meant a rather open confrontation with Moscow.

An opposing organisation to the Popular Front, the Latvian International Working People's Front (in short the Interfront), was also founded in 1988 by a group of individuals favouring the preserva-

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<sup>28</sup> Muiznieks 1993, p. 187.

<sup>29</sup> Ibid., p. 190.

<sup>30</sup> Ibid., p. 196.

<sup>31</sup> Dreifelds 1996, p. 69.

<sup>32</sup> Muiznieks 1993, p. 195.

<sup>33</sup> Dreifelds 1996, p. 60, Muiznieks 1993, p. 193.

tion of the USSR, most of them Russian-speakers. The organisation, however, did not mobilise overwhelming support among the Russian-speaking population, as democratically-minded individuals could not identify with its openly Soviet-style methods of work and rhetoric. It may be safely stated that both the Popular Front and the Interfront had problematic programmes for the majority of the Russian-speakers. As to the Latvians, "the Interfront, with its Brezhnev-era rhetoric, was more an object of ridicule than concern for [them] in late 1988 and early 1989."<sup>34</sup> Dreifelds notes that the non-Latvians were politically split around 1990 and estimates that only 20-30 per cent were attracted by the pro-status quo organisations such as the Interfront and the Latvian Communist Party.<sup>35</sup>

At the time, three tendencies in the approach of the Popular Front towards the non-Latvians were distinguishable. The proponents of the first one argued that the destiny of Latvia was for the Latvians alone to decide, and the opinion of the "newcomers" should not be of relevance. The second strand claimed that democratic methods were required and the interests of the non-Latvians should also be taken into account. However, the exact methods to be used and what was in the interest of the non-Latvians would be determined solely by Latvians. The supporters of the third possible approach held that, in the struggle for Latvia's revival, it would be necessary to unite the efforts of all Latvia's inhabitants and strive for mutual understanding and readiness for a compromise.<sup>36</sup> This third approach was the only acceptable option for the Russian-speakers. However, the most radical approach, the first one, eventually prevailed, alienating the Russian-speakers from the Front. As Muiznieks argues, "[e]ven progressive Russian-speakers could be expected to have strong qualms about the Front, whose program was based on liberal nationalism and the priority of the Latvian nation [...]. The process of polarisation appeared to accelerate soon after the founding of the Popular Front."<sup>37</sup>

The role played by the Communist Party of Latvia was initially to co-operate with the Popular Front. However, the antagonism between the two organisations quickly became pronounced, in spite of the fact that many liberally-minded communists joined the Front. At the Founding Congress of the Front, communists represented about one third of the delegates. Nevertheless, a crisis within the Communist Party led to its split in spring 1989 into two separate organisations: the Communist Party of Latvia (more "traditionalist" and predominantly Russian-speaking) and the reformist Independent Communist Party of Latvia (formed by the Latvian "national communists"). Many members chose to abandon the communist ranks altogether.<sup>38</sup>

One of the key emblematic events of the independence movement was the Baltic Way of August 23, 1989. This action mobilised around two million Latvians, Estonians and Lithuanians who commemorated the 50<sup>th</sup> anniversary of the signing of the Molotov-Ribbentrop Pact by holding hands and thus forming a human chain from Tallinn via Riga to Vilnius. A further major step towards independence was the Latvian Supreme Council elections of March 17, 1990, in which all Latvian residents could vote and where the pro-independence Popular Front won the majority of the seats. Only 15 of the newly-elected deputies had been members of the old Supreme Council, which meant that power was successfully and peacefully transferred to the new forces by parliamentary means. The ethnic composition of the Supreme Council elected in the March 1990 elections was as follows: 138 Latvians (70 per cent), 42 Russians (21 per cent), 8 Ukrainians, 3 Jews, 2 Belarusians and one each from Polish, Greek and German roots.<sup>39</sup> The key decision of the newly-elected Supreme Council was the passage of the Declaration of Independence on May 4, 1990, with 138 votes in favour (the required minimum being 134). Full independence was to be preceded by a transition period during which Latvia would still remain part of the USSR.

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<sup>34</sup> Muiznieks 1993, p. 197.

<sup>35</sup> Dreifelds 1996, p. 69.

<sup>36</sup> Tsilevich 1990, *Poputchiki ili soratniki?* [Co-travellers or partners?] in: Tsilevich 1993, p.5.

<sup>37</sup> Muiznieks 1993, p. 196.

<sup>38</sup> Dreifelds 1996, p. 63.

<sup>39</sup> *Ibid.*, p. 67.

In the second half of 1990, seeing the rapid gains of the liberals, the conservative forces in Moscow became preoccupied with losing control of the situation, and attempted to turn the clock back by violently suppressing the liberation movements in the republics. In Latvia, among other actions, the Latvian Press Building was occupied. In Riga, the determination not to allow the hardliners to take over other strategically important buildings was very strong. Barricades were built in particular to guard the Parliament, and people guarded the strategic buildings around the clock. In spite of disagreeing with the Latvians on certain political issues, the Russian-speaking democrats joined them on the barricades when the very issue of continuing with liberal reforms was about to be seriously questioned. On January 20, 1991, the special OMON forces (the Black Berets) attempted to occupy the Ministry of Interior building. The attack resulted in five deaths and several injuries. The chairman of the Russian Congress of People's Deputies Boris Yeltsin called on the Soviet Army not to intervene, and the situation was also internationalised. The effect of the hardliners' action was the opposite of the desired. Both Latvians and non-Latvians became consolidated in their opposition to the reactionary tendencies of the centre. They now shared their hopes for democratic changes in Latvia which, in the opinion of many, could only be brought about by independence.<sup>40</sup>

On March 3, 1991, a non-binding referendum on the issue of independence was organised in Latvia, in which all inhabitants had the right to participate. The outcome was overwhelmingly in favour of independence: 73.68 per cent favoured independence, which means that at least 33 per cent of Russian-speakers also favoured this outcome.<sup>41</sup> Social surveys reveal that 39 per cent of the non-Latvians supported independence by 1990.<sup>42</sup> Five months later, the failed Moscow *coup d'état* of August 1991 provided a set of circumstances under which the leaders of Latvia proclaimed full independence from the USSR on August 21, 1991. International recognition followed shortly.

### *1.5 The Post-Independence Political Context in Latvia*

The hopes for a democratic policy of the newly-elected Latvian decision-makers towards the non-Latvians disappeared soon after independence was re-established, as the stance on citizenship acquired a pronouncedly radical character. Already in 1990, the members of the radical nationalist informal groups organised the "Citizens' Committees", arguing that those who had migrated to Latvia during the Soviet era should not be entitled to the right to vote. Following a campaign to clarify who had the right to Latvian citizenship, around 900,000 signatures of persons who would be entitled to Latvian citizenship, i.e., those who could prove their links to the first Republic of Latvia, were collected both in Latvia and abroad.<sup>43</sup>

Political radicalisation led to the fragmentation and virtual collapse of the Popular Front. The citizenship concept based on the principle of legal continuity of the inter-war Republic of Latvia received broad support among the Supreme Council deputies and resulted in the adoption of the Resolution On the Restoration of the Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalisation on October 15, 1991. This central Resolution envisaged the granting of citizenship only to the pre-1940 citizens of Latvia and their descendants, leaving the rest (almost 30 per cent of the population, or over 700,000 people, most of whom were Russian-speakers)<sup>44</sup> in the legal vacuum. Consequently, also those non-Latvians who had cast their votes for the Popular Front deputies in the 1990 elections were excluded from the Latvian political community. This inevitably produced bitter feelings and led to a confrontation within the society that was now divided into citizens and non-citizens. This division was to a great extent (although not exclusively) drawn along ethno-linguistic lines.

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<sup>40</sup> Ibid., p. 77.

<sup>41</sup> Ibid., p. 78.

<sup>42</sup> Zepa, 1992, p.22.

<sup>43</sup> Muiznieks 1993, p. 199.

<sup>44</sup> Zītaris 1994. Latvijas Iedzīvotāju reģistrs kā Latvijas spogulis [Registry of the Latvian Population as the Mirror of Latvia], Latvijas Vēstnesis, 9 April. The official figure of the registered non-citizens as of March 28, 1994, was 724,874 persons.

The overall situation, however, remained comparatively calm. This resulted in international missions providing fairly neutral assessments concerning the Latvian government's policies towards the Russian-speakers. For example, the report of the United Nations fact-finding mission concluded with satisfaction in 1992 that "no instances of violence, no mass dismissals from employment, exclusion from educational establishments, evictions from apartments, or expulsions were reported."<sup>45</sup>

However, the Citizenship and Immigration Department, which was tasked with carrying out the registration of Latvian inhabitants and, among other things, conferring upon them the status of citizen or non-citizen, denied registration to over 100,000 persons, depriving them of legal residence in the country. This group now faced extreme uncertainty, as their situation implied the lack of a legal status and, consequently, of any sort of social security. A great number of these persons were illegally denied registration and, in some cases, even issued deportation orders on the basis of their residence in the buildings constructed by or belonging to the Soviet army personnel, in spite of having no affiliation with the army.<sup>46</sup> Many individuals resorted to the judiciary, and the Latvian courts recognised that the rights of these persons had, in the majority of cases, been violated. However, the Citizenship and Immigration Department often refused to comply with the courts' decisions and continued its illegal practices, revealed for one by the Helsinki Watch Report of October 1993.<sup>47</sup> Whether as a direct or as an indirect result of these policies, it is estimated that 100,000-200,000 people emigrated from Latvia in the early and mid-1990s for one reason or another, with 53,000 persons leaving in 1992 alone.<sup>48</sup>

Such citizenship policies and the practices of the authorities that induced Russian-speakers to leave Latvia were of central concern to the High Commissioner, and this is where he saw the potential for conflict, justifying his intervention. After his two initial visits to Latvia on January 15-20 and April 1-2, 1993, he wrote in his first letter to the Latvian Foreign Minister Georgs Andrejevs that "[o]n the basis of my conversations, I assume that the Government of Latvia, confronted with this situation, will not decide to oblige this group or parts of it to leave the country."<sup>49</sup> In his subsequent letter, the High Commissioner warned the Latvian government of the consequences the exclusionary approach to citizenship could have for democracy in Latvia: "If the overwhelming majority of non-Latvians in your country is denied the right to become citizens, and consequently the right to be involved in key decisions concerning their own interests, the character of the democratic system in Latvia might even be put into question."<sup>50</sup>

Against this background, the years 1992 and 1993 also saw the restriction of the language legislation, the elimination of the university programmes in the Russian language, as well as the commencement of large-scale language examinations of the Russian-speakers, which produced further tensions. In addition, in the parliamentary elections that were held on June 5-6, 1993, only those persons recognised by the Citizenship and Immigration Department as citizens, the majority of whom were ethnic Latvians, could vote. The elections took place in the absence of a Citizenship Law or naturalisation, and in the absence of legislation regulating the legal status of non-citizens. The scope of the citizens of Latvia was determined by the Supreme Council resolutions and decrees. The 1993 elections implied that the chosen line on citizenship was now even more difficult to reverse, as political power had been distributed in favour of the ethnic Latvians. The High Commis-

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<sup>45</sup> Fall, Ibrahim, Director of the UN Centre for Human Rights, asked by the United Nations Secretary General. Summary of the Report on a Fact-Finding Mission to Latvia, November, 1992, available in: Birckenbach 1997, p. 304.

<sup>46</sup> According to the law "On the Registration of Residents" of December 11, 1991 and the Supreme Council decree "On the Procedure of Instituting the Law of the Republic of Latvia on the Registration of Residents" of December 17, 1991, active duty USSR military personnel and their family members were not to be registered. The Citizenship and Immigration Department, however, refused to register civilians contracted by the military institutions and individuals residing in apartment buildings allegedly belonging to the military thus violating the existing legislation.

<sup>47</sup> Panico, Christopher on behalf of Helsinki Watch 1993: Violations by the Latvian Department of Citizenship and Immigration, Helsinki Watch, Vol. 5, No. 19, October 1993. Full text in: Birckenbach 1997, pp. 395-420.

<sup>48</sup> Dreifelds 1996, p. 152; Tsilevich and Antane 1999, in: Kolstø (ed.) 1999, figure 4.10.

<sup>49</sup> HCNM's letter to the Latvian Foreign Minister Georgs Andrejevs, 6 April 1993.

<sup>50</sup> HCNM's letter to Andrejevs, 10 December 1993.

sioner's chances to alter the Latvian citizenship policy under these circumstances thus became minimal at this point, in spite of the fact that the Citizenship Law had not yet been adopted.

In 1998, 78 per cent of all Latvian citizens were Latvians, 22 per cent were non-Latvians (16 per cent being ethnic Russians).<sup>51</sup> This pattern has been altered to only an insignificant extent after 1998, when the majority of non-citizens became eligible for naturalisation. The present official number of the naturalised citizens (around 65,000 since 1995) represents just over one tenth of the current official total number of the non-citizens and stateless persons, which is still above 500,000.<sup>52</sup> Initially, this number stood at over 700,000, but it has decreased owing to the general demographic crisis in Latvia, where the mortality rate exceeds the birth rate, as well as to emigration. As the figures show, naturalisation has not significantly contributed to the reduction of the number of non-citizens.

The general line of ethnic policy in Latvia has been followed by the ruling elites rather consistently during the entire post-independence period, regardless of the frequently-changing governments and coalitions (four parliamentary elections have taken place since independence; ten governments have been in power). The post-independence political spectrum may be generally characterised by drawing a rough parallel to Western-oriented political formations. Parties that have, in the course of the last decade, identified themselves as "centrist" include Latvia's Way, The Democratic Party Saimnieks, The New Party and the People's Party, which is considered right-of-centre. Right-wing radical nationalist political parties, whose programmes are built almost entirely around the ethnic issue, include For Fatherland and Freedom and The Movement for the National Independence of Latvia (MNIL) (these two parties have coalesced into a single parliamentary faction). The pro-minority opposition is composed of The Equal Rights Movement, The People's Harmony Party and the Socialist Party. Additionally, the conservative Farmers' Union, the Green Party and the two Social Democratic parties have also played an important role, although they have generally had less electoral success at the parliamentary level. Throughout the years, a large number of political formations have contested the elections with varying success. The process of party formation in Latvia is still in the state of flux and new actors frequently appear on the political arena, particularly shortly before the elections.<sup>53</sup>

On ethnic policy issues, the positions of the centrist and the radical forces have been approximated throughout the 1990s: the centrists have been sliding towards the demands of the radicals, whereas the radicals have been sometimes forced to deviate from the extreme positions for reasons of European integration. The "moderates" and the "radicals" have often been coalition partners: in 1995, Latvia's Way entered in coalition with Fatherland and Freedom that advocated an approach where the non-citizens would not be allowed to naturalise. The participation of the radical nationalist factions in the ruling coalitions has always been conditional upon the non-liberalisation of minority policies. Such conditions were incorporated at various points in time into the agreements among the government-forming factions.

The membership of both the centrist and the radical parliamentary factions has been overwhelmingly ethnic-Latvian, Russian-speakers being represented by the pro-minority opposition that has never entered the ruling coalitions since independence and has been easily voted out. The High Commissioner has dealt extensively with the representatives of Latvia's Way, whose members have held the post of the Prime Minister four times and the post of the Foreign Minister invariably until 2002. Fatherland and Freedom has had significant dominance in the state institutions vital to the interests of non-citizens and Russian-speakers in general, such as the Citizenship and Immigration Department and the Ministry of Education and Science. Its member Guntars Krasts held the post of the Prime Minister in 1997-1998. The naturalisation rate has been slow and the linguistic rights of the Russian-speakers have been gradually restricted after independence. These factors again indicate that the political context in which the High Commissioner operated was rather unfavourable

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<sup>51</sup> UNDP Latvia 1998a.

<sup>52</sup> Regularly updated statistics available from the Naturalisation Board's web page at: [http://www.np.gov.lv/index.php?en=fakti\\_en&saite=statistic.htm](http://www.np.gov.lv/index.php?en=fakti_en&saite=statistic.htm), (cited data as of August, 2003).

<sup>53</sup> Nørgaard et al. 1996, p. 85.

for the purpose of the implementation of his recommendations. However, the European orientation of most of the Latvian political actors has been a positive factor due to which the recommendations could not be completely ignored.

The pro-minority opposition in the Latvian Saeima is a rather complex phenomenon. The three main political formations that oppose the current citizenship policy and represent Russian-speakers – the Equal Rights movement, the Latvian Socialist Party and the People's Harmony Party – initially ran in parliamentary elections separately. In the 1998 elections, however, in spite of ideological differences, they for the first time ran under the name of the People's Harmony Party as a united political block.<sup>54</sup> The mentioned organisations formed the parliamentary faction For Human Rights in the United Latvia (FHRUL) that held 16 seats in the Saeima between 1998 and 2002. In the 2002 elections, FHRUL won the second largest number of seats (25), but remained in the opposition due to the unwillingness of the other actors to accept them as members. In 2003, a split occurred within the FHRUL: the faction of the People's Harmony Party with 16 seats and the faction of the Latvian Socialist Party with five seats were formed. Four MPs chose not to affiliate themselves with any faction. The largest number of seats (26) is now held by the new conservative formation *Jaunais Laiks* [The New Era] formed shortly before the elections. Latvia's Way lost the elections and is not represented.<sup>55</sup> Under the current distribution of political forces in parliament one may expect a continuation of the previously followed ethnic policy line, particularly as far as the educational sphere and linguistic issues are concerned.

### 1.6 The Identity of Russian-speakers in Latvia

Although a number of Russians, Ukrainians, Belarusians and representatives of other ethnicities in Latvia have organised themselves into national cultural societies and established ethnic schools following independence in order to raise their ethnic consciousness,<sup>56</sup> the majority of the Russian-speakers in Latvia do not view their ethnic origin as the principal reference point for their identity, unlike the Latvians. This phenomenon has been described as "ethnic nihilism",<sup>57</sup> a product of the Soviet-era promotion of cosmopolitan values convenient for cultivating the perception of the whole of the USSR as a homeland among Soviet citizens. The "ethnic nihilism" of the Russian-speaking linguistic minority in Latvia, in fact, appears to have been a highly positive factor for the inter-ethnic relations, as the response of the minority to the nationalising policies of the Latvians has not been expressed in similar ethno-nationalist terms, which, arguably, has *a priori* reduced the possibility of a classical violent ethnic conflict in the post-independence period.<sup>58</sup> The Russian-speaking identity in Latvia is a highly complex issue, and has been addressed by a number of researchers, most of whom have emphasised its dual nature, where the territorial component prevails over the ethnic one.<sup>59</sup> Volkovs, for example, has found that the Russian language as the native language is given higher priority than ethnicity as an identity reference point.<sup>60</sup> Other observers have concluded that the Russian-speakers in Latvia view themselves as being different from the Russians in Russia.<sup>61</sup> Kolstø has concluded that the general trend in the development of the Russian-speaking identity outside Russia is towards a new self-understanding as, for instance, "Baltic Russians" combined their Russian identity with a loyalty to their Baltic homeland.<sup>62</sup> The attitudes of the Russian-

<sup>54</sup> The block also included the Russian Party (an organisation that emphasises Russian ethnicity and opposes Russian nationalism to Latvian nationalism). However, the Russian Party has historically gained very little support among the Russian-speakers. Its only MP left the FHRUL faction in the seventh Saeima.

<sup>55</sup> Election results may be consulted at the Latvian Parliament's website: <http://www.saeima.lv>

<sup>56</sup> Only 2,198 students in Latvia attend the "ethnic minority" schools (Open Society Institute 2001, p. 291).

<sup>57</sup> Volkovs 1996, p. 67.

<sup>58</sup> For this line of argument, see: Dorodnova, 2002.

<sup>59</sup> For example, Rose and Maley 1997; Zepa 1995; Baltic Data House 1998.

<sup>60</sup> Volkovs 1998, p. 4.

<sup>61</sup> In 1998, 56 per cent of the polled Russian-speakers in Latvia viewed themselves as different people from the Russians in Russia; 30 per cent as the same people, 14 per cent were undecided. (Baltic Data House 1998, p. 126).

<sup>62</sup> Kolstø, 1996, pp. 629-634.

speakers in Latvia, particularly their optimism regarding its future, have been found to point towards tolerance and compromise rather than towards conflict.<sup>63</sup>

Due to the above-mentioned reasons, it appears justified to view the Russian-speakers who settled or were born in Latvia during the Soviet period as a unified actor in the conflict with the Latvian authorities for the purposes of this study, rather than distinguishing between the various ethnic groups that make up this linguistic minority. The approximate size of the Russian-speaking minority is reflected by the latest census data that show that 36 per cent of the Latvian population speak Russian as their native language, as opposed to 62 per cent who speak Latvian.<sup>64</sup> The nationalising Latvian policies have affected the ethnically, religiously and ideologically diverse groups that form a linguistically homogeneous Russian-speaking minority in a way that facilitates the consolidation of the similar interests of the Russian-speakers as regards citizenship and language policies and contributes to their mobilisation as an actor on the basis of these interests.<sup>65</sup>

### *1.7 Latvian-Russian Interstate Relations*

The Latvian-Russian interstate relations during the past decade have been characterised as the period of "unfriendly stability"<sup>66</sup> and as "the years of mutual alienation",<sup>67</sup> and have been marked by the issue of the Russian-speaking non-citizens in Latvia. In the period shortly before and immediately after the restoration of independence in 1991, relations between the Baltic states and democratic Russia were friendly and co-operative, as both sides were united in their aspirations to do away with Soviet associations.<sup>68</sup> Boris Yeltsin recognised the independence of the Baltic states without setting conditions or asking for guarantees with respect to the Russian-speakers. This period has been referred to as "the initial triumph of the democratic vision of interstate relations."<sup>69</sup> However, soon thereafter the friendly atmosphere was damaged by the hostile Latvian policy towards the Russian-speakers (particularly the citizenship issue), the Russian troop withdrawal (1992-1994) and NATO enlargement.<sup>70</sup>

Russia's reaction to the Latvian citizenship policy was, as may have been expected, highly critical. Russia attempted to bring international attention to the problem by raising the issue at international fora. On a number of occasions in the early 1990s, Russian statesmen even went as far as linking Russian troop withdrawal to the granting of political rights to the Russian-speaking minority. Such statements were immediately interpreted and presented in Latvia as proof of Russia's new "imperial plans" with regard to the Baltics, on the basis of which Latvia's appeals for Western protection gained significant political weight. With increasing frequency, today's Russia became associated with the former Soviet regime, and discussions on the Baltic-Russian relations developed into what has been called the "discourse of danger."<sup>71</sup>

Among the key Russian foreign policy documents viewed in Latvia as harassing its national security was the so-called Karaganov Doctrine of the "near abroad", which outlined the strategy for achieving closer integration of the post-Soviet space.<sup>72</sup> Latvia's suspicions with regard to Russia's plans were reflected in the Latvian National Security Concept of 1997 (that was later modified), which initially defined the main threat to Latvian security as coming "from the neighbouring countries in their efforts to retain the Baltic states within their political, economical and military influence."<sup>73</sup> Threat perceptions and enemy images were, however, created on both sides. In Russia,

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<sup>63</sup> See, for example, Rose and Maley 1994.

<sup>64</sup> Central Statistical Bureau of Latvia. 2000 Census data, available at: [www.csb.lv/Satr/atsk2.htm](http://www.csb.lv/Satr/atsk2.htm).

<sup>65</sup> Laitin 1998, p. 296.

<sup>66</sup> Moshes 1999.

<sup>67</sup> Trenin, 1997, p. 6.

<sup>68</sup> Sergounin 1998, p. 26.

<sup>69</sup> Melvin, 1994, p. 44.

<sup>70</sup> Sergounin 1998, p. 27.

<sup>71</sup> Jæger 1997, p. 21.

<sup>72</sup> Stranga, 1996, p. 150.

<sup>73</sup> For a discussion of the original Security Concepts of the three Baltic states, see: Jæger 1997.

emotional attitudes to the Baltic problems have sometimes led to exaggeration of the significance of the Baltic issues and to a vision of the Baltic states as "a source of threat to Russia."<sup>74</sup> In 1997, 80 per cent of Latvians viewed the Russian state as a definite or possible threat to the peace and security of Latvia (on the other hand, 79 per cent of Russian-speakers in Latvia did not perceive it as such).<sup>75</sup>

Observers have generally recognised that Russia's threats have been merely rhetorical, with Latvian analyst Stranga arguing that "the threat from Russia is imagined rather than real."<sup>76</sup> Zevelev, on the other hand, observing Russia, considers that one of the factors that explains the absence of open violence between Russians and other groups outside of Russia may lie in the restrained or muted policies of the Russian Federation: "Contrary to the belief that Russian policy in the 'Near Abroad' has been imperialistic and aggressive over issues concerning the new Russian diasporas, we find that Russian policy has instead been reasonably moderate in some of its features and tremendously ineffective in others [...] As a result of both moderation and ineffectiveness, there is a great discrepancy between the boastful, assertive rhetoric of Russia's leaders and the actual policy of Russia in its relations with the Russian diasporas."<sup>77</sup>

The major policy lines attempted by Russia with the purpose of retaining influence in the post-Soviet space were the policy of double citizenship and the policy of protecting the compatriots abroad, both of which proved rather ineffective.<sup>78</sup> The aggressive rhetoric exercised by Russia's leaders reached its culmination in spring 1998 when, in response to the actions of the Latvian police that dispersed a poverty-motivated Russian-speaking picket near the Riga city council, Russia threatened to introduce economic sanctions against Latvia if the problem of non-citizens was not solved immediately. The crisis caused some tension, but by then, however, it had already become clear to both Latvian and Western actors that Russia's rhetoric did not necessarily imply action with respect to Latvia.

Such was the political and social context in which the OSCE High Commissioner on National Minorities Max van der Stoep carried out his activities in Latvia. In no way was his involvement an easy task, as the complex historical and ideological issues carried over from the past into the modern political discourse often blocked the HCNM's initiatives or hampered negotiations. In spite of these factors, the HCNM succeeded, throughout the years, in following up on every recommendation he had ever issued and ensuring that the government take the necessary steps towards its implementation.

The involvement on the HCNM in Latvia has generally been given highly positive evaluation. In the opinion of Rob Zaagman, for example, the High Commissioner prevented the enactment of legislation and policies in the early 1990s that could have potentially resulted in a violent conflict, thereby contributing to peace and stability.<sup>79</sup> Paul Goble, on the other hand, considers the involvement of the High Commissioner damaging to the interethnic harmony, as "many in the supervised countries are becoming even more angry at what they see as a kind of interference that is making it more difficult rather than less for them to treat minorities on their territories fairly."<sup>80</sup>

The chapters below represent a systematic analysis of both the process of the HCNM's involvement in Latvia as well as that of the specific content of his recommendations compared to the government's chosen outcomes. This will allow us to determine the degree of the HCNM's effectiveness as well as to establishing in what sense he has or has not been effective.

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<sup>74</sup> Russian Foreign Minister Kozyrev on 19 January 1994 quoted in Sergounin 1998, p. 25.

<sup>75</sup> Rose 1997, p. 35.

<sup>76</sup> Stranga 1996, p. 161.

<sup>77</sup> Zevelev, 1996, pp. 265-266.

<sup>78</sup> Ibid. It is known that only about 60,000 non-citizens opted for the citizenship of the Russian Federation, with about half of them having moved to Russia by 1997 (UNDP Latvia 1998b, p. 56). Exact data are missing, but it is obvious that the overwhelming majority of non-citizens have chosen not to become citizens of the Russian Federation.

<sup>79</sup> Zaagman 1999, p. 27.

<sup>80</sup> Goble 1999, OSCE: Analysis From Washington - Countries Supervised And Not (Radio Free Europe/Radio Liberty, Washington).



## Chapter 2. The Adoption of the Latvian Citizenship Law, 1993-1994

### *2.1 Background to the Latvian Citizenship Policy*

The post-independence Latvian citizenship policy left the majority of the Russian-speakers stateless and was, therefore, at the root of the conflict between the two ethnolinguistic communities in Latvia. Citizenship issues were, thus, at the centre of the OSCE High Commissioner's attention from the early stages of his intervention. In the early 1990s, the HCNM was clearly concerned with the serious implications the policy may have had. In his first letter to the Latvian Foreign Minister, he expressed the hope that the Latvian government would not oblige the disenfranchised group to leave the country, as this would be contrary to the generally accepted international humanitarian principles and would have serious international repercussions.<sup>81</sup> The HCNM worked to avoid such an outcome and, as we know, massive expulsions from Latvia did not occur, although out-migration was indeed observed in the early 1990s. Citizenship and naturalisation-related issues, however, remained on the HCNM's agenda throughout the whole period of his involvement – an involvement that reduced the possibility of a further escalation of tensions in this area to the minimum.

It is essential to consider the historical and legal background of the debate surrounding the citizenship policy in Latvia in order to grasp the arguments of the majority and of the minority as well as the position of the High Commissioner. As was often admitted by Max van der Stoep, problems connected with the granting of citizenship in Latvia have to be viewed in the historical context. Latvian observers often stress that the historical facts that were described in the introductory chapter explain and, to a large extent, justify the chosen policy line.<sup>82</sup> While aware of the historical complexities, the High Commissioner, however, argued with regard to the Russian-speakers excluded from citizenship that they could also be considered victims of the Soviet system.<sup>83</sup> Subsection 2.1 that follows describes the historical background of the Latvian citizenship policy during both the interwar period and in the late 1980s-early 1990s. Subsection 2.2 deals with the process of the adoption of the Citizenship Law in 1993-1994 and the High Commissioner's general involvement in this process. Section 2.3 addresses the most controversial issue of naturalisation quotas in detail, outlining the exact content of the draft provisions and the HCNM's recommendations, as well as the nature of modifications of the relevant provisions under the influence of the HCNM.

#### *2.1.1 The Inter-war Period*

The first legal act regulating citizenship in the Republic of Latvia was the Citizenship Law of August 23, 1919. Because of the necessity to first of all define the scope of those persons who would have the right to participate in state politics, the law was adopted by the People's Council prior to the emergence of the first Saeima (Parliament) and adoption of the first constitution. The Law stipulated that the body of Latvian citizens would be represented by all former nationals of the Russian state, regardless of their ethnic or religious affiliation, who permanently resided within the borders of Latvia or were born within the counties that constituted part of Latvia at that time, and who did not acquire the nationality of another state. As argued by one of the key designers of the Latvian post-independence citizenship policy, a major proponent of the "legal continuity" argument, Juris Bojārs, such an inclusive approach was possible in 1919 because the Latvians made up the absolute majority of the population at that time, i.e., the ethnic composition of the population did not threaten state-building<sup>84</sup> (as it allegedly did in the 1990s).

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<sup>81</sup> HCNM's letter to Andrejevs, 6 April 1993.

<sup>82</sup> Paeglis 1993, in: Rīgas Balss, 16 September.

<sup>83</sup> Pie Vasilts Prezidenta: EDSA Komisārs [Visiting the President of State: The OSCE Commissioner], Latvijas Vēstnesis, No. 74, 16 September 1993.

<sup>84</sup> Bojārs 1993, p. 41.

The 1919 Law was amended several times before 1938. The amendments included the recognition of Latvian colonists who had left the country in search of land, setting the required term of residence for naturalisation at five years, and a procedure for the deprivation of citizenship for those who had been naturalised in an illegal manner. Further amendments established the principle of non-recognition of double citizenship upon naturalisation in another country and, on the basis of a number of treaties signed with Russia and Ukraine in 1920 and 1921, allowed for the option of citizenship and for the automatic recognition of repatriates and refugees as citizens of the respective country.<sup>85</sup>

### *2.1.2 The Modern Citizenship Debate, 1980s – 1990s*

Following the legal continuity argument that became the leitmotif of the post-Soviet political discourse in Latvia, the illegal nature of Soviet presence in the country implied that the first independent Republic of Latvia never ceased to exist. In 1991, the Republic of Latvia was, thus, re-established. Consequently, along with the restoration of the inter-war Republic of Latvia, the body of its inter-war citizens also had to be restored.

In the course of the late-1980s, the citizenship issue was discussed extensively in the context of the independence movement. The Popular Front initially promised an inclusive citizenship policy, whereby all inhabitants of the Latvian Soviet Socialist Republic (Latvian SSR) upon the reestablishment of independence of the Republic of Latvia would acquire Latvian citizenship (the so-called, "zero option"). The very first draft Citizenship Law of the Latvian SSR that was proposed to the Supreme Council in 1989 contained such a provision, setting the required residence term at five or ten years prior to the entry into force of the Citizenship Law.<sup>86</sup> However, after independence was achieved, the trend in the citizenship debate slid towards an increasingly exclusionary approach. Over the four years which it took the parliamentarians to adopt a Citizenship Law, the issue became a highly emotional one. Once the arguments for a stricter approach had gained the overwhelming support of the legislators, it appeared almost impossible to turn the debate backwards and give preference to a more liberal line. In spite of the objections of the international experts, the exclusionary approach was retained in the drafts that passed all the three readings in the Saeima and in the final text of the Citizenship Law adopted in the extraordinary fourth reading on July 22, 1994. The major steps towards the final outcome are described in the following sections.

### *2.1.3 The Draft Citizenship Law, 1989*

The first draft Citizenship Law of the Latvian Soviet Socialist Republic was proposed to the Supreme Council of the Latvian SSR in July 1989. It was developed at a time when Latvia still had the status of being one of the USSR republics, and the provisions were in compliance with the then existing Constitution of the Latvian SSR, the Constitution of the USSR and the USSR Citizenship Law. However, the concepts employed in the draft were clearly elaborated with the view of achieving complete independence from the USSR. The concept of legal continuity of the Republic of Latvia was reflected in Article 2, Paragraph 1, that stipulated that the citizens of the Latvian SSR are persons who held citizenship of the Republic of Latvia before July 21, 1940 (the official date of Latvia's entry into the USSR) and acquired Soviet citizenship in accordance with the USSR Supreme Council Resolution of September 7, 1940, and who did not lose that citizenship. Article 2, Paragraph 3, foresaw what resembled the "zero option": it stipulated that also those citizens of the USSR who had been permanently residing on the territory of the Latvian SSR for no less than ten (or five) years upon the entry of the Law into force and who considered themselves citizens of the Latvian SSR, would be regarded as citizens of the Latvian SSR.

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<sup>85</sup> Ibid., 43.

<sup>86</sup> Zakon Latvijaskoj Sovetskkoj Socialisticheskkoj Respubliki o grazhdanstve Latvijaskoj SSR (proekt) [Law of the Latvian Soviet Socialist Republic on the Citizenship of the LSSR (draft)], Sovetskaja Latvija, 26 July 1989, Art. 2 (3).

The draft also contained provisions regulating the compliance of the citizenship of the Latvian SSR with that of the USSR (Art. 3); the legal status of the citizens of other USSR republics (Art. 6); the status and rights of foreign citizens and stateless persons on the territory of the Latvian SSR (Art. 7); the retaining of citizenship after marriage (Art. 10); the retaining of citizenship by persons living abroad (Art. 11); legal protection of the citizens of the Latvian SSR abroad (Art. 12); issues of expulsion and extradition of the citizens of the Latvian SSR (Art. 13); the issue of double citizenship, which the draft did not allow for (Art. 14); procedures for naturalisation (Arts. 21-23, 37-47); the granting of citizenship to children (children born in Latvia to stateless parents would be recognized as Latvian SSR citizens) (Arts. 16-20, 30-35); loss and restoration of citizenship, including deprivation of citizenship (denaturalisation) and expatriation (Arts. 24-29).<sup>87</sup> This draft was never adopted.

#### *2.1.4 The Draft Citizenship Law, 1991*

The first post-independence draft Citizenship Law containing 39 articles was elaborated and submitted to the Supreme Council by the Popular Front faction working group chaired by Juris Bojārs.<sup>88</sup> This was the draft where the legal continuity approach to granting citizenship was first introduced. It restricted the scope of citizens, stipulating that Latvian citizens are only those persons who held the citizenship of the Republic of Latvia on June 17, 1940, in accordance with the Citizenship Law of August 23, 1919 as was in force on June 17, 1940, and their descendants.<sup>89</sup> The draft provided foreigners and stateless persons with the possibility to naturalise, stipulating that the Saeima would define the annual naturalisation quotas for the permanent residents of Latvia.<sup>90</sup> The conditions for naturalisation included conversational knowledge of the Latvian language, a 16-year period of permanent residence, knowledge of the fundamental provisions of the Constitution, as well as an oath of loyalty to the Republic of Latvia.<sup>91</sup> It was envisaged that naturalisation would not start earlier than July 1, 1992.<sup>92</sup> The draft included several restrictions to the right of naturalisation, among them criminal record and activities directed against Latvia.<sup>93</sup>

With regard to stateless children, the draft contained quite liberal provisions. It was stipulated that a child born in Latvia to stateless parents would acquire Latvian citizenship.<sup>94</sup> This applied also to children born on the territory of Latvia to parents who were citizens of the USSR and did not possess citizenship of other USSR republics, and who were permanently residing in Latvia.<sup>95</sup>

#### *2.1.5 The Supreme Council Resolution of October 15, 1991*

The 1991 draft was presented to the Supreme Council of the Republic of Latvia for consideration in the first reading on October 15, 1991. It was, however, not adopted. Radical factions argued that the Supreme Council was not a legitimate legislative body and that only the new Parliament, the fifth Saeima, could be entrusted with enacting citizenship legislation. This argumentation was, indeed, controversial, as, after extensive debates, the Supreme Council did in the end define the scope of Latvia's citizens by adopting the Resolution "On the Restoration of the Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalisation". The Resolution was meant to be a conceptual document that was not formally a law. In practice, however, it had the force of law: it served as the basis for defining the electorate of the fifth Saeima and for the issuing of Latvian citizens' passports.

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<sup>87</sup> Ibid.

<sup>88</sup> Latvijas Republikas Likums par pilsonību (projekts). Projektu izstrādājusi LTF frakcijas darba grupa [Republic of Latvia Citizenship Law (draft). Elaborated by the Latvian Popular Front working group], October 1991.

<sup>89</sup> Ibid., Art. 2 (1).

<sup>90</sup> Ibid., Art. 17.

<sup>91</sup> Ibid., Art. 18 (1), (2), (4), (5).

<sup>92</sup> Ibid., Art. 39. In fact, general naturalisation finally started only on January 1, 1996.

<sup>93</sup> Ibid., Art. 20 (1), (2), (4), (6), (7), (8), (9).

<sup>94</sup> Ibid., Art. 14.

<sup>95</sup> Ibid., Art. 18.

The Resolution (that contained only four articles) preserved the legal continuity principle and implied that the presence of Soviet-era settlers in Latvia was illegal: "As a result of the long-standing internationally illegal annexation of Latvia's territory, a large number of USSR citizens, whose entry and residence have not been accepted by any treaty between the Republic of Latvia and the USSR, have settled in Latvia".<sup>96</sup> Thus, it recognised as citizens of Latvia only those persons who held Latvian citizenship on June 17, 1940, and their descendants, who at the moment of the adoption of the Resolution lived in the Republic of Latvia, who register by July 1, 1992, and who receive Latvian passports according to the procedures set forth by the Republic of Latvia Council of Ministers.<sup>97</sup> Persons who held Latvian citizenship on July 1, 1940, and their descendants, who at the moment of the adoption of the Resolution did not live in the Republic of Latvia or were citizens of another country, could register at any time and could receive Latvian passports according to the procedures set forth by the Republic of Latvia Council of Ministers if they presented their permission of expatriation.<sup>98</sup> The Resolution also recognised as invalid the USSR Supreme Soviet Presidium decree of September 7, 1940, through which the Lithuanian, Latvian and Estonian Soviet Socialist Republic citizens are granted USSR citizenship.<sup>99</sup> This was done in order to "eliminate the consequences of the USSR's occupation and annexation of Latvia and to renew the legal rights of the aggregate body of the Republic of Latvia citizens".<sup>100</sup>

The fundamental requirements for naturalisation were more or less in line with the 1991 draft Citizenship Law. It is important to note, however, that Article 3.6 provided that general naturalisation would begin no sooner than July 1, 1992, and would be accomplished in accordance with the Republic of Latvia Citizenship Law. It was, thus, hoped that the Law would be adopted by then. However, there was no Citizenship Law until July 1994 and no naturalisation until 1995.

#### *2.1.6 Reactions to the Resolution of October 15, 1991*

The reactions that followed the adoption of the Resolution were controversial. Hundreds of thousands of persons who had arrived in Latvia in accordance with the laws in force during the Soviet period or who were born in Latvia suddenly found themselves without any political rights and excluded from the political decision-making process. It is, therefore, not surprising that the Resolution was viewed by them as a legal instrument violating human rights on a massive scale. On other fronts, Latvians living in emigration could not accept the fact that the Resolution did not provide them with the possibility for holding double citizenship.<sup>101</sup> And finally, the radical nationalist circles considered the policy too liberal as, in their view, no naturalisation for the Soviet-era settlers should have been allowed even at the theoretical level.

The international assessment of the decision also varied.<sup>102</sup> A number of fact-finding missions visited the country in order to look into the issues of alleged human rights violations of the Russian speaking non-citizens. Most missions chose to take a more or less neutral position, or a "wait-and-see" approach, stating that no major violations of rights or persecution on a massive scale had been found. The only clear recommendation that was offered was that the Citizenship Law should be adopted quickly. For example, a Council of Europe Report stated in January 1992 that the Resolution was not "unreasonable" concerning the principles of naturalisation and the ruling out of double

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<sup>96</sup> Republic of Latvia Supreme Council Resolution "On the Renewal of the Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalization", October 15, 1991.

<sup>97</sup> Ibid., Art. 2 (1).

<sup>98</sup> Ibid., Art. 2 (2).

<sup>99</sup> Ibid., Art. 1.

<sup>100</sup> Ibid., Preamble.

<sup>101</sup> Their demands were formally satisfied by the adoption on 27 November, 1991, of a Supreme Council Resolution that stipulated that the provisions concerning double citizenship did not apply "to the Republic of Latvia citizens and their descendants, who, being situated outside Latvia due to the occupation of their Fatherland, have acquired the citizenship of another country during the period from June 17, 1940 to August 21, 1991." The Citizenship and Immigration Department initially refused to implement this Resolution.

<sup>102</sup> See Birckenbach 1997.

citizenship. Although it found less reasonable the actual content of the naturalisation process,<sup>103</sup> the overall conclusion of the Report was, on the whole, very positive:

The Supreme Council seems thus to have expressed the resolve of the Republic of Latvia to comply with the obligations incumbent upon the member states of the Council of Europe with regard to human rights and fundamental freedoms. [...] It remains for the effective exercise of those rights and freedoms to be duly secured in practice by the Latvian authorities.<sup>104</sup>

A UN fact-finding mission, on the other hand, concluded in November 1992 that while "the information received and examined by the Mission does not reveal gross and systematic violations of human rights in Latvia,"<sup>105</sup> the Latvian Government's attempt "to redress certain historical inequities and injustices perpetrated during Soviet rule from 1940 to 1991 [...] has given rise to anxiety among the non ethnic Latvians about their future status and role in the country."<sup>106</sup>

Strong criticism was voiced by Dr. Asbjörn Eide who compiled a report at the request of the European Bank for Reconstruction and Development, arguing that, although the approach chosen to set citizenship requirements in Latvia "may not directly violate any specific rule of positive international law, it runs so strongly counter to a number of basic principles of modern human rights that the cumulative effect must be to consider them as violations."<sup>107</sup> This, however, did not become the predominant line of argument in the dealings of the international community with Latvia.

## 2.2 *The Adoption Process of the Citizenship Law and the HCNM's Involvement*

### 2.2.1 *The HCNM's Initial Involvement in Latvia, 1993*

The heated discussions over the anticipated citizenship legislation took place against the complicated political background of negotiations with Russia on troop-withdrawal issues and the problems in Latvian and Russian accession to the Council of Europe. In this emotionally charged atmosphere, Max van der Stoel paid his first visit to Latvia (January 15-20, 1993). The High Commissioner visited Latvia three times before the first reading of the Law took place, and four times in total before the final adoption of the Citizenship Law, which occurred on July 22, 1994. During his introductory visit, van der Stoel met with the representatives of the press, politicians, members of various organizations of the Russian-speakers and representatives of the national cultural societies. He spoke also with the Russian Ambassador Aleksandr Rannih, the Russian Orthodox bishop Aleksandr Kudrjashov and the head of the Old Believers' Church Ioan Miroljubov. The visit was reflected in different ways in the largest Latvian newspapers. The *Diena* referred to it as "a visit of purely neutral character,"<sup>108</sup> whereas the Russian-language newspaper *SM Segodnya* took a more sceptical point of view, leaving the impression that the minority could expect no improvement of its situation following the visit of the HCNM.<sup>109</sup>

The High Commissioner's second visit that took place on April 1-2, 1993 was, among other things, connected with the critical statements made by some Russian officials on the question of Russian minorities in the Baltic countries. In this connection, the HCNM met with the Russian Ambassador Aleksandr Rannih. A representative of the Russian Embassy said they were ready to cooperate, and expressed hope that similar meetings would take place on a regular basis. Max van der Stoel also

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<sup>103</sup> Meyer and Rozakis at the request of the CoE, 1992, Report on Human Rights in the Republic of Latvia, in: Birkenbach 1997, Doc. 19, p. 353.

<sup>104</sup> Ibid., p. 360.

<sup>105</sup> Fall 1992, p. 303.

<sup>106</sup> Ibid., p. 304.

<sup>107</sup> Eide at the Request of the EBRD 1992, p.109.

<sup>108</sup> Bojāre 1993, Latvijas starpnacionālā situācija... [The interethnic situation in Latvia...], Diena, 16 January.

<sup>109</sup> Vorontsov 1993, Komissar prihodit, ministr uhodit [Commissioner Comes, Minister Goes], SM Segodnya, 21 January.

met, among other, with Māris Pļāvnieks, the then Head of the Citizenship and Immigration Department<sup>110</sup> – the institution practicing numerous human rights violations.<sup>111</sup>

According to the HCNM's mandate, "after a visit to a participating State, the High Commissioner will provide strictly confidential reports to the Chairman-in-Office on the findings and progress of the High Commissioner's involvement in a particular question."<sup>112</sup> Despite the conclusions of the HCNM in his first report on Latvia to the CSO (April 1993), in which he stated that he had found no evidence of persecution of national minorities,<sup>113</sup> the High Commissioner decided that there were sufficient reasons to continue his involvement in Latvia.

The High Commissioner presented his first recommendations to Latvia in his letter to the Foreign Minister Georgs Andrejevs of April 6, 1993, seven months before the first reading of the Citizenship Law in the Saeima, which finally took place only on November 25, 1993. When writing the letter, the High Commissioner hoped for the speedy adoption of the Citizenship Law by the Supreme Council. However, as mentioned above, the argument that the Citizenship Law could only be considered in the first reading by the Saeima that would be elected by a defined body of citizens was the main reasons for a significant delay in the consideration of the Law.

The HCNM's second letter of recommendations followed shortly after the first reading of the Law, on December 10, 1993. It contained the High Commissioner's assessment of the draft as adopted in the first reading, as well as further recommendations for its improvement. A third letter was addressed to the Speaker of the Latvian Saeima on June 7, 1994, two days before the second reading of the Law. The letter was a joint appeal by van der Stoep and the Acting Secretary General of the Council of Europe Peter Leuprecht to take notice of the recommendations on the Citizenship Law that had been issued by both the HCNM and the CoE experts.

During his meeting with the President on September 14, 1993, the High Commissioner expressed his understanding of the complicated demographic and social situation in Latvia. At the same time, he invited the Latvian government to adopt a liberal Citizenship Law as soon as possible. The Law, in the view of the High Commissioner, would work as a stabilizing factor in Latvia's domestic politics. The President replied that the Government of Latvia would, taking into consideration the internationally recognized norms and experience, definitely elaborate citizenship-related legislation that would ensure the survival of the Latvian nation, at the same time guaranteeing the human rights of the non-citizens. The President emphasized the knowledge of the Latvian language as one of the most important criteria for acquiring citizenship.<sup>114</sup>

The third visit of the HCNM to Latvia took place on September 12-15, 1993, following the Parliamentary elections of the fifth Saeima which took place on June 5-6, 1993.<sup>115</sup> He met with the members of the new government, including Foreign Minister Andrejevs and the newly-elected President Guntis Ulmanis. The High Commissioner also held talks with the Speaker of the Saeima Anatolijs Gorbunovs, Prime Minister Valdis Birkavs, Head of the standing parliamentary committee on Human Rights Inese Birzniece and Head of the parliamentary Foreign Affairs committee Aleksandrs Kiršteins. He also met with former Minister for Foreign Affairs, now leader of the parliamentary faction Harmony for Latvia, Jānis Jurkāns, with Latvian Way's MP Māris Gailis, the Deputy speaker of Parliament, as well as with leaders of the parliamentary factions and minority representatives.<sup>116</sup>

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<sup>110</sup> Kulmanis 1993a, EDSA īpašais padomnieks... [OSCE Special Adviser...], Diena, 2 April.

<sup>111</sup> Panico 1993.

<sup>112</sup> Mandate of the OSCE High Commissioner on National Minorities, Art. 18.

<sup>113</sup> Foundation on Interethnic Relations 1997, p. 66.

<sup>114</sup> Pie Valsts Prezidenta... [Visiting State President...], Latvijas Vēstnesis, 16 September 1993.

<sup>115</sup> Latvia's Way received the majority of the votes. However, it was difficult to form a coalition as nine parties had gained entry into the parliament. The government was finally approved on July 21, 1993. It was formed by the Latvia's Way in coalition with the Farmers' Union. Valdis Birkavs became Prime Minister representing Latvia's Way. Georgs Andrejevs kept his post as Minister of Foreign Affairs (Latvia's Way).

<sup>116</sup> Kulmanis 1993b, Stoels aicina ātri pieņemt pilsonības likumu [Stoel Invites to Speedily Adopt the Citizenship Law], Diena, 15 September 1993.

### 2.2.2 The Media's Treatment of the HCNM's Initial Involvement in Latvia

The first letter containing the HCNM's recommendations was published in the moderate Latvian newspaper *Neatkarīgā Cīņa* on May 25, 1993, preceded by a note where regret was expressed over the fact that the correspondence of the HCNM with the Latvian Foreign Minister is not accessible to the general public. The text became available after an MP brought it from a human rights conference in Finland. The most influential Russian-language newspaper, *SM Segodnja*, also published the recommendations.

Since then, the High Commissioner's activities attracted increasing attention on the part of the media. Each subsequent visit was covered in as much detail as possible by both the Latvian-language and the Russian-language media. The Russian-language newspapers seem to have had a more favourable attitude towards the activities of the HCNM than the Latvian ones. However, whereas the minority newspaper coverage often expressed a wish that the HCNM should do more for the minorities, the majority opinions grew ever more critical of his excessive involvement. At the official level, it was frequently stressed that the High Commissioner had not found any evidence of human rights violations or minority prosecution in the country. All critical points that the HCNM issued concerning state policies were presented as secondary. The minority newspapers, on the contrary, emphasized the HCNM's criticism of state policies.<sup>117</sup> In both cases, the media had very little to report. The High Commissioner gave almost no interviews and rarely made public statements, and those that were made were of general nature and brief. In spite of that, his activities were always in the centre of the media's attention, which inevitably had an impact on public opinion.

### 2.2.3 The High Commissioner's Position regarding the Legal Continuity Approach, 1991-1993

The registration of the population of Latvia that was decreed by the 1991 Resolution On the Restoration of the Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalisation was carried out shortly after the adoption of the Resolution. Most people had been registered by March 1, 1993. Those who were recognized as citizens of Latvia in accordance with the Resolution were registered as citizens; the rest were registered as permanent residents, or were not registered at all. The Latvian citizens' passports were printed in 1992 and their issuing was started shortly thereafter. Finally, the first Latvian Parliament after the restoration of independence, the fifth Saeima, was elected in June 1993 by the registered citizens only. All of these developments took place in the absence of a Citizenship Law.

The legal status of persons who were not recognized as citizens of Latvia in accordance with the Resolution, initially numbering over 700,000, was not defined until April 12, 1995, when the Law On the Status of Former USSR Citizens Who Are Not Citizens of Latvia or Any Other State was adopted. This delay naturally resulted in dissatisfaction among those left in a legal vacuum. Against this background of anxiety and rising uncertainty among Russian-speakers about their legal status, the High Commissioner issued his first recommendations, emphasizing the urgent necessity of adopting a Citizenship Law. Considering that the position of the majority of the parliamentary factions was supportive of the strict legal continuity approach, it was unlikely that the fundamental definition of the scope of citizens would be significantly changed. Nevertheless, the High Commissioner regarded the adoption of the Citizenship Law as one of the most important steps for ensuring interethnic accord in Latvia, stating that:

In a policy aiming at the promotion of continued harmonious relations between Latvians and the non-Latvian population the most important element would, of course, be the passing of legislation which demonstrates that the Latvian Government is taken the interests of the non-Latvians living in Latvia

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<sup>117</sup> For example, Max van der Stoep agreed to a brief interview to *SM Segodnja* in September 1993. The publication was preceded by a note stating that "the Latvian authorities tried to conceal from the society the fundamental work of the High Commissioner ... - his analysis of the situation in Latvia and the recommendations to the government and parliament" and that the publication of his recommendations "caused dissatisfaction among some politicians." (Steshenko and Meshkov, *SM Segodnja*, 21 September 1993).

fully into account. I would be especially conducive to harmonious interethnic relations if the present uncertainty amongst non-Latvians about the forthcoming legislation concerning their position in Latvia could be brought to an end as soon as possible. In this connection, I should like to mention the need for the speedy adoption of a Citizenship Law.<sup>118</sup>

Thus, the High Commission called not just upon a quick adoption of a Citizenship Law as such, but of a law that would bring certainty into the position of the non-citizens.

As noted previously, the constitutional status of the Supreme Council led to debates on whether a Citizenship Law could be adopted at all. This argumentation was reflected in the Latvian Foreign Minister's reply to the initial letter of the High Commissioner, which made it clear that a Citizenship Law would not be considered until June 1993:

Most of your conclusions appear to be reasonably grounded, especially those concerning the lack of a new Citizenship Law in Latvia. As you know, the current Latvian Supreme Council is a transitional parliament and has no legal mandate under the restored 1922 Latvia Constitution to change the body of Latvia citizenship through naturalisation or other means. This legal mandate will be held by the newly-elected Saeima which is being elected on June 5 and 6 1993. Thus, one of the most urgent tasks for the new Saeima will be to adopt a complete Citizenship Law which will include provisions for naturalisation. Your recommendations will certainly be presented to the Saeima members.<sup>119</sup>

#### *2.2.4 Debating the Citizenship Law in the Fifth Saeima: A General Overview, 1993-1994*

When the fifth Saeima was finally elected, eight factions were formed.<sup>120</sup> Five of the eight parliamentary factions came forth with their own drafts of the Citizenship Law. In short, the drafts of Fatherland and Freedom and the Movement for the National Independence of Latvia (MNIL) envisaged the most restrictive provisions concerning the non-citizens, allowing practically no naturalisation at all. Latvia's Way's and the People's Harmony Party's drafts were considered "liberal". These drafts entrusted the Cabinet of Ministers with the establishment of annual naturalisation quotas. The Equal Rights faction's draft provided for the so-called "zero option", whereby, as noted above, citizenship would be granted to most Latvian inhabitants residing in Latvia at independence. In practice, the National Block in the Saeima supported Fatherland and Freedom's approach (no naturalisation), while the ruling coalition sided with that of Latvia's Way (strict annual quotas).

The representatives of the National Block attempted to further postpone the consideration of the Citizenship Law by passing it to a popular vote in a national referendum. However, the attempt to hold a referendum on the Law failed in the end. As mentioned, the first reading of the Law finally took place only on November 25, 1993. The "zero-option" approach (citizenship to all residing in Latvia at independence) was marginalized from the very beginning. The struggle took place between two approaches: that proposed by the National Block (no naturalisation of non-citizens at all) and that proposed by Latvia's Way (minimum naturalisation based on quotas determined each year by the Cabinet of Ministers). After extensive debates, the draft Law proposed by Latvia's Way was taken as the basis for further discussion.

#### *2.2.5 The HCNM's and the CoE's Joint Involvement in the Drafting of the Citizenship Law*

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<sup>118</sup> HCNM's letter to Andrejevs, 6 April 1993.

<sup>119</sup> Andrejevs's letter to HCNM, 18 April 1993.

<sup>120</sup> Latvia's Way, the Latvian Farmers' Union, The Democratic Centre Party, The Latvian Christian-Democratic Party, For Fatherland and Freedom, the Movement for the National Independence of Latvia (MNIL), Harmony for Latvia and Equal Rights. The ruling coalition consisted of Latvia's Way and the Latvian Farmers' Union. For Fatherland and Freedom, the Movement for the National Independence of Latvia and the Christian Democrats formed the so-called National Block (which was also joined by some deputies from the Democratic Centre Party and the Farmer's Union). The Equal Rights Movement and the People's Harmony Party formed the "pro-minority" opposition.



It is essential to note that the Law was debated against the background of Latvia's application for membership in the Council of Europe (CoE), which was submitted for consideration in September 1991. One of the CoE's major requirements to Latvia as an applicant for membership was the adoption of a Citizenship Law.<sup>121</sup> The CoE experts were actively involved in the discussions and evaluations of the draft Citizenship Law. Therefore, the High Commissioner's activities have to be analysed in conjunction with the involvement of the Council of Europe.

By the time the first reading of the Law took place, the issue had attracted a great deal of international attention. Thus, for example, the visit by a fact-finding mission of the European Parliament that looked into the situation of the political and social rights of the Russian-speaking population intentionally coincided with the first reading of the Citizenship Law.<sup>122</sup> Generally speaking, one can state that the process of the adoption of the Citizenship Law was closely followed internationally.

The High Commissioner sent his comments and recommendations on the draft Law, which had been adopted in the first reading, on December 10, 1993, whereas the Council of Europe experts' comments were received on January 25, 1994. Many aspects of the Law did not satisfy the European experts. They in particular criticised the quota system proposed for naturalisation, which practically envisaged no naturalisation at all. The initial reaction of the Latvian Foreign Ministry to the recommendations of the High Commissioner was very careful, implying that their consideration would not follow immediately.

The second reading of the Law did not take place until June 9, 1994. The importance attached to the issue by the OSCE and the CoE was manifested in a letter sent to the Speaker of the Saeima Anatolijs Gorbunovs on June 7, 1994, by both the High Commissioner and the Acting Secretary General of the Council of Europe, illustrating also how closely these two institutions coordinated their activities:

It is our hope that the recommendations made will be taken into account, and that a satisfactory solution be found. Both our organisations are always prepared to continue the exchange of views on this issue and to provide international expertise regarding the legislation and its future implementation.<sup>123</sup>

Subsequently, on June 20, 1994 (one day before the third reading of the Citizenship Law took place), the Committee of Ministers of the Council of Europe forwarded a Message adopted by the Committee to the Prime Minister and Acting Foreign Minister of Latvia Valdis Birkavš with the request to forward the message to the Speaker of the Saeima. The Message contained references to the recommendations made by the OSCE and the CoE Experts. It also stressed the connection between Latvia's application for membership in the Council of Europe and the adoption of the Citizenship Law:

1. In the light of the application of Latvia for membership of the Council of Europe and wishing to see this country as a member of the Organisation as soon as possible, the Committee of Ministers has been informed of and is following very closely developments in the Latvian Parliament concerning legislation on the citizenship issue.  
[...]
4. The Committee of Ministers would however wish that whatever solution is adopted be in line with the recommendations given by the legal experts of the Council of Europe and by the CSCE, based on the relevant international instruments and practice.<sup>124</sup>

#### *2.2.6 The Passing of the Draft Citizenship Law on June 21, 1994*

However, as will be shown in the next chapter dealing with the specific aspects of the High Commissioner's recommendations, his key proposals, most notably the one dealing with naturalisation

<sup>121</sup> Opinion No.183 (1995) on the Application by Latvia for Membership of the Council of Europe, January 31, 1995.

<sup>122</sup> Eiropas Palamenta delegācijas pieņemšana [Meeting with the European Parliament Delegation], Latvijas Vēstnesis, 25 November 1993.

<sup>123</sup> HCNM and Acting Secretary General of the CoE, Leuprecht, letter to Gorbunovs, 7 June 1994.

<sup>124</sup> Council of Europe Committee of Ministers. Message of the Committee of Ministers to the Prime Minister (Acting Foreign Minister) of the Republic of Latvia, adopted on June 20, 1994.

quotas, were not taken into account even after the draft Law was passed in its third reading by the Saeima on June 21, 1994. The Saeima also passed Article 14, retaining the quantitative principle providing for the restriction of naturalisation after the year 2000 not to exceed 0.1 per cent of the citizenry in the previous year. The reaction by the international bodies was uncompromising in stating that Latvia was delaying if not threatening its accession to the Council of Europe and the further integration into the European political and military order by retaining this provision in the Citizenship Law. Latvian President Guntis Ulmanis was urged by the Latvian Cabinet of Ministers, as well as by the foreign ambassadors and representatives of international organizations, to return the Law back to the Saeima for repeated consideration.

The Latvian Government (headed by Valdis Birkavs) held an extraordinary session on June 22, 1994, and sent an appeal to President Ulmanis to return the Law back to the Saeima for repeated consideration, urging the President to use Article 71 of the Satversme (the Constitution) for this purpose:

The start of the negotiations with the Council of Europe regarding the possibility of conferring the associated member status upon Latvia is threatened, and so is further integration into the European Union. Latvia's joining of the European collective security structures becomes problematic, including closer ties with NATO. All of that threatens Latvia's foreign policy development which is aimed at protecting state sovereignty and ensuring its irreversibility.<sup>125</sup>

The argumentation of the Government was based exclusively on the membership of Latvia in international organizations, primarily the CoE and the EU. This reflected the effectiveness of the "conditionality policy" that had been chosen by the international organizations.

#### *2.2.7 President Ulmanis's Veto*

On June 28, 1994, President Ulmanis indeed returned the Citizenship Law back to the Saeima for repeated consideration. In his letter to the Speaker he called on the Saeima to comply with the OSCE and the Council of Europe recommendations, using the following argumentation:

It is necessary to once again consider the provisions of Article 14 regarding the general procedure for naturalisation, taking into account the recommendations of the CSCE and the Council of Europe experts and the opinion of other international organisations, as well as the controversial vote on this Article during the Saeima session on June 21, 1994.<sup>126</sup>

On the same day, the President held a press conference where he explained the motives for vetoing the Law. The President mentioned that during the days immediately following the adoption of the Citizenship Law, he was addressed by the officials of many states, all foreign ambassadors accredited in Latvia, as well as by the representatives of various European institutions. The President reported that in his conversation with the ambassadors he had stressed that the Latvian Citizenship Law could not comply with the standards that Europe had set forth because the Law was compelled to deal with the consequences of Soviet occupation: "Those groups of people who were brought to Latvia by force create problems for the future survival of the Latvian state and nation. We cannot resolve this issue immediately by granting citizenship to everybody as Europe is asking."<sup>127</sup> At the same time, however, the President considered that certain recommendations had to be complied with. The President also explicitly admitted that the rejection to sign the Law was due to foreign policy considerations:

The adoption of the Citizenship Law also has a foreign policy aspect. I have received two demarches from the Council of Europe and the European Union. It is our own wish to join the European struc-

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<sup>125</sup> Ministru Kabineta ārkārtēja sēde. Ministru Kabineta aicinājums valsts Prezidentam. [Extraordinary Session of the Cabinet of Ministers. Appeal of the Cabinet of Ministers to the President of State], Latvijas Vēstnesis, 28 June 1994.

<sup>126</sup> Valsts Prezidenta raksts [Letter of the President of State], Latvijas Vēstnesis, 30 June 1994.

<sup>127</sup> Beidzot mums ir ilgi gaidītais likums... [Finally We Have the Long-Awaited Law...], Latvijas Vēstnesis, no. 75, June 1994.

tures and to respect those principles and legal norms that form the basis of those organizations [...]. I cannot sign this Citizenship Law if I have a feeling that, if I do so, Latvia will be isolated from the other states, that it will remain alone with its problems.<sup>128</sup>

### *2.2.8 The Repeated Consideration of the Citizenship Law*

Most of the international experts' recommendations concerned the general procedure for naturalisation and the naturalisation requirements. The crucial issue was that of the quota principle, as it determined how many people (if any) would be eligible for applying for citizenship. This quota principle (contained in Article 14) had been retained in the version passed in third reading, and was unacceptable to the international experts.

After the repeated reading of the Citizenship Law that was held on July 22, 1994, Articles 11, 14 and 17 were amended. Certain clarity was brought into Article 11, which dealt with the restrictions to naturalisation. As to Article 14, the "naturalisation schedule" (or the "windows" system, see below) was prolonged, and the provision that the naturalisation of those born outside Latvia should not exceed 0.1 per cent of the citizenry in the previous year was removed from the Law. Nevertheless, the essence of Article 14 finally adopted after the repeated reading did not differ significantly from the previous version of the Law and, as will be shown in the next sections, was not in line with the recommendation of the High Commissioner.

Most notably, Article 17 was made clearer after the repeated reading in the sense that it now established a time-frame for the reviewing of naturalisation applications, stating that an applicant was to be provided with a response no later than one year after the submission of the application. In comparison with the wording of Article 17 as adopted in the third reading (where no clear time-frame for the reviewing of the applications was provided), this was indeed an improvement.

Attempting to explain why the Saeima finally did introduce some amendments into the Citizenship Law after its repeated reading, Boris Tsilevich concluded in September 1994 that if Latvia failed to fulfil any requirements made by the CoE, it would not be accepted into the organization and would be isolated in the long run.<sup>129</sup> Indeed, Latvia was subsequently admitted to the Council of Europe on February 10, 1995.

### *2.2.9 Assessment*

Under the influence of the High Commissioner, the citizenship problem in Latvia was widely internationalised and cooperation among international actors on the issue of citizenship was for the first time practiced. However, considering that the key recommendations issued by the High Commissioner in 1993, particularly the one dealing with the scope and speed of naturalisation (analysed in detail in the next section), were ignored in the final text of the Citizenship Law, it would be incorrect to describe the Law, in the form in which it was adopted after the repeated reading on July 22, 1994, as a piece of legislation "which demonstrates that the Latvian Government is taking the interests of the non-Latvians living in Latvia fully into account,"<sup>130</sup> as had been hoped by the High Commissioner. Also, the uncertainty of the future position of the non-citizens was not effectively brought to an end as the High Commissioner had recommended. The reasons for this were, first of all, that the law regulating the legal status of non-citizens was adopted almost one year after the adoption of the Citizenship Law and, secondly, because the eligibility "windows" for the most numerous groups of non-citizens were to open only in several years to come. The exact content of the provisions of the draft Citizenship Law containing the quota principle and the process of their modifications under the influence of the High Commissioner's specific recommendations in the course of parliamentary readings will now be analysed.

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<sup>128</sup> Ibid.

<sup>129</sup> Tsilevich 1994, Zharkoe leto 1994-go [The Hot Summer of 1994], in: Tsilevich 1998, p. 152.

<sup>130</sup> HCNM's letter to Andrejevs, 6 April 1993.

## 2.3 *Specific Recommendations of the High Commissioner Regarding the Quota System for Naturalisation and the Saeima's Response, 1993-1994*

### 2.3.1 *The "Radical" and the "Liberal" Approaches to Quotas*

As noted previously, the drafts of the Citizenship Law elaborated by five parliamentary factions varied from allowing no naturalisation at all (Fatherland and Freedom and MNIL) to automatically recognizing all non-citizens as citizens (the so-called "zero option" proposed by Equal Rights). The approach suggested by Equal Rights had no chance of being adopted, considering that the 1991 Resolution had already defined the scope of Latvian citizens, and the chosen approach was not questioned by the majority of the parliamentarians. Thus, at the point when the Citizenship Law was to be considered in the first reading, the issue around which most discussions evolved was that of how much naturalisation of non-citizens (if any) would be allowed.

The drafts proposed by Fatherland and Freedom and the Movement for the National Independence of Latvia were largely based on the Latvian Citizenship Law of 1919. However, Fatherland and Freedom's draft excluded the possibility of applying those articles of the 1919 Law that regulated the granting of citizenship, thus making naturalisation as such impossible.<sup>131</sup> The Movement for the National Independence of Latvia proposed to base naturalisation on the annual quotas which would be established by the Cabinet of Ministers in such a way as *not to exceed 0.1 per cent of the annual natural growth rate of the citizenry in the previous year*<sup>132</sup> (this, in fact, also meant that there would be no naturalisation, as the natural growth rate among both citizens and non-citizens in Latvia had been negative since 1991).<sup>133</sup>

The drafts submitted by Latvia's Way and by Harmony for Latvia proposed a system of annual quotas that were to be determined by the Cabinet of Ministers and approved by the Saeima each year, *taking into consideration the demographic and economic situation in the country*.<sup>134</sup> Latvia's Way's proposal stressed the necessity to establish the quotas in such a way as *to ensure the development of Latvia as a single nation state*.<sup>135</sup>

In short, the political debates revolved around two approaches to naturalisation: the so-called "radical approach" (no naturalisation of non-citizens) advocated by the National Block (Fatherland, MNIL, the Christian Democrats and some deputies from other factions) and the so-called "liberal approach" of Latvia's Way (strict naturalisation quotas established annually by the Cabinet of Ministers). To what extent Latvia's Way's proposal was more liberal than that of the radicals was, however, not clear, as the Cabinet of Ministers could, if it wished, adopt very limited quotas.

### 2.3.2 *Naturalisation Quotas in the Draft Citizenship Law*

As a result of the first reading on November 25, 1993, the draft proposed by Latvia's Way was taken as the basis for further discussion. Article 9 (naturalisation quotas) was formulated as follows:

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<sup>131</sup> Kalniņš 1993, Zakonoproekti o grazhdanstve v сопоставлении [Draft Citizenship Laws: a Comparison], Diena, 26 October.

<sup>132</sup> Latvijas Republikas Likums "Par 1919. gada 23. Augusta Latvijas Republikas likuma 'Par Pavalstniecību' atjaunošanu" (projekts. Projektu iesniedz LNNK deputātu frakcija 13. 09. 1993), [Republic of Latvia Draft Law "On the Restoration of the August 23, 1919 Republic of Latvia Citizenship Law" (Draft submitted by the Movement for the National Independence of Latvia faction deputies, September 13, 1993)], Latvijas Vēstnesis, 16 September 1993, Art. 15.

<sup>133</sup> Latvian Central Statistical Committee 1998, p. 69.

<sup>134</sup> Art. 9 of the draft Law prepared by the Peoples' Harmony Party (edition as of 6 October 1993). Available from the Saeima archives.

<sup>135</sup> Likumprojekts "Latvijas Republikas Pilsonības likums". Projekts izstrādāts LC darba grupā 1993. g. 17. septembrī. [Republic of Latvia Draft Citizenship Law prepared by the "Latvia's Way" working group, 17 September 1993], Art. 9.

Republic of Latvia citizenship through naturalisation shall be granted individually by the Cabinet of Ministers in conformity with the annual naturalisation quotas.

Naturalisation quotas for each forthcoming year shall be determined by the Cabinet of Ministers and approved by the Saeima, taking into consideration the demographic and economic situation in the country, in order to ensure the development of Latvia as a single-nation state.

Apart from the annual naturalisation quotas, citizenship may also be granted individually to persons mentioned in Article 11<sup>136</sup> of this Law.<sup>137</sup>

One of the principal arguments presented by the Latvian authorities to the international observers as a justification for the quota principle was that the Naturalisation Board would not be able to process the numerous applications for citizenship if large numbers of non-citizens were be allowed to apply at the same time. According to the official data obtained during the Registration of the population of Latvia, as of March 28, 1994, 724,874 persons were registered as non-citizens and the vast majority, 645,439 of them, wished to become Latvian citizens.<sup>138</sup> These statistics led the authorities to believe that there would be many thousands of non-citizens applying for citizenship as soon as naturalisation would start. It was also feared, particularly by the radical factions, that the draft Law could result in the expansion in the number of applicants rather than in its restriction.

### *2.3.3 The HCNM's Recommendations on the Draft Law*

The High Commissioner saw a different danger in the formulation adopted in first reading by the Saeima, namely that the quotas would be reduced to the point where no naturalisation could take place for years to come. In his December 10, 1993, letter to the Latvian Foreign Minister, the High Commissioner made it clear that the wording of Article 9 was unacceptable: "[q]uite apart from the phrase 'single-nation state' which might lead to concerns about the rights of non-Latvians, these formulations give Government and Parliament considerable latitude concerning the size of the annual quotas. On the basis of the criteria mentioned, they could even lead to decisions not allowing naturalisation at all or very minimal quotas for a considerable number of years."<sup>139</sup> The HCNM argued that a quota system could lead to uncertainty among a vast part of the population with regard to their future status, and therefore proposed what he saw as a compromise solution - a gradual schedule for naturalisation that would, on the one hand, allow for the majority of non-citizens to naturalize quickly, and, on the other hand, to deal with the "practical difficulties in processing applications for citizenship in a short period of time".<sup>140</sup>

- 1) After the adoption of the law, the naturalisation of those categories mentioned in Articles 11, 12 and 13<sup>141</sup> will be processed as much as possible during the remainder of 1994 and 1995.
- 2) As of 1 January 1996, naturalisation procedures will start for all those who have been residing in Latvia for more than 20 years;
- 3) As of 1 January 1997, naturalisation procedures will start for all those who have been residing in Latvia for more than 15 years; and
- 4) As of 1 January 1998, naturalisation procedures will start for all those who have been residing in Latvia for more than 10 years.

The advantage of this formula would be, on the one hand, that a gradual system of naturalisation would be maintained, but that at the same time non-Latvian residents would have certainty about their chances of acquiring citizenship.<sup>142</sup>

<sup>136</sup> Art. 11 defined the groups eligible for extraordinary naturalisation such as, e.g., spouses of citizens (in the version adopted after the first reading).

<sup>137</sup> Republic of Latvia Citizenship Law (Draft adopted in first reading on 25 November 1993), unofficial English translation available from the Saeima archives.

<sup>138</sup> Zitars, 1994.

<sup>139</sup> HCNM's letter to Andrejevs, 10 December 1993.

<sup>140</sup> Ibid.

<sup>141</sup> Art. 11 (after the third reading) defined the groups that may not be naturalized (therefore, it is unclear why the High Commissioner mentioned this article); Art. 12 defined the groups that could be naturalized if they met the established requirements; Art. 13 defined the groups eligible for extraordinary naturalisation.

<sup>142</sup> HCNM's letter to Andrejevs, 10 December 1993.

The High Commissioner made this proposal aware of the fact that 98 per cent of all non-Latvians had been living in Latvia for more than five years, and that 93 per cent of persons had been living in Latvia for 16 years or more.<sup>143</sup> Also, the HCNM's proposal did not differentiate between persons eligible according to whether they had been born in Latvia or outside Latvia. If implemented, this scheme would have allowed for the majority of non-citizens to apply for naturalisation throughout the period of five years (1994-1998). Moreover, many of the elderly non-citizens would have been eligible to apply, as many of them had spent over 15 or 20 years in Latvia, although they were born elsewhere.

#### *2.3.4 Reactions to the High Commissioner's Recommendations*

Reviewing the proposals of the various parliamentary factions and individual members of parliament that were submitted for the second reading regarding Article 9 (now Art. 14), it appears that they indeed familiarized themselves with the proposal of the High Commissioner to replace the quotas by a gradual schedule for naturalisation. The proposal closest to the one suggested by the High Commissioner, in the sense that it allowed for quite a large group of non-citizens to apply during a relatively short period of time, came from the People's Harmony Party. This proposal recommended adopting a time frame which differed only slightly from that outlined by the High Commissioner.

However, the Saeima's Legal Committee rejected this proposal, while accepting the proposal of Latvia's Way, which envisaged a slower process of naturalisation, allowing very limited age groups to start applying for citizenship beginning in 1996. Strict differentiation was made between those who were born in Latvia and those who were born outside of Latvia. As a result, the High Commissioner's proposal was modified to an unrecognizable extent, and the following version of Article 14 was adopted after the third reading of the Law on June 21, 1994:

- (1) Consideration of Applications for granting of Latvian citizenship shall be initiated in accordance with requirements listed in Articles 11 and 12 herein in the following order:
  - 1) Starting from January 1, 1996, persons who were born in Latvia and are 16 to 20 years old on the date of submission of their application;
  - 2) Starting from January 1, 1997, persons who were born in Latvia and are 21 to 25 years old on the date of submission of their application;
  - 3) Starting from January 1, 1998, persons who were born in Latvia and are 26 to 30 years old on the date of submission of their application;
  - 4) Starting from January 1, 1999, persons who were born in Latvia and are over 30 years old on the date of submission of their application;
  - 5) Starting from the year 2000, other persons.
- (2) Applications for naturalisation by persons listed in Paragraphs 1) - 4) of Section (1) of the present Article shall be considered in the order of their submission.
- (3) The annual number of persons granted Latvian citizenship listed in Paragraph 5) of Section (1) of the present Article shall not exceed 0.1% of the number of citizens of Latvia in the previous year. The order of consideration of applications for naturalisation from such persons shall be determined in a manner that will provide priority to persons who arrived to Latvia while being underage and who have resided in Latvia for a longer time.<sup>144</sup>

Considering that the Law was adopted in this edition in June 1994, a period of five years would have to have passed before persons over 30 years old born in Latvia could start applying. Similarly, a period of six years would have to have passed for persons who were not born in Latvia (even if they had come to Latvia immediately after their birth or at a very young age). It is possible to roughly determine the number of persons who could apply for naturalisation after the year 2000 according to Section 3 of Article 14. Based on the number of Latvian citizens in 1998, totalling

<sup>143</sup> Data cited in HCNM's letter to Andrejevs of 6 April 1993.

<sup>144</sup> Republic of Latvia Citizenship Law as adopted in the third reading on June 21, 1994. Unofficial English translation available from the Saeima archives.

1,770,355,<sup>145</sup> 0.1 per cent of this figure would constitute 1,770 persons. Consequently, after the year 2000, no more than about 1,770 persons could be naturalized per year, which is a very insignificant number considering that approximately two thirds of all non-citizens were born outside Latvia and one third were born in Latvia.<sup>146</sup>

When comparing the recommended "naturalisation schedule" proposed by the High Commissioner with the one adopted in the third reading of the Citizenship Law, it becomes evident that the recommendation of the High Commissioner was ignored. Although the term "quota" was not used, the quota principle was, indeed, retained. As discussed previously, the international community did not accept the adopted formula. In the session of the Parliamentary Assembly of the Council of Europe of June 27-July 1, 1994, objections were expressed by the representatives of various committees to the quota principle contained in the adopted Citizenship Law. The Latvian delegation also met with significant pressure from the Russian side, which attempted to draw as much attention as possible to the discriminatory character of the Latvian Citizenship Law.<sup>147</sup>

At the session of the then CSCE Parliamentary Assembly in Vienna that took place around the same time, Latvian delegates were informed by the High Commissioner that a political decision had already been taken within the Council of Europe that, if the quotas in the Citizenship Law were not abolished, Latvia would face difficulties in joining the CoE.<sup>148</sup>

### *2.3.5 The Reconsideration of the Citizenship Law and Article 14*

The combined pressure of the international actors and the Cabinet of Ministers urged President Ulmanis to return the Law to the Saeima. The result was that two parliamentary standing committees were called upon for the purpose of re-drafting the problematic articles of the Citizenship Law, in particular Article 14. The first joint session of the Legal Committee and the Human Rights Committee was held on July 14, 1994. Another session of the Legal Committee was held on July 21, 1994.<sup>149</sup> As a result, the "schedule" was made slightly clearer in the sense that it now differentiated the persons born outside Latvia into those who entered Latvia as minors and those who entered Latvia as adults. In the end, during the extraordinary session of the Saeima held specifically for the repeated consideration of the Citizenship Law on July 22, 1994, a new version of Article 14 (1) was adopted:

#### *Article 14. General procedure for naturalization*

- (1) Applications for naturalization shall be reviewed in accordance with the requirements of Articles 11 and 12 of this Law in the following order:
  - 1) starting from January 1, 1996 - the applications of those persons who were born in Latvia and are 16 to 20 years old on the submission date of their application;
  - 2) starting from January 1, 1997 - the applications of those persons who were born in Latvia and are up to 25 years old on the submission date of their application;
  - 3) starting from January 1, 1998 - the applications of those persons who were born in Latvia and who are up to 30 years old on the submission date of their application;
  - 4) starting from January 1, 1999 - the applications of those persons who were born in Latvia and who are up to 40 years old on the submission of their application;
  - 5) starting from January 1, 2000 - the applications of all other persons who were born in Latvia;
  - 6) starting from January 1, 2001 - the applications of those persons who were born outside of Latvia and who have entered Latvia as minors;

<sup>145</sup> UNDP Latvia 1998a, p. 10.

<sup>146</sup> Muižnieks (ed.) 1997a in: UNDP Latvia 1998b, p. 53. (N.B. this data is for non-citizens. As to ethnic Russians, 52 per cent were born in Latvia according to Rose and Maley, 1994).

<sup>147</sup> Lācīte 1994, Krievija cenšas aizkavēt Latvijas uzņemšanu Eiropas Padomē [Russia Tries to Delay Latvia's Admission into the Council of Europe], Labrīt, 30 June 1994.

<sup>148</sup> Tihonovs 1994, EP joprojām iesaka svītrot kvotas pilsonības likumā [Council of Europe Still Recommending to Strike out Quotas from the Citizenship Law], Diena, 9 July 1994.

<sup>149</sup> Dokuments Nr. 751. Pilsonības likuma otrreizējai caurlūkošanai uz 21. 07. 94 iesniegtie priekšlikumi [Document No. 751. Proposals submitted for the repeated reading of the Citizenship Law as of July 21, 1994], Latvijas Vēstnesis, 23 July 1994.

- 7) starting from January 1, 2002 - the applications of those persons who were born outside of Latvia and who entered Latvia up to the age of 30;
- 8) starting from January 1, 2003 - the applications of all other persons.<sup>150</sup>

Section 2 of the Article provided that the applications for naturalisation by the persons shall be reviewed in the order of their submission. And that the order for reviewing the applications for naturalisation shall be determined by giving precedence to those persons who have resided in Latvia for the longer period. Importantly, any amendments to Article 14 were to come into force no earlier than one year after their adoption.<sup>151</sup>

The provision that the annual naturalisation of those eligible after the year 2000 should not exceed 0.1 per cent of the citizenry of the previous year was removed from the new version of Article 14. However, the overall schedule was prolonged. For example, if in the version adopted after the third reading, all those born in Latvia and who were over 30 years old on the date of the submission of their application could start applying as of January 1, 1999, the version adopted after the repeated reading gave this opportunity only to those persons born in Latvia who were up to 40 years old. Persons older than 40 years who were born in Latvia could start applying only in January 2000. Furthermore, the schedule divided those born outside Latvia into three groups: those who entered Latvia as minors, those who entered Latvia before the age of 30 and all the other persons. The last group of non-citizens born outside Latvia was to become eligible for naturalisation only in 2003. Also, the order of reviewing the applications of this last group was to be determined considering the period of their residence in Latvia. In order to prevent a quick reconsideration of the system, it was initially proposed in Section 4 that amendments to this Article that accelerate naturalisation shall come into force no earlier than one year after their adoption.<sup>152</sup> However, in the final version the words "that accelerate naturalisation" were omitted, referring the provision to any amendments.

Thus, although Article 14 was amended after the repeated reading of the Citizenship Law on July 22, 1994, its provisions were not made significantly clearer in comparison to the version adopted after the third reading. The only improvement of the Article was that it now set definite dates (although very remote) for when those born outside Latvia could start applying for citizenship. The Law did not foresee the time-frame during which the naturalisation of all non-citizens could be accomplished.

Notably, the groups whose right to apply for citizenship was shifted to the years 2001, 2002 and 2003 (i.e., nine years from the adoption of the Law) were the most numerous. Those with the right to apply during the first years after the adoption of the Citizenship Law comprised a minority (see Table below). In this way, the process of naturalisation was expected to continue for an indefinite number of years – contrary to the recommendation of the High Commissioner.

*Table 2. Naturalisation Eligibility*

Year	Number eligible
1995 (extraordinary naturalisation)	approximately 60,000
1996 (persons born in Latvia, aged 16 to 20)	33,327
1997 (persons born in Latvia, aged 20 to 25)	31,252
1998 (persons born in Latvia, aged 25 to 30)	27,605

<sup>150</sup> Republic of Latvia Citizenship Law as adopted on 22 July 1994. Original Latvian text and an unofficial English translation published in *Latvijas Vēstnesis*, August 11, 1994.

<sup>151</sup> Ibid.

<sup>152</sup> Dokuments Nr. 751, op.cit. *Latvijas Vēstnesis*, 23 July 1994.



1999 (persons born in Latvia, aged up 30 to 40)	51,284
2000 (all other persons born in Latvia)	65,865
2001 (persons born outside Latvia who entered Latvia as minors)	120,783
2002 (persons born outside Latvia who entered Latvia up to the age of 30)	214,456
2003 (all other persons)	133,814

Source: Human Rights and Social Integration in the Republic of Latvia: A General Survey, National Report Prepared by LR Ministry of Foreign Affairs and LR Naturalisation Board in Association with UNDP Latvia for the UNDP Regional Meeting in Yalta 2-4 September 1998, in: Human Rights for Human Development, Riga, August 1998.

### *2.3.6 Reactions to the Adoption of the Citizenship Law*

The final version of the Law was, as we have seen, far from the recommendations of the High Commissioner. Apart from the recommendation regarding the naturalisation schedule also other recommendations, such as the granting of citizenship to stateless children born in Latvia and others (which will be described below) were ignored. Nevertheless, no international criticism followed. Nor was there an official warm welcome in the form of a press statement on the part of the High Commissioner. Although reserved in their reactions, the Western actors seemed, on the whole, rather pleased with the fact that the Law was, in fact, reconsidered and adopted.

Contrastingly, the reaction from Russia was indignant to the extent where the Latvian MFA issued a public reply contradicting Russia's position. The MFA insisted that President Boris Yeltsin's characterisation of the Latvian Citizenship Law as a "glaring example of the disregard of international human rights standards" and the fact that Latvia ignored international recommendations was not true. The MFA insisted that the recommendations of the CSCE and the CoE were, in fact, included and adopted, and that the Law met international standards.<sup>153</sup>

In an effort to play down the exact content of the provisions of the Citizenship Law, official circles in Latvia presented it as a major triumph of the liberal democratic forces that had taken the recommendations of international experts into account, resisting the objections made by the radical factions. At the CSCE Budapest Follow-up Meeting, President Ulmanis stated on December 6, 1994, with regard to the cooperation between Latvia and international organisations:

The best manifestation of such cooperation is the Citizenship Law adopted by the Latvian parliament. According to the conclusions of the CSCE High Commissioner on National Minorities as well as the CSCE and Council of Europe experts, the Latvian legislation in the field of interethnic relations meets the highest international standards.<sup>154</sup>

On a more pessimistic note, Boris Tsilevich gave his assessment of the Citizenship Law in the following way:

It is not difficult to predict the future development of events. In two or three years, the Council of Europe and the OSCE will start wondering: looks like a more or less decent law has been adopted, but why is there no real naturalisation? The Latvian representatives will explain to them that [...] the lazy Russians do not want to study the state language and the history of Latvia in spite of all the efforts of the authorities to help them. This explanation will suffice for another couple of years. But in about five years the problem will become more serious, and everything will start from the beginning: visits of experts, commissions, etc.<sup>155</sup>

The subsequent developments proved that this forecast was correct. The extremely slow pace of the naturalisation process put in question the effectiveness of the schedule (or "windows" system) en-

<sup>153</sup> Latvian MFA's Announcement of 4 August 1994.

<sup>154</sup> Valsts prezidenta Gunta Ulmaņa runa Eiropas drošības un sadarbības apspriedes Budapeštas konferencē [Speech of the President of State Guntis Ulmanis at the Conference for Security and Cooperation in Europe Budapest Conference], Neatkarīgā Cīņa, 7 December 1994.

<sup>155</sup> Tsilevich 1998, p. 151.

shrined in the Citizenship Law. Chapters 3 and 4 that follow deal with the complex and difficult process of the High Commissioner's renewed interventions with the citizenship issue in 1996-1998, where he insisted on the complete abolition of the "windows" system and the granting of citizenship to stateless children born in Latvia.

## Chapter 3. Abolishing the "Windows" System

In 1995 and 1996, the pace of naturalisation in Latvia was extremely slow. A wide discrepancy between the number of those eligible and the number of applicants was observed. This situation drew the High Commissioner's close attention to the naturalisation process, whereby he attempted to look into the reasons for its slow pace. After a thorough analysis, the HCNM arrived at the conclusion that the "windows" system represented the main obstacle to naturalisation, as those wishing to naturalise were not allowed to do so immediately. Throughout 1997 and 1998, the HCNM thus insisted on the complete abolition of the age brackets or "windows". This was a politically complex process as, since the radical nationalist Fatherland and Freedom Party – the party fiercely opposed to any liberalisation of the citizenship policy - formed part of the ruling coalition since 1995. In 1997, its member Guntars Krasts became Prime Minister and formed a conservative government bound by an agreement not to expand naturalisation. In spite of having to operate in a very complex domestic political context, the High Commissioner finally achieved that the "windows" system was abolished. This chapter describes the chain of his interventions during this period in detail, concentrating on his skilful use of both domestic and international political circumstances for the purpose of pushing his recommendations through. Along with his key recommendation to abolish the "windows", the HCNM also insisted upon the granting of citizenship to stateless children born in Latvia and easing the requirements for naturalisation - issues that will be discussed in Chapters 4 and 5.

### *3.1 The Problem of Naturalisation, 1995-1997*

#### *3.1.1 Stagnation of the Naturalisation Process and the Coalition Agreement*

The wide discrepancy between the number of persons eligible for naturalisation and the number of actual applicants is shown in the Table below. The figures for those actually naturalised are given for 1995, 1996, 1997 and the first ten months of 1998 (while the "windows" were still in force).

*Table 3. Naturalisation Statistics, 1995-1998*

Year	Total No. of Non-citizens	Total Number eligible (including the previous years)	Number naturalised in the respective year	Total number naturalised
1995	740,231*	approximately 60,000 (persons eligible for extraordinary naturalisation)	984	
1996		93,327 (persons eligible for extraordinary naturalisation plus those born in Latvia aged 16-20)	3,016	4,000
1997	687,486*	124,579 (persons eligible for extraordinary naturalisation plus those born in Latvia aged up to 25)	2,993	6,993
1998		152,184 (persons eligible for extraordinary naturalisation plus those born in Latvia aged up to 30)	3,632	10,625
TOTAL (1995-1998)		152,184	10,625	10,625

Source: Data provided by the Information Centre of the Naturalisation Board (August 31, 1999).

Against this background, almost no discussions of the problem took place in the Saeima. Under the centre-right governing coalition comprised of the "moderate" and the "radical" forces, the Citizenship Law and, in particular, a possibility for its liberalisation was a complete taboo topic. The coalition-forming factions included Fatherland and Freedom, the Movement for the National Independence of Latvia (MNIL), the Latvian Farmers' Union, the Latvian Unity Party, Latvia's Way and the Democratic Party Saimnieks. The Agreement on the Formation of the Government (headed by Andris Šķēle) included a provision that the government-forming parties shall not initiate nor support changes of the main principles of the Citizenship Law and the Law regulation the status of non-citizens (unless such changes are initiated by one tenth of the electorate).<sup>156</sup> In this way, any initiatives directed at the liberalisation of the Citizenship Law were frozen. The forces representing themselves as "moderate nationalists" such as Latvia's Way, that could, in principle, consider amendments to the Citizenship Law under compelling circumstances, found themselves taken hostage by the agreement with the radical nationalists who threatened to leave the coalition and cause a governmental crisis if such attempts were made.

What is more, Fatherland and Freedom continued to argue that the "windows" system was too liberal. The party attempted to revive the principle of annual naturalisation quotas that would not exceed 0.1 per cent of all citizens during the previous year. In accordance with Article 78 of the Latvian Constitution, the party initiated a collection of signatures with the view of further passing the draft to a national referendum. The campaign lasted until February 15, 1996. A little over 131,000 signatures were needed (one tenth of the electorate).<sup>157</sup> However, the campaign fell short of some 5,000 signatures needed to reach the target: it was a rather close outcome.

In connection with the campaign, members of the European Parliament wrote to the Speaker of the Saeima Ilga Kreituse showing the importance attached by the EU to this issue: "should this motion or a proposal of similar intent come before the Saeima, we would ask that it be dealt with in a manner compatible with the international undertakings already given by Latvia, as a state which we wish to welcome into the European Union in the not too distant future."<sup>158</sup>

### *3.1.2 Reasons for the Slow Naturalisation Pace*

In the meantime, the Naturalisation Board attempted to look into the reasons of the low number of those wishing to acquire Latvian citizenship through naturalisation. In 1996, a survey was conducted by the Board among the students of Russian schools, in order to reveal how many were interested in obtaining citizenship and what reasons prevented them from applying.

The survey showed an overwhelming interest in obtaining citizenship: 63 per cent of the students expressed such a wish. Only 11 per cent expressed no interest.<sup>159</sup> The respondents mentioned the following reasons for wishing to become citizens: the fact that they reside and wish to continue to reside in Latvia (62 per cent); they consider Latvia their motherland (46.8 per cent), citizenship is important for their future (34.7 per cent); and they wish to feel as full and equal members of the Latvian society (34.1 per cent).<sup>160</sup>

At the same time, the high requirements for naturalisation were mentioned by the students as factors that prevented them from applying for naturalisation. Thus, insufficient knowledge of the Latvian language was mentioned by 26 per cent of the students, the level of knowledge of history and

<sup>156</sup> Pravitelstvo kak obshchestvo s ogranichennoj otvetstennostju [A Government as a Limited Shares Company], *Biznes i Baltija*, 21 December 1995.

<sup>157</sup> Komissar slushaet prognozi [The Commissioner is Listening to the Forecasts], *Biznes i Baltija*, 23 January 1996.

<sup>158</sup> The European Parliament Delegation for Relations with Estonia, Latvia and Lithuania. Letter to the Speaker of the Saeima of the Republic of Latvia Ilga Kreituse from the Chairman of the Delegation Niels Sindal, Vice Chairman Alfred Gomolka and Vice Chairman Christof Tannert, Brussels, 22 February 1996.

<sup>159</sup> Naturalisation Board of the Republic of Latvia 1997, p. 28.

<sup>160</sup> *Ibid.*, p. 29.

constitution required by 26 per cent, insufficient information about naturalisation by 24.1 per cent, and an excessively high fee for naturalisation by 19.8 per cent.<sup>161</sup>

The High Commissioner paid special attention to the results of this as well as other surveys. In his March 14, 1996 letter, he cited the results of various surveys extensively and concluded that the main reasons for the low activity of the potential applicants were the excessively high naturalisation requirements. The recommendations he submitted to the Latvian Government at that point almost exclusively concerned lowering the requirements. There was no mention of abolishing the "windows" at that stage.<sup>162</sup>

### *3.1.3 The HCNM's Recommendation to Abolish the "Windows" System in the 1996-1997 Latvian Political Context*

It was only in his October 28, 1996 letter (that followed his eighth visit to Latvia) that the High Commissioner recommended a complete abolition of the "windows" system:

As so few applicants have made use of the "window" opened in 1996, it is clear that the problem confronting Latvia now is not the danger of being swamped by a great number of applicants at the same time, but the risk that the process of naturalisation - an essential element of the process of integrating non-Latvians into Latvian society - is moving much too slowly. I hope therefore that due consideration will be given to the abolishment of the "window" system.<sup>163</sup>

In his December 24, 1996 reply to the HCNM, the Foreign Minister explained that negotiations on this issue are impeded by "political difficulties" (i.e., the mentioned agreement of the coalition-forming factions not to liberalise the Citizenship Law).

By April 1997 (after his ninth visit to Latvia), the High Commissioner had repeatedly recommended to do away with the "windows" system. During this period, no major changes had occurred in the distribution of political forces in Latvia in spite of the January 1997 governmental crisis. A new government made up of the radical nationalists and the "moderate" forces, committed to maintaining the grip on naturalisation, was formed by the same Prime Minister Andris Šķēle in February 1997.

Russia's approach to the citizenship issue did not soften either during the above-mentioned period. In January 1997, Russian Foreign Minister Yevgeny Primakov mentioned the possibility of introducing economic sanctions against the Baltic states, to which the Latvian Foreign Ministry reacted by stating that it seemed "unrealistic that the Russian government is now really prepared to perform any non-friendly and non-constructive action against its neighbouring states."<sup>164</sup> In February 1997, the Russian leaders were still insisting upon the unconditional granting of citizenship to all those who were legally residing in Latvia at independence (in August 1991).<sup>165</sup>

Meanwhile, the naturalisation process was practically at a halt, which provided Russia with reasons for sharp criticism, thus attracting the attention of international organisations. As of spring 1997, the issue began to be addressed in the mass media with increasing frequency (this is particularly significant in the case of the Latvian-language mass media, which had generally focused far less attention on citizenship- and naturalisation-related issues than the Russian-language media). As the *Baltic Times* mentioned in March 1997, "Latvia is coming under mounting pressure from abroad to loosen naturalisation requirements for the country's Russian-speaking population."<sup>166</sup>

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<sup>161</sup> Ibid., p. 30.

<sup>162</sup> HCNM's letter to the Latvian Foreign Minister Valdis Birkavs, 14 March 1996.

<sup>163</sup> HCNM's letter to Birkavs, 28 October 1996.

<sup>164</sup> Republic of Latvia MFA, Comments of the State Secretary of the Ministry of Foreign Affairs of the Republic of Latvia Mr. Maris Riekstins..., 10 January 1997.

<sup>165</sup> Easing Latvian Naturalisation Rules, *The Baltic Times*, 6 March 1997.

<sup>166</sup> Ibid.

Assessing the pace of naturalisation under the "windows" system, the then Director of the Latvian Centre for Human Rights and Ethnic Studies, Nils Muižnieks, concluded that "to call this pace 'gradual' is an understatement – naturalisation is not really taking place at all."<sup>167</sup> This was a particularly troubling situation as "everyone remembers the divisive political battle leading up to passage of the 1994 law, not to mention [...] the attempt by right-wing forces to organise a referendum to make naturalisation even more difficult."<sup>168</sup> He continued by arguing that the situation distorted Latvian politics by skewing the political spectrum to the right, that it hindered Latvia's chances for integration into the EU and that it undermined long-term stability in Latvia. Muižnieks called upon lifting the taboo off the subject and abolishing the "windows" system, as it is "completely unnecessary".<sup>169</sup>

Just prior to the High Commissioner's visit on April 6 and 7, 1997, Latvian President Ulmanis also came forth with a criticism of the naturalisation "windows". He stated that "if we want to see Latvia as a modern European state, our attitudes toward non-Latvians cannot be symbolised by the closed windows of naturalisation."<sup>170</sup> The President's initiative was immediately condemned by Fatherland and Freedom whose stance suggested that changing the Citizenship Law at that point would inevitably lead to the fall of the government.<sup>171</sup>

It was against this background that the High Commissioner attempted to end the stagnation of the naturalisation process. His recommendation to this effect was worded in his letter of May 23, 1997 to the Latvian Foreign Minister as follows (emphasis added):

However, permit me to add *a strong plea for abolishing the "window" system*. The maintenance - also in the modified form I recommend - of the test system provides a sufficient guarantee that Latvia will not suddenly be swamped by a big wave of new citizens insufficiently prepared for integration. There is, in my view, no valid reason to let hundreds of thousands of non-citizens wait for several years before they can get a chance to start the process of naturalisation.<sup>172</sup>

The reply of the Foreign Minister did not follow until September 1997. However, the political situation and the attitude of the authorities to the citizenship policy was greatly influenced during the summer of 1997. Apart from a chain of other events that had an impact on the situation, the release of the European Commission's Opinion on Latvia's Application for Membership of the European Union on July 16, 1997, was of major importance. It was stated that "Latvia needs to take measures to accelerate naturalisation procedures [...] and to pursue its efforts to ensure general equality of treatment for non-citizens and minorities."<sup>173</sup>

The criticism of the EU regarding the readiness of Latvia to join the organisation urged the Latvian authorities to seriously address the naturalisation and integration problem, especially considering that Latvia (unlike Estonia) was not invited by the European Commission to start accession negotiations in 1997. It was seen as necessary to look into the issues that were pointed out by the EU as being problematic.

As to the Latvian Foreign Minister's reply of September 11, 1997, to the High Commissioner's recommendation, it contained the view that not the "windows" system (i.e., not the state policy), but the non-citizens' attitude towards the Latvian state was to blame for the slow naturalisation. Indeed, the Foreign Minister was right in implying that the non-citizens were not particularly enthusiastic about naturalisation for purely psychological reasons, as they felt alienated from the state. The results of a survey conducted in 1998 showed that more than one third of the non-citizens (33 per cent) considered the naturalisation procedure to be humiliating.<sup>174</sup> However, the survey results only

<sup>167</sup> Muižnieks 1997a, Latvia's Citizenship Law Does Not Work, in: The Baltic Times, 13 March.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> Kahar 1997, Ulmanis puts Citizenship on Front Burner, in: The Baltic Times, 10 April.

<sup>171</sup> Ločmele 1997.

<sup>172</sup> HCNM's letter to Birkavs, 23 May 1997.

<sup>173</sup> The European Commission. Commission's Opinion on Latvia's Application for Membership of the European Union, 16 July 1997.

<sup>174</sup> Baltic Data House 1998, Fig. 23-24, pp. 40-41.

confirmed what had been already rather obvious: namely, that the exclusionary state policies were regarded as unfair by the non-citizens and that they were not prepared to accept them. In fact, already in 1993, 98 per cent of Riga's non-citizens considered the proposed Citizenship Law to be unfair.<sup>175</sup> The Baltic Barometer II Survey of 1994 showed that only eight per cent of the Russian-speakers in Latvia agreed with the policy, whereby only the pre-1940 citizens and their descendants should have the right to vote in the parliamentary elections (as opposed to 46 per cent of the Latvians).<sup>176</sup> Therefore, it may even be stated that the non-citizens boycotted naturalisation, as they considered it degrading.

Nevertheless, the "windows" undoubtedly represented a considerable "speed bump" on the way of naturalisation. Although the general attitude among the non-citizens towards naturalisation in principle was negative, practical considerations outweighed emotions in many cases and boosted many non-citizens' readiness to go through the process.

### 3.2 Revived Debate on the "Windows" System, 1997-1998

Although the initial official reaction of the Latvian authorities to the High Commissioner's recommendation to abolish the "windows" system was reserved, the issue started to be addressed with increasing frequency throughout the second half of 1997, and particularly in the beginning of 1998, due to unceasing international interference. The High Commissioner, in cooperation with the OSCE Mission in Latvia, took a most active part in pushing for the liberalization of the Citizenship Law. His approach found overwhelming support on the part of the EU, the Council of Europe, CBSS, and other international bodies including NATO and the diplomatic corps accredited in Latvia.

However, considering the fact that Andris Šķēle's government resigned on July 26, 1997, and Gunars Krasts of Fatherland and Freedom was nominated by the President to form a new Government (approved on August 8, 1997), it appeared hardly credible that the idea of abolishing the "windows" would find positive response with the decision-makers. The new Government held an even firmer nationalistic stance than the previous one. Besides, similar to the previous Government, its Declaration stipulated that the Citizenship Law may be amended only if all coalition-forming parliamentary factions agreed to the reform. In the case of any attempt to liberalise the Law, analysts predicted a governmental crisis.<sup>177</sup>

Nevertheless, in October 1997 the Naturalisation Board submitted the proposal to abolish the "windows" to the standing parliamentary Committee for Human Rights. The Russian-language press commented that this happened primarily because of the criticism coming from international organisations, reproaches from the Russian side and Latvia's wish to join the EU.<sup>178</sup> Fatherland and Freedom immediately threatened to leave the ruling coalition.

#### 3.2.1 A Season for Extremism

The second half of 1997 was characterised by a series of shocking incidents and unceasing harsh rhetoric coming from both the Latvian and the Russian side. An explosion of the Memorial to the Liberators of Riga in the Victory Park (a meeting point of WW II Soviet army veterans and Russian-speaking pensioners) took place on June 6, 1997. Two members of the right-wing extremist paramilitary *Aizsargi* were killed in the explosion that they had themselves arranged. The reaction

<sup>175</sup> Smith, Aasland and Mole 1994, in: Smith (ed.) 1994, p. 193.

<sup>176</sup> Rose, 1995b, p. 22.

<sup>177</sup> Kozakov and Trubnikov 1997, in: Biznes I Baltija, 10 October.

<sup>178</sup> Kozakov 1997, *Kak otkritj okno v Evropu? Nuzhno zakritj 'okna naturalizacii'* [How to Open the Window to Europe? By Closing the 'Naturalisation Windows'], in: Biznes i Baltija, 9 October.

of the Russian-speaking media was as indignant as ever. The Duma of the Russian Federation issued a special statement regarding the incident.<sup>179</sup>

In November 1997, an advertisement appeared in the *International Herald Tribune* written and paid for by a Latvian right-wing extremist living in the United States called Aivars Slucis. The article was entitled "Organization for Security and Cooperation in Europe (OSCE) and Its Kommissar for Minorities, Max van der Stoel - Agents of Russian Imperialism." Apart from an excessive amount of hate-speech directed at the Russians, the article contained an appeal to the High Commissioner: "repatriate all 1 million Russian colonists from Latvia to empty Russia, and you may partly reserve some of your evil deeds of the last six years."<sup>180</sup> The article was translated and published in both the Latvian and the Russian-language newspapers, which provoked emotional reactions. Representatives of Fatherland and Freedom stated that whatever was contained in the article was the opinion of the Party.<sup>181</sup> Subsequently, in a widely-scrutinised statement, the Deputy Secretary General of Fatherland and Freedom announced on TV that all non-citizens would have to leave Latvia by the year 2002.<sup>182</sup> On top of that came the murder of the leader of the paramilitary *Aizsargi* (whose members were involved in the explosion of the Memorial) on November 28, 1997.

In the meantime, the amendments to the Labour Code that, among other things, were to entitle language inspectors to require a dismissal of an employee if his/her knowledge of Latvian did not correspond to the required level were debated and adopted by the Saeima in the third reading on February 5, 1998. However, the President returned the amendments to the Saeima for repeated consideration. International involvement again played a role in this decision – pressure was exercised by the HCNM and by the CBSS Commissioner. The Council of Europe was also involved.<sup>183</sup> The issue was postponed and the new Code was adopted as late as 2001.

### 3.2.2 *The Crisis of March-April 1998*

Tensions escalated in March 1998 following a picket in front of the Riga City Council called for by the Russian-language newspaper *Panorama Latvii*. Mostly Russian-speaking pensioners (around 1,000 people) were protesting against the extremely poor living conditions and excessively high utility rates they were unable to pay. As the organisers of the picket had not obtained permission to hold it and because the crowd had blocked traffic on the near-by street, the police intervened to disperse the picket. Brutal methods were used against the pensioners, some of whom were beaten up by policemen. In the eyes of many, the incident had an ethnic colouring as the pensioners were Russian-speakers whereas the policemen were Latvians.<sup>184</sup>

Russia's reaction to the above events was harsh, as might have been expected. Russian Foreign Minister Yevgenii Primakov said Latvian police had committed a "glaring violation of elementary human rights."<sup>185</sup> Presidential spokesman Sergei Yastrzhembskii stated that imposing trade sanctions against Latvia would be a "justified response to the treatment of the demonstrators."<sup>186</sup> The international community was again called upon by the Russian Foreign Ministry to take action with

<sup>179</sup> Federalnoe Sobranie - Parlament Rossijskoj Federacii, Zaijavlenije Gosudartvennoj Dumi v svazi so vzrivom y Memoriala Pobedi v gorode Rige [Parliament of the Russian Federation. Announcement of the Russian Duma Regarding the Explosion at the Victory Memorial in Riga], Moscow, 24 June 1997.

<sup>180</sup> Slucis 1997, Organization for Security and Cooperation in Europe (O.S.C.E) and Its Kommissar for Minorities, Max van der Stoel - Agents of Russian Imperialism, in: The International Herald Tribune, 13 November.

<sup>181</sup> The opinions are cited in, e.g.: Fedoseev 1997 (Chas, 20 November).

<sup>182</sup> Tihonovs 1997, Tēvzemieši grib panākt nepilsoņu aizbraukšanu [Fatherlanders Want to Get the Non-Citizens to Leave], in: Diena, 27 November.

<sup>183</sup> For example, shortly after the President returned the amendments (on 17 February), Secretary General of the Council of Europe Daniel Tarschys addressed a letter to the Speaker of the Saeima Alfreds Čepānis, suggesting that a group of experts visit Latvia with the purpose of discussing the draft. (Letter available from the Saeima archives, Red. No. 743, February 23, 1998).

<sup>184</sup> For comments on the incident, see MINELRES archives at: <http://www.minelres.lv/minelres/archive/03121998-02:03:38-8641.html>

<sup>185</sup> Radio Free Europe/Radio Liberty RFE/RL Newsline Vol 2, No. 44, Part II, 5 March 1998.

<sup>186</sup> Radio Free Europe/Radio Liberty RFE/RL Newsline, 9 March 1998.



respect to Latvia, particularly as far as the problem of the Russian-speaking minority is concerned.<sup>187</sup> This time, Russia's reaction was seen as potentially going beyond mere rhetoric to which the Latvian officials had been used to. It also raised concerns in the West. The situation thus developed into a major diplomatic crisis.

The atmosphere was heated up by the scandalous march devoted to the 55<sup>th</sup> anniversary of the Latvian Waffen SS Legion on March 16 (in which some state officials and MPs took part) and the provocative explosions in the Riga synagogue and near the Russian Embassy on April 2 and 5 respectively for which no one claimed responsibility.<sup>188</sup>

The conflict sparked a series of political dismissals in Latvia, including the Latvian Economic Minister Atis Sausnītis, who was charged with having exaggerated the impact of the possible Russian economic sanctions, and the Latvian National Police Chief Aldis Lieljuksis, who was held responsible for having failed to prevent the bombing of the synagogue.

Commenting on the situation, Nils Muižnieks pointed out in early April that:

The most troubling aspect in this season of extremism has been the lack of strong moral and political leadership, the absence of voices urging tolerance and moderation. More level-headed politicians within "Fatherland and Freedom", such as Prime Minister Guntars Krasts and Finance Minister Roberts Zile, did not forcefully distance themselves from racist extremists in their party. [...] Politicians' silence last year clearly set the stage for current difficulties, yet it continues today.<sup>189</sup>

### *3.2.3 International Response to the Conflict*

International organisations quickly addressed the situation in Latvia. Alongside attempting to smooth Russia's harsh reaction, the representatives of the CoE, CBSS, OSCE and the EU used the situation to intensify their pressure to implement their repeatedly issued recommendations, one of the most essential of which was the abolition of the naturalisation "windows", which had been recommended by the High Commissioner.

International attention was also drawn to another highly sensitive political issue that added to the tensions in March-April 1998: the new draft Language Law. The draft envisaged state regulation of language use in the private sphere and the cutting down of secondary education in Russian. Its second reading initially scheduled for mid-March was postponed to April 2 – around the dates of the 11<sup>th</sup> visit of the High Commissioner to Latvia.

The chain of events that followed suggests that the escalation of an international crisis sobered the more centrist and Europe-oriented Latvian officials as they realised the possible long-term international consequences of their silent approval of the continuing inaction with respect to the Russian-speaking non-citizens, as well as of the attempts to aggravate the situation by adopting more stringent legislation. At the time of the HCNM's visit, the issue of the integration of non-citizens was declared a priority on the political agenda, and action was immediately taken. For example, an Integration Council was established on March 31, which was tasked to draft a programme for the integration of society. It is hardly a coincidence that this action was taken at the time when the High Commissioner was in Riga.

On April 3, the Latvian Foreign Ministry issued a statement announcing the "successful visit" of the High Commissioner and the decision of the Government coalition partners to open discussion on amendments to the present Citizenship Law. These amendments would be aimed, amongst other

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<sup>187</sup> For example, on 16 March, several Russian representatives to the Parliamentary Assembly of the Council of Europe presented a motion for a resolution to the Assembly, on "Violations by the Latvian authorities of universally recognized human rights". (CoE Parliamentary Assembly, Doc. 8039, 16 March 1998).

<sup>188</sup> Radio Free Europe/Radio Liberty (RFE/RL) reports on respective dates.

<sup>189</sup> Muižnieks 1998, The Season for Extremism, in: The Baltic Times, 2 April 1998.

objectives, at facilitating the naturalisation process. The MFA pointed to the "maximum transparency" that Latvia had demonstrated in its dealings with the High Commissioner, and explicitly welcomed and invited further cooperation in its efforts of integrating non-citizens.<sup>190</sup> The international community was thus assured by the Latvian Foreign Ministry that the issue of the non-citizens, which had not evolved for many years, became the top priority in Latvian politics. The Russian-speakers reacted to the government's initiatives rather sceptically, considering them window-dressing measures taken for fear of conflict with Russia and threatened EU accession negotiations.

### *3.2.4 Reactions to the HCNM's Recommendation on Abolishing the "Windows"*

At this point in time, events appeared to be developing rather dramatically. International organisations kept urging for an immediate adoption of the amendments, whereas the nationalist forces used every opportunity to block the process.

On April 15-17, 1998, Max van der Stoep again visited Latvia (his 12<sup>th</sup> visit, two weeks after the previous one). It was reported that the visit was requested by the Latvian Prime Minister Guntars Krasts himself. On April 15 (once again, while the High Commissioner was in Riga), the Latvian government conceptually approved the idea of abolishing the "windows" system and introducing the procedure for granting citizenship to stateless children. The *Baltic Times* reported that this was "an unprecedented move."<sup>191</sup> On April 17, the High Commissioner issued a press statement welcoming the decision of the government to support his recommendations.

The CBSS High Commissioner, Ole Espersen, who was in Riga at the same time and who met with many state officials, also welcomed the decision. The greatest political weight was, however, carried by the statement issued by the Presidency on behalf of the European Union, which unequivocally implied the complete political backing of the High Commissioner's recommendations by the EU:

The European Union welcomes the decision of the Government of Latvia on 15 April to develop a revised action plan for the accelerated handling of citizenship issues and to make a more intensive effort to facilitate real social integration. The Union considers it essential for government's programme to match fully the standards established by the OSCE in this area, drawing on the advice of the OSCE's High Commissioner on National Minorities, and will continue to take a close interest in the implementation of the government's programme. The Union hopes that the Latvian Parliament will take early action to adopt the government's decisions.<sup>192</sup>

The welcoming statements issued by the influential international actors on the same day may be seen as a form of joint diplomatic pressure on the Latvian government, carrying a clear message that once a commitment to comply with international recommendations was made, deviation from the promise would not find international understanding. What is also clear, however, is the fact that the government's agreement to start discussions of the amendments was extended out of foreign policy considerations and that it had not been based on domestic incentives. As one of the leaders of Fatherland and Freedom admitted openly, the faction agreed to discuss the changes for purely tactical reasons, as the aspired EU membership outweighed the reluctance to negotiate:

The Co-operation Council of the factions started considering the citizenship issue when it became clear that the West's support of Latvia against Russia's pressure will be possible only if Latvia makes a step towards the observation of the recommendations of Western experts. Of course, we can argue about whether the expert opinions are based on the full understanding of the historical and domestic political situation in Latvia, but if the movement towards the EU and NATO stops, the consequences might be even graver than the adoption of the amendments to the Citizenship Law. We have to realise that there are quite a few opponents of the enlargement within these organisations, who are only wait-

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<sup>190</sup> Announcement by the MFA of Latvia, Riga, 3 April 3, 1998.

<sup>191</sup> Neuman 1998, Citizenship Law Amendments Hot Topic for Bilateral Relations, in: *The Baltic Times*, 23 April.

<sup>192</sup> Presidency Statement on Behalf of the European Union on Latvia, published in Brussels, London and Riga on 17 April 1998.

ing for the inner conflicts in the candidate countries that could be used as arguments against their acceptance. In the present situation Latvia has nothing else left to do but make certain concessions, at the same time retaining some indisputable principles regarding the citizenship issue. [...] The participation of "Fatherland and Freedom/MNIL" in the negotiations on the amendments to the Citizenship Law is a tactically important step.<sup>193</sup>

### 3.3 *The Process of Amending the Citizenship Law, 1998*

On May 13, 1998, the Saeima voted to pass the amendments prepared by the Government to the standing committees (the decision was approved only at a third try, as the Fatherland and Freedom/MNIL faction did not register their presence in an attempt to prevent the quorum).<sup>194</sup> The first reading of the amendments took place on May 20, 1998. Before the second reading, the High Commissioner sent another letter to the Speaker of the Saeima in connection with the issue of stateless children (the provisions contained in the draft did not comply with his recommendation, see also Chapter 4). The HCNM once again stressed the importance of abolishing the "windows" and welcomed the response the Saeima had so far given to that issue.<sup>195</sup>

The process of debating and adopting the amendments was closely watched internationally and given a sense of urgency. Aware of the intentions of the nationalist parties to hamper the process, international actors attempted to speed up the procedure by advising the Saeima to adopt the amendments under the urgency procedure, i.e., in just two (instead of three) readings. In an unprecedented diplomatic move, British Prime Minister Tony Blair – leader of the EU presiding country at the time – sent a letter to the Latvian Prime Minister Guntars Krasts arguing that postponement of the adoption of this legislation or the adoption of such legislation that is not in compliance with the recommendations given by the High Commissioner on National Minorities would not be viewed in the positive light by the EU.<sup>196</sup>

This was a clear example of the excellent co-ordination of diplomatic activities among international organisations: the president of the European Council referred to the HCNM's recommendations in a personal letter to the Latvian Prime Minister and linked their implementation to the EU's position – a move that was seen as potentially capable of having an impact on top-level Latvian officials.

However, in spite of international pressure, the Latvian parliamentarians did not support the adoption of the amendments under the urgency procedure. After having been passed in second reading on June 4, 1998, one more reading was necessary for the amendments to be definitively adopted. The opponents of the amendments hoped to hold the third reading no earlier than in the fall, after the end of the parliamentary holidays. However, President Ulmanis appealed to Prime Minister Krasts to call an extraordinary session of the Saeima at the end of June, stating that in the case that the Prime Minister did not do so, the President would take the issue into his own hands. As Krasts hesitated, 34 deputies requested an extraordinary session in accordance with the Rules of Procedure of the Latvian Saeima.<sup>197</sup> This session was held on June 22, 1998, and ended with the adoption of a whole package of amendments to the Citizenship Law. In total amendments to 25 articles were adopted, including those to Article 14 on abolishing the "windows". Importantly, the amendments to Article 14 were to come into force without the one-year delay. However, together with adopting the liberalising amendments recommended by the international community, the Saeima also approved of a series of amendments that restricted the provisions previously in force – notably, those concerning the granting of citizenship for the special meritorious service for Latvia, those regulating the deprivation of citizenship on ground of having provided false information and those dealing with restrictions to naturalisation on the basis of criminal record.

<sup>193</sup> Pētersons 1998, (Interview with Grīnblats, member of "Fatherland and Freedom", ex-minister of education in Nacionālā Neatkarība, 29 April).

<sup>194</sup> TB/LNNK Almost Stalls Citizenship Amendments, in: The Baltic Times, 21 May 1998.

<sup>195</sup> HCNM's letter to Speaker of Saeima Alfrēds Čepānis, 25 May 1998.

<sup>196</sup> T. Blēra vēstule G. Krastam [T. Blair's Letter to G. Krasts], in: Diena, 4 June 1999.

<sup>197</sup> Steven Johnson 1998a, in: The Baltic Times, 18 June.

### 3.3.1 *The Request for a National Referendum*

The decision of the Saeima was followed by an avalanche of congratulations from international organisations and Western governments. As to Russia, while recognising that the abolition of the "windows" would be a step in the right direction, it held that this would not constitute the implementation of all OSCE recommendations.<sup>198</sup>

However, a disappointment followed only shortly after the adoption of the amendments, as one third of the parliamentarians (including some representatives of the factions favouring the amendments) requested the President not to proclaim them for the period of two months, in accordance with Article 72 of the Latvian Constitution. During those months, the signatures of one tenth of the voters requesting a national referendum on the suspended amendments had to be collected. The well co-ordinated activities of the international actors that followed the suspension of the amendments suggest that it might have been hoped to prevent or influence the signature-collection campaign. The link between implementing the HCNM's recommendations and Latvia's EU membership chances was even stressed by officials of the countries that had previously not taken special interest in citizenship issues in Latvia. For example, as reported by mass media, the State Secretary of the Spanish MFA, Ramon de Miguel, visited Riga on July 9, 1998, and warned that if the issue of non-citizens was not solved in the nearest future, Latvia could face difficulties integrating into the EU. Furthermore, due to the initiative to hold a referendum, the developments in the country would be closely followed.<sup>199</sup>

### 3.3.2 *Support for the HCNM's Recommendations on the Citizenship Law*

In the first half of July, emotions were stirred over Prime Minister Guntars Krasts' fear that the OSCE would not be content with the implementation of the current recommendations regarding citizenship, and would issue new ones (under the alleged pressure from Russia). The Prime Minister expressed this concern in reaction to the letter from the CBSS Commissioner Ole Espersen received by the Foreign Ministry around July 10, 1998, in which he pointed to the advisability of granting voting rights to non-citizens at the municipal level.<sup>200</sup> The discussions around the issue caused international officials to give special assurance to the Latvian authorities that they would not ask for more than the key OSCE recommendations. For example, US Deputy Secretary of State Strobe Talbott told in his interview to the *Diena* that "we consider that the standards that concern not only Latvia, but all countries in the region, especially the ones striving to become part of the democratic community of states, are the standards set by the OSCE."<sup>201</sup> Another assurance was the vote on the final Declaration of the Annual Session of the OSCE Parliamentary Assembly in Copenhagen, where the Member States did not support Russia's proposal to include special recommendations to Estonia and Latvia into the Declaration.<sup>202</sup> On July 17, 1998, in order to ease the tension, the High Commissioner issued a statement assuring Krasts that he would not change his recommendations:

In the course of the past weeks, Prime Minister G. Krasts has repeatedly expressed an assumption that as soon as my Recommendations regarding the amendments to the Citizenship Law are implemented, I would recommend new changes to that law. I would like to clearly state my opinion. My Recommendations in this regard are mentioned in my letter to the Foreign Minister V. Birkavs of May 23, 1997.

<sup>198</sup> ASV un Eiropas Savienība apsveic izmaiņas Pilsonības likumā [USA and the European Union Welcome Changes of the Citizenship Law], in: *Diena*, 6 June 1998.

<sup>199</sup> Kozakov 1998a, *Evropa preduprezhdaet...* [Europe is warning...], in: *Chas*, 11 July.

<sup>200</sup> Kozakov 1998f, *Zagadki Espersena* [the Riddles of Espersen], in: *Chas*, 11 July.

<sup>201</sup> Ozoliņš 1998a, *Baltija - NATO uzticības lakmusa tests* [The Baltics - a Litmus Test for NATO's Trust], in: *Diena*, 8 July.

<sup>202</sup> Kozakov 1998c, in: *Chas*, 15 July.

Since the time when I issued these Recommendations, I have not changed my views in this regard and I do not see the necessity to do that also in the future.<sup>203</sup>

The High Commissioner then listed his precise recommendations. The statement was referred to by one Latvian political analyst as "unprecedented". As he noted, "something extraordinary must happen for an international official of the level of the OSCE High Commissioner to issue such a straightforward and personalised statement referring to a specific state official, mentioning his name and denying his words."<sup>204</sup>

However, Krasts said he was not convinced by the statement and asked for the guarantees on behalf of the OSCE as a whole.<sup>205</sup> Following this request, EU Foreign Affairs Commissioner Hans van der Broek assured Latvia on June 20, 1998, of the EU's opinion that Latvia would not be asked to do more than the OSCE had recommended. Latvian Foreign Minister Valdis Birkavs was once again assured by the High Commissioner himself in a telephone conversation on July 20, 1998, that there would be no new recommendations on citizenship.<sup>206</sup>

Describing the role of the High Commissioner, one Latvian political analyst wrote:

Whether the radicals like it or not, M. van der Stoel is regarded as one of the most authoritative people entitled to give his opinion on Latvia. He is seriously taken in the EU which even draws its conclusions on whether Latvia is ready to enter the EU using his judgments. Also the Council of Europe that does not have its own commissioner for these issues recognizes his opinion. In the same way the USA, especially last week, has firmly emphasized its wish that Latvia implement M. van der Stoel's recommendations. No more, no less.<sup>207</sup>

Thus, in the highly sensitive pre-referendum political context, major international organisations demonstrated a uniquely unanimous position with regard to the issue of non-citizens in Latvia, referring to the OSCE High Commissioner's recommendations as the universally recognised standard. Considering that Russia was not fully satisfied with the amendments adopted by the Latvian parliament, and called on the West to continue advising Latvia to improve its citizenship legislation, it was seen as important by the Western actors to distance themselves from Russia's position in the situation where the implementation of even the minimum international recommendations was threatened.

### 3.3.3 *The Success of the Referendum Initiative*

In spite of all the assurances and warnings from influential foreign officials that blocking the process of the implementation of the HCNM's recommendations could have dangerous consequences for Latvia, the collection of signatures for the referendum started on July 20, 1998. On August 18, 1998, it became clear that the necessary number of signatures had been collected. The referendum was scheduled for the same day as the elections of the seventh Saeima (October 3, 1998) in order to avoid extra costs for arranging the referendum and to ensure a sufficient turnout for the quorum. The issue was heavily emotionalised and it was evident that a large part of society was not familiar with the essence of the amendments, in spite of numerous explanatory articles in the Latvian press.<sup>208</sup> Also, the heightened international attention to the issue was often perceived as unjustified interference in Latvia's internal affairs and aroused a counter-reaction in society.

<sup>203</sup> HCNM's Press Statement on Latvia, 16 July 1998. Published in Latvian as "M. van der Stūla paziņojums" [Statement by M. van der Stoel], in: *Diena* 18 July 1998.

<sup>204</sup> Ozoliņš 1998c, Krasts stratosfēra [Krasts in the Stratosphere], in: *Diena*, 20 July.

<sup>205</sup> Tihonovs 1998a, in: *Diena*, 18 July.

<sup>206</sup> Tihonovs and Ločmele 1998, in: *Diena*, 21 July.

<sup>207</sup> Tihonovs 1998b, Melnais ēģelis [The Dark Angel], in: *Diena*, 25 July.

<sup>208</sup> Plamše 1998, in: *Diena*, 1 September.

The High Commissioner visited Latvia on August 24-26, 1998, and once again held meetings with a wide spectrum of Latvian officials, including the President. The primary aim of the visit was the discussion of the draft Language Law; however, the citizenship issue was given special attention. During the period just preceding the referendum, international officials used their last opportunities to once again call on the people of Latvia not to repeal the amendments, and to reiterate the invulnerability of the OSCE recommendations. Even NATO voiced its support for the HCNM's recommendations and exercised political conditionality. For example, around September 10, 1998, US Ambassador to NATO Alexander Vershbow urged Latvians to support the proposed changes to the Citizenship Law and warned that the fate of the amendments could affect the country's aspirations to join NATO and other Western institutions.<sup>209</sup>

However, the nationalistically-oriented political forces almost succeeded in repealing the amendments. In addition to the powerful campaign against the amendments, also the wording of the referendum question was rather confusing. This was noted also by the observers from the Council of Europe. The question was formulated as follows: "Do you want the law of 22 June 1998 'The Amendments to the Citizenship Law' to be repealed?" Voters then had to check "for" or "against". In the words of a Council of Europe adviser from Finland, Gunnar Jansson, this created confusion, as "[y]ou have to answer yes if you mean no [to amendments] and no if you mean yes."<sup>210</sup>

### *3.3.4 The Result of the National Referendum*

The outcome of the long-awaited referendum was in favour of retaining the amendments in the Law. The result was close, however, with just over half of the voters supporting the amendments. Raimonds Pauls, Leader of the New Party (which favoured the amendments), analysed the outcome by pointing out that "the results would not have been the same if people had known what they were voting for."<sup>211</sup> The High Commissioner issued a more positive welcoming statement on October 5, 1998, noting that the people of Latvia had taken "a very important step towards solving interethnic problems and promoting the process of integration."<sup>212</sup>

Following the referendum, Section 1 of Article 14 of the Citizenship Law now reads:

Applications by persons who have attained the age of fifteen years for admission to Latvian citizenship shall be examined in the order of their submission in accordance with the provisions of Sections 11 and 12 of this Law.<sup>213</sup>

Thus, the non-citizens can now apply for naturalisation regardless of their age or place of birth, provided they fulfil all other requirements. The age quotas or "windows" have, thus, been abolished. The amendments, in effect, righted the wrongs of the 1994 decision when the Latvian parliamentarians turned a deaf ear to the recommendations of the High Commissioner and the Council of Europe not to introduce a quota system. The process of doing away with the "windows" at a later stage proved extremely complicated, and the whole initiative was on the verge of failure due to the powerful resistance to the implementation of the recommendation by the political forces opposing any liberalisation of the Citizenship Law. Although of major importance, first of all from the point of view of domestic stabilisation, the abolition of the "windows" was, nevertheless, viewed by many primarily in the light of the Latvian-Russian bilateral relations.

### *3.3.5 Assessment of the Influence of the High Commissioner on the Political Process*

Evidence abounds to conclude that the High Commissioner played the primary role in the process of the abolition of the "windows" system. He was backed by practically every significant interna-

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<sup>209</sup> Johnson 1998b, NATO Membership Could Hinge on Amendments, in: The Baltic Times, 10 September.

<sup>210</sup> Latvian Voters Say 'Yes' to Amendments, in: The Baltic Times, 8 October 1998.

<sup>211</sup> Ibid.

<sup>212</sup> HCNM's on Referendum in Latvia, 5 October 1998.

<sup>213</sup> The English text of the Law can be found at: [http://www.np.gov.lv/en/faili\\_en/Pils\\_likums.rtf](http://www.np.gov.lv/en/faili_en/Pils_likums.rtf).

tional organisation and by influential Western officials, who in most cases took his recommendations as the basis for their own arguments. Apparently, there was both the initiative of those organisations and governments to do so, as well as the High Commissioner's capacity to mobilise his international partners. Besides, no other international organisation has analysed the Latvian ethno-political context and the relevant legislative acts, and in particular the draft Laws, in such detail as the High Commissioner and his experts did. Backed by the assistance of the OSCE Mission to Latvia, they carefully followed the proposals submitted for every reading of the Law. As a result, the High Commissioner managed to prepare very neutral and balanced recommendations that, in their essence, were acceptable to most Latvians. At the same time, he was successful in urging the non-citizens to make use of the existing naturalisation process, no matter how much they disliked it. This acts as an explanation why the rest of the international actors trusted the opinion of the High Commissioner based on detailed research and analysis, and accepted his recommendations as the basis for the formulation of their own positions.

In spite of the difficulties and reluctance among parts of the Latvian authorities to implement the High Commissioner's recommendations, it may be concluded that the High Commissioner's involvement in the abolishment of the "windows" and the adoption of the other amendments to the Citizenship Law has been effective, particularly in operational terms. However, it is also evident that he may not have succeeded without the simultaneous involvement and backing by the EU, the United States, NATO and other organisations. The political weight of the High Commissioner was primarily dependent on the "carrots" that were linked to his recommendations, meaning above all the EU membership accession negotiations at the point in time when the citizenship amendments were being introduced. In any case, something that seemed impossible to achieve - liberalisation of the Citizenship Law under the government of Fatherland and Freedom - was successfully carried out.

In the case that the amendments had been repealed, it would now be possible to question the necessity of the heightened attention of the international community to the issue in the way it was observed during the discussions on the amendments. Undoubtedly, there was some counter-reaction to the activities of the international organisations, which were seen in Latvia as undue pressure. This might have found expression in some voters' rejection of the Saeima's decision as a sign of protest against outside interference. However, it is doubtful whether there would have been any serious discussion of the problem of the stagnation of the naturalisation process at the governmental and parliamentary level as well as in mass media had the High Commissioner not intervened. This is in particular the case considering the influence of the right-wing forces in the governing coalition. Thus, even if the majority of the voters' stance on the issue was not altered, awareness of the seriousness of the citizenship problem was, indeed, raised. Therefore, even in the case that the amendments would not have been supported by the voters, the High Commissioner's activities would nevertheless have been regarded as successful, as the attention of the electorate, still consisting mostly of ethnic Latvians, was finally brought to the problems of non-citizens – problems which many citizens had previously tended to disregard.

It can also with all certainty be stated that the negative outcome of the referendum would have had very serious international repercussions for Latvia and that, considering the West's generally favourable attitude towards Latvia, pressure on the government would have continued. The High Commissioner would have most certainly come back to the issue at a later stage until the government agreed to repeatedly address the problem.

In substantial terms, the effectiveness of abolishing the "windows" system is demonstrated by the naturalisation figures: whereas between February 2, 1995 and November 9, 1998, only 10,625 people were naturalised, after the "windows" had been abolished, the figures grew. Thus, in 1999, 12,427 persons underwent naturalisation (more than during the whole period preceding the abolition of the "windows" system). In 2000, the number of the naturalised stood at 14,900. As of 2001, however, the pace began to slow down once again: 10,637 persons were naturalised in that year and 9,844 in 2002. 3,535 persons were naturalised in the first half of 2003. Thus, one may conclude that the average pace of naturalisation significantly increased in comparison with the average pace dur-

ing the first three years. In 1998, the Head of the Naturalisation Board, Eižēnija Aldermāne, predicted that around 20,000 people would be naturalised each year. This, however, has not proved to be the case. It was also predicted that around 300,000 people would eventually go through the process.<sup>214</sup> This has not been achieved so far either. The total number of naturalised persons since 1995 is 62,774 (the figure is given as of June 30, 2003). In addition, a total of 8,430 underage children became citizens as a result of the naturalisation of their parents.<sup>215</sup> There are, however, still around 500,000 non-citizens in Latvia.<sup>216</sup>

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<sup>214</sup> Kozakov, 1998d, in: Chas, 6 October.

<sup>215</sup> Official statistics are regularly updated and available at: [http://www.np.gov.lv/en/faili\\_en/Lpp1\\_angl.doc](http://www.np.gov.lv/en/faili_en/Lpp1_angl.doc).

<sup>216</sup> Statistics available at: [http://www.np.gov.lv/index.php?en=fakti\\_en&saite=residents.htm](http://www.np.gov.lv/index.php?en=fakti_en&saite=residents.htm).



## Chapter 4. The Issue of Stateless Children Born in Latvia

One of the most important issues addressed by the High Commissioner in his recommendations was that of recognizing children born in Latvia as Latvian citizens. This issue came into the foreground alongside the abolition of the "windows" system in 1998. This chapter provides the legal background of the provision dealing with the granting of citizenship to stateless children born in Latvia, describes the nature of the High Commissioner's recommendations on the issue and analyses the complex process of their consideration.

### 4.1 Background

The 1989 Latvian SSR draft Citizenship Law, prepared by the working group headed by Juris Bojārs (but never adopted by the Supreme Council), contained a provision regarding children born to stateless parents permanently residing on the territory of the Latvian SSR. The draft automatically recognized such children as citizens of the Latvian SSR. This applied also to children born on the territory of Latvia to permanently residing citizens of the USSR and who did not possess citizenship of other USSR republics.<sup>217</sup> Similarly, the draft Citizenship Law of 1991 (which was not adopted either, but reduced to the October 15, 1991 Resolution), stipulated that a child born in Latvia to stateless parents shall acquire Latvian citizenship.<sup>218</sup>

However, the fundamental normative act on citizenship that represents the starting point for every analysis - the Resolution of October 15, 1991 - did not recognize such children as citizens of Latvia. Only the pre-war citizens and their descendants were recognized as belonging to the aggregate body of Latvian citizens. Nor did the Resolution contain any specific provisions regarding children born to stateless parents on the territory of Latvia.

The first recommendation of the High Commissioner (April 6, 1993) regarding children born in Latvia invoked two provisions of international legal instruments to which Latvia is a party:

Children born in Latvia who would otherwise be stateless should be granted Latvian citizenship taking into account Article 24, paragraph 3, of the International Covenant on Civil and Political Rights and Article 7, paragraph 1, of the Convention on the Reduction of Statelessness.

#### 4.1.1 Compliance with Article 24, Paragraph 3, of the International Covenant on Civil and Political Rights, 1993-1994

Article 24, Paragraph 3, of the International Covenant on Civil and Political Rights establishes that "every child shall have a right to a nationality."<sup>219</sup>

Article 1 of the draft Latvian Citizenship Law as adopted in the first reading in November 1993 established the groups of people automatically recognized as Latvian citizens. The following groups of children were recognized as citizens:

- children whose mother or father was a Republic of Latvia citizen at the moment of the child's birth;<sup>220</sup>
- children born in the Republic of Latvia and whose parents are unknown, provided that the child's affiliation with another state's citizenship is not certified.<sup>221</sup>

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<sup>217</sup> Article 18 of the 1989 draft law.

<sup>218</sup> Article 14 of the 1991 draft law.

<sup>219</sup> International Covenant on Civil and Political Rights, New York, 16 December 1966, at: [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).

<sup>220</sup> Article 1, Paragraph 2, of the draft law as adopted in the first reading on 25 November 1993.

Thus, children born in Latvia to non-citizens/stateless persons were not recognized as citizens of Latvia. The only provisions concerning these children were contained in draft Article 12 (priority rights for naturalisation) which stipulated that "persons who are born in the territory of the Republic of Latvia have priority rights under the naturalization quotas" and Article 13 (naturalisation of children) that stipulated: "the underage children who permanently reside in Latvia are granted citizenship at the same time as their parents who are acquiring citizenship through naturalisation. This provision also applies to children who are adopted or born out of wedlock." Commenting on draft Article 12 in his December 10, 1993 letter, the High Commissioner reiterated that,

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

In this way, the High Commissioner did not invoke any new international legal norms after the law passed its first reading, referring to his previous recommendations. Considering that the provision of the International Covenant invoked by the High Commissioner is rather vague, as it does not stipulate that a child should have an *automatic* right to a *specific* nationality, the draft Latvian Citizenship Law as adopted in the first reading on November 25, 1993, was in formal compliance with the above provision of the Covenant as, although it did not recognize every child born in Latvia as its citizen, underage children, in principle, had the right to seek Latvian citizenship through the naturalisation of their parents under Article 13. The problem was that the naturalisation quotas contained in Article 9 could have made naturalisation very minimal or even impossible. But even in that case, there was an excuse. Under the provisions of the Citizenship Law of the Russian Federation in force at that time, every former USSR citizen could opt for the citizenship of the Russian Federation and acquire it by way of registration. Thus, formally, all Latvia's non-citizens (including children) had such an option - a right to the nationality of the Russian Federation. The opinion of the High Commissioner regarding this argument will follow in the sections below.

The provisions of the Citizenship Law regarding children did not undergo any major changes throughout the readings leading to the adoption of the law on July 22, 1994. Article 2 (possession of Latvian citizenship) automatically recognized the following groups of children as Latvian citizens:

- 3) children found within the territory of Latvia whose parents are not known;
- 4) children with no parents who live in an orphanage or boarding school in Latvia;
- 5) children both of whose parents were citizens of Latvia on the day of birth of such children, regardless of the place of birth of such children.<sup>222</sup>

A separate article, Article 3, regulated the citizenship of a child one of whose parents is a citizen of Latvia. Article 15 regulated the naturalisation of children (its provisions were made more detailed, but the basic principles remained).

Thus, the fundamental principle of not recognizing children of non-citizens born in Latvia as Latvian citizens remained unchanged in the final version of the Citizenship Law as adopted on July 22, 1994. This meant that children without citizenship continued to be born in Latvia. Considering that naturalisation was hardly taking place at all under the "windows" system in force until November 10, 1998, it may be concluded that, although the right of the children born in Latvia to its nationality through the naturalisation of parents was formally guaranteed by the Citizenship Law, it was to a large extent robbed of its meaning by the "windows" system.

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<sup>221</sup> Article 1, Paragraph 3, of the draft law as adopted in the first reading on 25 November 1993.

<sup>222</sup> Article 2, Paragraphs 3, 4, and 5 of the Citizenship Law as adopted on 22 July 1994.

#### 4.1.2 Compliance with Article 7, Paragraph 1, of The Convention On The Reduction of Statelessness

The second international provision invoked by the High Commissioner, Article 7, Paragraph 1, of the Convention on the Reduction of Statelessness stipulates:

- (a) If the law of a Contracting State entails loss or renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality;
- (b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.<sup>223</sup>

After the first reading in late 1993, the draft Latvian Citizenship Law indeed entailed loss of citizenship which could follow renunciation of citizenship or deprivation of citizenship. Article 17 of the draft Law set out the conditions for the renunciation of citizenship. In accordance with the provision, every person could be entitled to renounce Latvian citizenship. The application of renunciation could be refused if the obligations towards the state were not fulfilled (this referred primarily to the mandatory military service). However, it was not stated anywhere that renunciation could be refused if the individual in question does not acquire another nationality. Therefore, the initial draft provision did not formally comply with the international norm invoked by the High Commissioner. This provision was, however, not of high relevance with regard to stateless children born in Latvia. Besides, before the second reading, Latvia's Way submitted a proposal that the provision on the renunciation of citizenship should only apply to those persons *who possess or are granted the citizenship of another state*. The proposal was accepted and voted upon in the parliament. The norm has not been amended to this day (Article 23 of the Citizenship Law currently in force). Thus, the loss of Latvian citizenship through renunciation does not presently entail statelessness and is in compliance with the international provision invoked by the HCNM. However, it has little to do with stateless children. The provision on the deprivation of citizenship is of higher relevance.

According to the initial draft Citizenship Law, the deprivation of citizenship could be exercised if within five years from the acquisition of citizenship it was discovered that the individual had deliberately provided false information about him/herself when testifying his/her belonging to the body of Latvian citizens (Art. 18, para. 1 of the draft Law) or if the individual has joined foreign armed or security service or another service of a foreign state without permission from the Cabinet of Ministers (Art. 18, para. 2 of the draft Law). Similarly, if the loss of Latvian citizenship occurred as a result of deprivation, the individual could remain stateless. Although Article 19 of the draft Law guaranteed that (emphasis added) "a person's loss of Republic of Latvia citizenship does not affect the citizenship of this person's spouse, *children* or other family members", the provision did not apply to cases set in Article 18, Paragraph 1, of the draft Law (i.e., if an individual was deprived of citizenship on grounds of having provided false information at registering). This meant, for example, that if parents were deprived of citizenship on grounds of false information, their children would be deprived of citizenship as well. Thus, initially, the recommendation of the High Commissioner to comply with Article 7 (1) of the Convention on the Reduction of Statelessness was not implemented with the adoption of the Citizenship Law in first reading, both with regard to children and in general, as far as deprivation of citizenship is concerned.

However, as of the second reading of the Citizenship Law, the provision that the loss of Latvian citizenship shall not affect the citizenship of this person's spouse, *children* or other family members was to be applied with no exceptions. Thus, presently, if a parent is deprived of Latvian citizenship, this will not entail the loss of Latvian citizenship by the child, also in the cases of having provided false information. Therefore, with regard to children, the Law is in compliance with Article 7, Para-

<sup>223</sup> Convention on the Reduction of Statelessness, New York, 30 August 1961, at: [http://www.unhchr.ch/html/menu3/b/o\\_reduce.htm](http://www.unhchr.ch/html/menu3/b/o_reduce.htm).

graph 1 of the Convention on the Reduction of Statelessness, and the recommendation of the HCNM has been implemented.<sup>224</sup>

#### *4.2 Recommendations Concerning the Granting of Citizenship to Children Born in Latvia to Stateless Persons or Non-Citizens, 1997-1998*

During the period while the Citizenship Law was being debated (1993-1994), the provisions that caused the most international criticism were those dealing with the naturalisation quotas. As the quota principle was retained also after the Law had been adopted in the third reading, most international efforts, including those of the High Commissioner, were directed at attempting to remove the principle from the text of the Law. As a result of the international involvement, the President returned the Law to the Saeima for repeated consideration. In the situation when the possibility of naturalisation of large groups of non-citizens as such was questioned, the rest of the issues, including the granting of citizenship to children of non-citizens, appeared less important. Besides, considering the sensitivity of citizenship-related issues in the Latvian context, having pressed for too many changes in the law at once could have caused an irreversible counter-reaction. Thus, the issue of stateless children remained unaddressed for some time after the adoption of the Citizenship Law.

The High Commissioner once again brought the attention of the Latvian authorities to the problem of non-citizens' children, providing his detailed argumentation, in his letter of May 23, 1997. Referring to Article 28 of the Latvian Citizenship Law, which stipulates that "should an international agreement ratified by the Saeima provide for provisions other than those contained in this Law, the provisions of the international agreement shall be applied", the High Commissioner recommended that Latvia bring its Citizenship Law in compliance with the international instruments to which it is a party, particularly, the Convention on the Rights of the Child.

Specifically, the High Commissioner invoked Article 7 of the Convention on the Rights of the Child, which reads as follows:

- (1). The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
- (2). State Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular when the child would otherwise be stateless.<sup>225</sup>

In accordance with this international norm, as well as with the ones invoked in his earlier recommendations, the High Commissioner suggested that Latvia should start the granting of Latvian citizenship to children in Latvia who are presently stateless or who would become stateless at birth, without requiring them to take any tests (original underscoring):

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<sup>224</sup> Generally, however, deprivation of citizenship may still entail statelessness in the case when an individual is serving in a foreign army, security service, etc. (Article 24 (2)) and in the case if an individual has knowingly provided false information about himself/herself when verifying the right to hold Latvian citizenship or during naturalisation (Article 24 (3)). It is important that, along with the amendments of June 2, 1998 that liberalised the Latvian Citizenship Law, an amendment to Article 24 (3) was introduced which dropped the provision that the individual could be deprived of citizenship on grounds of having provided false information if this is discovered *within 5 years from the granting of citizenship*. Presently, the individual may be deprived of citizenship also if the relevant facts are discovered upon the expiration of this period. Notably, the amendment was approved in 1998, roughly five years after the registration of the Latvian population when part of the population were registered as citizens (in accordance with the October 15, 1991 Resolution) and others - as non-citizens. Therefore, the practice of deprivation of citizenship on grounds of false information continues entailing statelessness.

<sup>225</sup> Convention on the Rights of the Child, New York, 20 November 1989, at: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

Opening the door for granting Latvian citizenship on the basis of the Convention on the Rights of the Child does not imply that Latvia could be obliged to apply the *ius soli* to anyone born in the territory of Latvia. The obligation in question exists only and exclusively for those children born in Latvia who would otherwise be stateless. [...] It goes without saying that maintaining the obligation to pass language and constitutional tests for the category of children described in Article 7 of the Convention of the Right of the Child would rob the right conferred in this article of its meaning, taking into account the fact that such tests would in all likelihood only be passed when these children approach adulthood.

Considering the painful attitude on the part of the Latvian authorities as well as on the part of the majority in general to the idea of *automatically* recognizing such children as citizens, the High Commissioner emphasized that it would be acceptable and still in line with the international norms to require parents to submit an application requesting citizenship for their children, as well as to require an habitual residence of five years prior to the submission of the application. The High Commissioner also invoked Article 3 of the Convention on the Rights of the Child, which requires that "in all actions concerning children [...] the best interest of the child shall be a primary consideration".

In his argumentation, the High Commissioner also addressed the anticipated argument often made by those opposing the recognition of stateless children born in Latvia as its citizens (as well as in relation to stateless persons residing in Latvia in general) that, as children of former USSR citizens, they can make use of the provisions of the Citizenship Law of the Russian Federation which enables them to opt for the citizenship of the Russian Federation and acquire it by registration.<sup>226</sup> According to this argument, the children born in Latvia to non-citizens had the right to a nationality under the 1991 Citizenship Law of the Russian Federation. Therefore, Latvia was not obliged to grant such a right. In this connection, the High Commissioner argued as follows (original under-scoring):

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

Thus, the recommendation was that the otherwise stateless children should be granted citizenship on application after a period of residence not exceeding five years immediately preceding the lodging of the application. The High Commissioner stressed that either the automatic granting of citizenship to stateless children or the granting of citizenship on the above conditions was the general practice in most European states. Finally, he presented political arguments for starting such practice in Latvia:

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

<sup>226</sup> This was the case at the time of the HCNM's involvement while the 1991 Citizenship Law was in force in the Russian Federation. A new Citizenship Law in the Russian Federation was, however, passed in 2002 and the acquisition of the citizenship of the Russian Federation by the former USSR citizens is now made more complex.

years, will ensure that they will get an adequate training of the Latvian language in their schools. There is every reason to assume that by the time they reach adulthood they will be well integrated in Latvian society.

The High Commissioner also emphasized that his arguments were made after consultations with a number of international experts, namely, Professor Geraldine van Bueren of the Faculty of Law at the University of London, Director of the Programme on International Rights of the Child; Professor Thomas Burgenthal, Presiding Director of the International State of Law Centre at the George Washington University, member of the UN Human Rights Committee; Professor Asbjorn Eide, Director of the Norwegian Institute of Human Rights at the University of Oslo and Chairman of the UN Working Group on the Rights of Minorities; Ambassador Thomas Hammerberg of Sweden in his capacity as Vice-Chairman of the UN Committee on the Rights of the Child; Professor Martin Scheinin of the Faculty of Law at the University of Helsinki and member of the UN Human Rights Committee; and Professor Christian Tomuschat of the Faculty of Law at Humboldt University in Berlin.

In his September 11, 1997 reply to the High Commissioner, the Latvian Foreign Minister Birkavs argued that the existing Citizenship Law did not directly contradict Article 7 of the Convention on the Rights of the Child or the provisions of the International Covenant on Civil and Political Rights and the Convention on the Reduction of Statelessness, since the children born in Latvia have the right to the citizenship of Latvia, which they can exercise together with their parents or independently at the age of 16. The Minister presented the view of the government according to which the rights of children of non-citizens born in Latvia were not affected in practice, since children "would not be affected by the restriction to certain professions or the right to vote due to their young age. In accordance with the relevant national legislation they enjoy their rights, including protection by law, possibilities for education, medical care, the right to travel and protection by the Republic of Latvia while abroad." Birkavs also pointed to the varying practices of the participating states of the OSCE with regard to the application of the above-mentioned international human rights documents differs from country to country, also noting that Latvia is not a signatory to the European Convention on Nationality, to which the HCNM had referred. "I recognise that there may be different interpretations of the above-mentioned human rights documents," concluded the Minister, "however, it should be stressed that the decision to change or not to change the Citizenship Law with regard to this and other matters is beyond the competence of the Government and can only be taken by the legislative body - the Saeima."

It is important to note that this reply from the Foreign Minister came at the time when the government led by Guntars Krasts of the Fatherland and Freedom party was in power. This fact may partially explain the argumentation presented by the Foreign Minister, as it appeared unlikely that any serious notice would be taken by Krasts's government of the High Commissioner's recommendations.

#### *4.2.1 The 1998 Negotiations over the Provision on Stateless Children*

Nevertheless, the development of events at the beginning of 1998 (described above in detail) led to a situation when due consideration was given to the issue of stateless children. The government of Latvia conceptually approved the High Commissioner's recommendation on April 15, 1998, when the High Commissioner was on a visit to Riga in the midst of the Latvian-Russian crisis and the heightened international attention directed at the events taking place in Latvia. On April 17, 1998, two days after the government had expressed its approval of abolishing the "windows" system of naturalisation and the idea of granting citizenship to children born in Latvia (the group in question now constituted only those born in the *independent* Latvia, after August 21, 1991), the High Commissioner, who was still in Riga, issued a press statement welcoming the decision:

[I] welcome the decision of the Government to support my recommendation to grant Latvian citizenship without having to pass tests to all children born in Latvia since August 21, 1991, whose parents

are stateless and have legally resided in Latvia for no less than five years, provided that the parents apply for such naturalisation.

The task of the Government was now to draft a legislative proposal to be submitted to the parliament in order to include the relevant provision into the Citizenship Law.<sup>227</sup> Simultaneously, proposals with regard to stateless children were also being drafted by the parliamentarians. In the complex circumstances of the crisis with Russia and unprecedented Western diplomatic pressure, even the government of Fatherland and Freedom saw the need of urgently drafting the provision that the HCNM was insisting upon. The lack of political will to introduce such a provision in accordance with the HCNM's recommendation, however, led to the creation of complex legal labyrinths whose purpose was, on the one hand, to formally fulfill the recommendation of the international community but, on the other hand, not to allow the existing situation to change considerably under the new provision.

Thus, on April 24, 1998, the High Commissioner was requested by the Latvian government to provide comments on two draft proposals regarding children: one prepared by the Parliamentary Working Group and one prepared by the Governmental Working Group. The request for the High Commissioner's opinion was a result of an agreement reached earlier between him and the Latvian Prime Minister.<sup>228</sup> It is worth emphasizing that the High Commissioner was asked to give his opinion by April 27, 1998. The urgency of the matter was explained by the forthcoming meeting of the Cabinet of Ministers on April 28, 1998 where the proposals were to be discussed.

The Parliamentary Working Group proposed a wording of the provision that was far from the recommendation of the HCNM. The process of recognizing stateless children as Latvian citizens could only start when then turned 16 years old, and tests were required in order to prove their knowledge of Latvian (or a certificate of having been educated in Latvia). In fact, the proposal changed basically nothing in comparison to the existing situation, as one could begin naturalisation at the age of sixteen anyway under the existing provisions of the law (Art. 14), and those who had acquired education in the Latvian language were exempt from the language tests (Art. 21) and the test of history/constitution (Art. 12 (4) as amended on March 16, 1995). The only difference was that the children in question who did not acquire education in the Latvian language would be exempt from the history/constitution test. Notably, the head of the Governmental Working Group, who forwarded the proposals to the High Commissioner on behalf of the Latvian Prime Minister, argued not for his group's, but for the more restrictive proposal of the Parliamentary Working Group, noting that underage children can be naturalized anyway together with their parents.

However, in his reply of April 30, 1998, the High Commissioner restricted his comments to the variant prepared by the Government Working Group, since the proposal of the parliamentarians "did not comply in any way"<sup>229</sup> with his original recommendations.

The proposal of the Governmental Working Group stipulated that a child under 16 years old who was born in Latvia after August 21, 1991, and who permanently resides in Latvia could acquire Latvian citizenship if both or one of the parents who have resided in Latvia for at least five years launch an application to the effect. Six cases whereby a person is considered to be one of the child's parents were listed. A requirement was also included that parents, upon submitting their application for the child's citizenship, should pledge to promote the child's mastering of the Latvian language and to cultivate the child's loyalty towards the Republic of Latvia. The proposal also foresaw that if the parents did not exercise this right, the child could, upon turning the age of sixteen, apply for Latvian citizenship him/herself upon submitting a document proving that he/she has gained education at an educational institution with the Latvian language of instruction or a document certifying the applicant's knowledge of Latvia as required for naturalisation.<sup>230</sup>

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<sup>227</sup> The Cabinet of Ministers has the right to initiate legislation in accordance with Article 65 of the Latvian Constitution.

<sup>228</sup> Republic of Latvia Prime Minister's Office. Letter to HCNM, 24 April 1998.

<sup>229</sup> HCNM's letter of reply to the Prime Minister of Latvia Guntars Krasts, 30 April 1998.

<sup>230</sup> Republic of Latvia Prime Minister's Office. Letter to HCNM, 24 April 1998.

The High Commissioner was also asked by the Head of the Governmental Working Group to give his comments on some draft articles of the Law on Education and the Law on State Language (under discussion at that time) that were to be seen in conjunction with the anticipated amendments to the Citizenship Law. However, the High Commissioner refrained from making detailed observations and argued that the amendments to the Citizenship Law regarding stateless children should not be made dependent on the adoption of these laws, which might turn out to be a protracted process. The High Commissioner reminded the Government that "it might meet little international understanding if Latvia, after having agreed to fulfill my recommendation regarding children of stateless parents in Latvia, would subsequently delay its implementation."<sup>231</sup>

Commenting on the proposal of the Governmental Working Group regarding an amendment to the Citizenship Law on stateless children, the High Commissioner welcomed the basic underlying principle that citizenship should be granted to children who were born in Latvia since 21 August 1991, who are under 16 years of age, and whose parents are stateless and have been resident in Latvia for no less than five years.

However, he once again emphasized that, upon reaching the age of 16, children born in Latvia whose parents did not request citizenship for them should not be required to take any tests, nor provide proof of having acquired education in the Latvian language. Therefore, he recommended deleting these requirements arguing that "it should be entirely sufficient for them to submit an application", as "the concerns embodied in these aforementioned paragraphs will in any event be met through the education process to which all children are subject." For the same reasons, the High Commissioner recommended that the provision concerning the parents' pledge should be deleted as well:

[W]hat it is necessary to retain in the new law is the right of stateless children born in Latvia to be conferred citizenship unconditionally (i.e. without language, educational, or other requirements). In my view, it is not only a legal obligation on the Republic of Latvia to conform its Citizenship Law with this requirement of international law, but such a step would also contribute significantly to promoting social integration within the country.<sup>232</sup>

The Saeima voted upon forwarding the proposed amendments to the parliamentary standing committees on May 13, 1998. Ironically, the Fatherland and Freedom faction voted against submitting the proposal of the Governmental Working Group (headed by a member of the party), which, nevertheless, did not prevent its submission in the very end.<sup>233</sup> The first reading of the amendments to the Citizenship Law took place on May 20, 1998. However, the variant *dismissed* by the High Commissioner was adopted (the one prepared by the *Parliamentarian*, not the Governmental Working Group). Besides, the provision was further restricted in that, while in the proposal of the *Parliamentarian* working group submitted to the High Commissioner, children born in Latvia to *stateless* parents could undergo the described procedure upon achieving the age of 16, the version adopted by the Saeima in the first reading limited this group only to children at least one of whose parents is a citizen of the former USSR.<sup>234</sup> One way or another, the approach was entirely incompatible with the High Commissioner's recommendation.

<sup>231</sup> HCNM's letter of reply Krasts, 30 April 1998.

<sup>232</sup> Ibid.

<sup>233</sup> Ozoliņš 1998b, Krasts pret valsts interesēm [Krasts Against the National Interests], in: Diena, 3 June.

<sup>234</sup> Latvijas Republikas Saeima. Grozījumi Pilsonības likumā. Likumprojekts otrajam lasījumam [Amendments to the Citizenship Law. Draft Prepared for the Second Reading] (to be considered on 4 June 1998). p. 4. N.B. The General Provisions of the Citizenship Law containing definitions of terms were also amended. While prior to the amendments the Law did not explicitly differentiate the status of a stateless person from that of a "non-citizen of Latvia", such differentiation was now made explicit. Thus, "stateless person" was defined as "a person who is not considered a citizen (national) in accordance with the laws of any state." This definition was adopted in the third reading. In both the first and the second reading, the adopted definition was "a person who is not considered a citizen (national) nor has the right to citizenship (nationality) in accordance with the laws of any state". "Non-citizen" was defined as "a person who, in accordance with the law "On the Status of those Former USSR Citizens who do not have the Citizenship of Latvia or that of any other State", has the right to a non-citizen passport issued by the Republic of Latvia".)



Closely following the development of events, the High Commissioner addressed a letter to the Speaker of the Saeima Alfreds Čepānis on May 25, 1998, before the second reading of the amendments took place. He once again argued for the acceptance of his recommendation to grant citizenship to stateless children born in Latvia on the conditions he specified and bring the Latvian law in accordance with Latvia's international obligations:

To grant these children this right could scarcely be considered as a revolutionary step, also taking into account the fact that the number of stateless persons showed only a minimal decrease in recent years and is presently still over 650000. But this positive gesture towards the younger generation of non-Latvians could contribute to harmonisation of interethnic relations. On the other hand, rejection of such a step might cause resentment, especially because of the fact that these young people cannot possibly be associated with what happened in the past. [...]

I am of course aware of the legislative proposal which would only give the children of stateless parents the right to apply for citizenship after they have reached the age of 16 - without language test if they have a diploma of a Latvian language school, and with a language test it this would not be the case. In my view this proposal would change very little compared with the present situation. For most of the children, the only advantage would be that they would not have to pass the history test. Moreover, if the Citizenship Law would be changed only in such a limited way, the text of the law would still be incompatible with the Convention on the Rights of the Child.

Fears have been expressed that granting of citizenship without tests to children of stateless parents would create a precedent. However, these children form a special category. Article 7 of the Convention of the Rights of the Child provides them with the right to acquire a nationality - a right which Latvia has recognised by becoming a party to that Convention. Maintaining the system of tests for these children would rob this right of its meaning, taking into account the fact that such tests would in all likelihood only be passed when these children approach adulthood.<sup>235</sup>

#### *4.2.2 Adoption of the Provision on Stateless Children*

After heated debates, the version that was closer to the one elaborated by the Governmental Working Group that was initially submitted for the consideration of the High Commissioner, was finally adopted by the Latvian parliament in the third reading on June 22, 1998. Following that, the amendments were passed to the National Referendum which was preceded by the political events described above. Fatherland and Freedom invited the voters not to support the amendments. Finally, the amendments were approved by 52 per cent of the voters on October 3, 1998. The provision regarding stateless children entered into force on January 1, 1999.

It is justified to quote the full wording of the provision presently in force, as it demonstrates the legal labyrinth the Latvian side preferred to create instead of adhering to a concise wording that the High Commissioner's recommendation would have required (emphasis added):

Article 3.1. Citizenship of a Child Born in Latvia after 21 August 1991 to Persons who are Stateless Persons or Non-Citizens

- (1) A child who is born in Latvia after 21 August 1991, shall be acknowledged as a Latvian citizen in accordance with the procedures set out in Section two or three of this Article, if they comply with all the following requirements:
  - 1) their permanent place of residence is Latvia;
  - 2) they have not been sentenced to more than five years imprisonment in Latvia or in any other state for committing a crime; and
  - 3) they have, prior to that, been stateless persons or non-citizens for the entire time.
- (2) Until the moment a child has reached the age of 15 years, an application for acquisition of citizenship may be submitted by:

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<sup>235</sup> HCNM's letter to Čepānis, 25 May 1998.

- 1) both parents of a child, if they are registered in the Population Register and are stateless persons or non-citizens who have, until the time of submission of the application, been permanently resident in Latvia for not less than the preceding five years (for persons who arrived in Latvia after 1 July 1992, the five-year period shall be calculated from the day a permanent residence permit is obtained);
  - 2) the mother of a child, if she is registered in the Population Register and is a stateless person or a non-citizen who has, until the time of submission of the application, been permanently resident in Latvia for no less than the preceding five years (for persons who arrived in Latvia after 1 July 1992, the five-year period shall be calculated from the day a permanent residence permit is obtained), and *if there is no entry regarding the father in the birth record of the child, or such record has been made on the instructions of the mother*;
  - 3) one of the parents of a child, if the parent is registered in the Population Register and is a stateless person or non-citizen who has, until the time of submission of the application, been permanently resident in Latvia for not less than the preceding five years (for persons who arrived in Latvia after 1 July 1992, the five-year period shall be calculated from the day a permanent residence permit is obtained), but *the other parent of the child is deceased*; or
  - 4) the adopter of a child, if they are registered in the Population Register and are stateless persons or non-citizens who have, until the time of submission of the application, been permanently resident in Latvia for not less than the preceding five years (for persons who arrived in Latvia after 1 July 1992, the five-year period shall be calculated from the day a permanent residence permit is obtained).
- (3) If persons, who have the right to submit an application regarding the acknowledgment of a child as a citizen of Latvia, have not done so, a minor, upon attaining the age of 15 years, has the right to acquire Latvian citizenship in accordance with the procedures set out in this Article, by submitting one of the following documents:
- 1) a document which verifies that the minor has acquired specialised secondary education or vocational education (vocational secondary school, vocational gymnasium, vocational school) with Latvian as the language of instruction; or
  - 2) a document which certifies, in accordance with the procedures set out in Articles 19 and 20 of this Law, that the minor is fluent in the Latvian language.
- (4) Persons who have the right to submit an application regarding the acknowledgment of a child as a Latvian citizen, shall submit it in accordance with the procedures and form prescribed by the Cabinet (of Ministers), including in such application their certification that they will help the child master the Latvian language as the Official language, and acquire an education and will instill in the child a respect for and loyalty to the Republic of Latvia.
- (5) The opportunities for acquiring citizenship provided by this Article may be utilized by a person until they attain the age of 18 years.<sup>236</sup>

#### 4.3. Summary and Conclusions

Thus, children of non-citizens and stateless persons can be granted Latvian citizenship also before the age of 16 if their parents lodge an application on their behalf and pledge to help them master the Latvian language and to instill in them respect and loyalty towards the Latvian state. Besides, if parents do not make use of this opportunity, the children can seek citizenship upon attaining the age of 15 (considering that the provision refers to the children born after August 21, 1991, the first group will be able to exercise this right in 2006 at the earliest). Proof of specialized secondary or vocational education in the Latvian language or, in the absence of such, a language test is required (something the High Commissioner considered impermissible).

Notably, it is made quite difficult for single parents to lodge an application for citizenship on behalf of their children. Such an application generally has to be lodged by *both* parents. One of the parents can lodge such an application only if 1) it is a mother of the child and there is no record of the father in the birth certificate, or such record has been made on the instructions of the mother (which also requires proof); 2) it is either of the parents, but the other one is deceased.

Therefore, in cases if one of the parents is *deprived of his/her parental rights*; has been declared *man-hunted* and has been hunted for at least one year; is admitted to be *missing*; and in the case if

<sup>236</sup> Translation by the Latvian Translation and Terminology Centre (1998); except: the terms "Article" and "Section" are used instead of "Section" and "Paragraph" respectively, as in all other cases for the purpose of this Study.

the parents are *divorced*, the parent bringing up the child cannot lodge the application on his/her own. In all of these cases law still requires that *both* parents lodge the application. It should be emphasized that all of these cases were mentioned as cases in which the application could be lodged by the parent bringing up the child in the initial proposal of the Governmental Working Group forwarded to the High Commissioner on April 24, 1998, as well as in the version adopted in the second reading. However, just prior to the third reading of the Law in the Saeima, the Legal Bureau of the Parliament proposed a change which was accepted by the responsible standing committee (the Legal Committee)<sup>237</sup> and voted upon by the parliamentarians. Thereby, the cases in which only one parent could lodge an application were restricted to just two. Had the amendments been accepted as "urgent" (after just two readings, as international organisations insisted), the provision would not have been changed in this way.

It is particularly disappointing that the provision allowing a single parent to lodge the application in the case if parents are *divorced* has been removed from the law considering that, for example, in 1999, 63.9 per cent of marriages in Latvia ended in a divorce in relation to the marriages contracted.<sup>238</sup>

Besides, the prescription of the procedures in accordance with which parents would lodge the application for citizenship on behalf of their children is delegated to the Cabinet of Ministers. The respective Regulations of the Cabinet of Ministers consisting of 26 articles and three appendixes were adopted on February 2, 1999.<sup>239</sup> The Regulations specify which documents are required of the applicants in order to undergo the procedure. The Regulations stipulate the final decision on the recognition/non-recognition of a child as a Latvian citizen lies with the Head of the Naturalisation Board.<sup>240</sup>

The examination of the process of introducing the provisions regarding stateless children/children of non-citizens into the Citizenship Law and their evolution in the course of the readings in parliament demonstrates the difficulty of convincing the majority to widen the electorate even to a minimal extent. The process has been characterized by the creation of political, legal and bureaucratic obstacles on the way of implementing the High Commissioner's recommendation. It is not evident that the approach advocated by the High Commissioner would have been accepted by the parliament had he not intervened before the second reading, and had he not enjoyed the support of other international organisations and Western governments.

In order to draw a conclusion as to whether the High Commissioner's recommendation regarding stateless children has been implemented, it is important to summarize the evolution of the recommendation itself. Initially (in 1993), the High Commissioner recommended that citizenship should be granted to children born in Latvia who would otherwise be stateless in accordance with international standards. Although the international norms he invoked do not make it explicit that the state should automatically grant citizenship to such children, the recommendation could be interpreted as implying the automatic granting of citizenship to all children born in Latvia (regardless of the date of birth). Later, however, the High Commissioner strongly and repeatedly emphasized that he was not arguing for the automatic granting of citizenship to such children (May 1997). Still, in May 1997, the recommendation was to "start granting citizenship to children in Latvia who are presently stateless or would become stateless at birth." It was recommended that parents should show interest by submitting an application. It was also considered acceptable that a term of residence not exceeding five years prior to the lodging of the application should be required. However, it was stressed that no further conditions (such as language tests, etc.) should be introduced.

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<sup>237</sup> Latvijas Republikas Saeima. Grozījumi Pilsonības likumā. Likumprojekts trešajam lasījumam [Amendments to the Citizenship Law. Draft Prepared for the Third Reading], to be considered on 22 June 1998, p. 7.

<sup>238</sup> UNDP Latvia 2002, p. 148.

<sup>239</sup> Latvijas Republikas MK noteikumi 32/1999. Kārtība, kādā tiek iesniegts un izskatīts iesniegums par bērna atzīšanu par Latvijas pilsoni, [Republic of Latvia Cabinet of Ministers Regulations No. 32/1999 Procedures for Lodging and Examination of an Application on the Recognition of a Child as a Citizen of Latvia].

<sup>240</sup> Article 3 of the Regulations 32/1999.

Following consultations with the Latvian authorities, in March 1998 the same recommendations of the High Commissioner concerned only the group of children born in Latvia after the restoration of independence (August 21, 1991). However, this was the only aspect in which the High Commissioner "narrowed" his recommendation. The position that no additional requirements such as language tests or the parents' pledge should be introduced has been firmly held by the High Commissioner and advocated all throughout the process of adopting the amendments.

In the final version of the provision incorporated in the Citizenship Law, the fundamental principle of the High Commissioner's recommendation was observed - children born in the independent Latvia to stateless parents can be granted citizenship upon the application of the parents who have been residing in Latvia for no less than five years, although a number of conditions, particularly regarding the procedure for lodging the application, were introduced. At the same time, the parents are required to pledge that they would help their child to learn Latvian and bring him up respecting and being loyal to the Latvian state. This requirement is not in line with the High Commissioner's recommendation. Besides, if the parents do not exercise this right, the child, starting at the age of 15 would still be required either to present proof of having been educated in the Latvian language or to take the language test. Therefore, in this aspect the recommendation of the High Commissioner has not been implemented.

It is worth noting that members of Fatherland and Freedom repeatedly mentioned that the High Commissioner had recommended the automatic granting of citizenship to stateless children (which in reality was not the case), but the party would fight against this approach. Such a view was expressed, for example, in the party newspaper on a number of occasions:

In spite of the demand of the OSCE High Commissioner on National Minorities Max van der Stoel as well as other Western experts to automatically grant citizenship to the children born in Latvia, the "Fatherland and Freedom/MNIL" faction has managed to achieve that in the draft amendments to the [Citizenship] Law the children of non-citizens born in Latvia will become eligible for applying for citizenship only in 2007 on condition that they prove their knowledge of Latvian.<sup>241</sup>

With reference to the proposal of the Government Working Group (which in no case foresaw the automatic granting of citizenship to stateless children), the following was reported before the second reading of the amendments:

It is noteworthy that in addition to the "Fatherland and Freedom/MNIL" faction, also [two other factions - J.D.] cannot guarantee their deputies' support of the amendments to the Citizenship Law drafted by the Cabinet of Ministers that correspond to the OSCE recommendations which require the automatic granting of citizenship to the children born in Latvia to non-citizens.<sup>242</sup>

He [Max van der Stoel - J.D.] firmly stands for the automatic granting of citizenship to the children of non-citizens born in Latvia, which can never be accepted by our association. The position of the OSCE Commissioner is grounded in the West's general incomprehension that stateless persons in the classical meaning of the term and the children of former USSR citizens are quite different concepts.<sup>243</sup>

In July (while signatures in support of the referendum were being collected), the High Commissioner once again explained the essence of his recommendations in a press statement (see full text in the previous chapter) published in the Latvian newspapers. As reported by the media, he also clarified his recommendations during his August visit to Latvia (prior to the referendum) and suggested that the Latvian authorities make an effort to explain the essence of the amendments to the public.<sup>244</sup>

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<sup>241</sup> Pētersons 1998b, in: *Nacionālā Neatkarība*, 29 April.

<sup>242</sup> Pētersons 1998c, *Tēvzemieši neatbalstīs automātisku pilsonības piešķiršanu* [Fatherlanders will not Support the Automatic Granting of Citizenship], in: *Nacionālā Neatkarība*, 27 May.

<sup>243</sup> Pētersons 1998a.

<sup>244</sup> Zhdanova 1998, *Soveti v pustotu* [Advice into Emptiness], in: *Chas*, 26 August.

Prior to the referendum, Latvia's Way issued a pre-elections leaflet calling on the voters to support the amendments and explaining their essence. It was explained that, according to the data of the Citizenship and Migration Affairs Board, 151,500 children were born in Latvia after August 21, 1991. 88 per cent, or 133,100 of them are citizens, but 12 per cent, or 18,400 are non-citizens. Further argumentation, evidently, considered effective for convincing the voters to support the amendments was as follows:

Considering that these children - non-citizens do not get Latvian citizenship automatically, but upon a special request of their parents, it means that all 18 400 will not become Latvian citizens. This small number does not threaten our national identity; we are not only achieving the integration of the young generation into the Latvian state, but also indirectly ensuring the loyalty of these children's parents towards the state. As opposed to adults, a child does not have to be convinced that he has to learn Latvian, but he must be taught Latvian.<sup>245</sup>

The unawareness of the voters of the exact provisions of the amendments to the Citizenship Law they were to approve or reject might to a certain extent also explain the subsequent close outcome of the referendum. By approving of the amendments, the voters were approving of the OSCE recommendations. It is possible that in the minds of many "OSCE recommendations" meant the automatic recognition of stateless children as Latvian citizens considering the misleading information that appeared in the press from time to time. Such a conviction could have led some of the voters to reject the amendments. In any case, it is impossible to prove this assumption, and what is important in the end is that the amendments were retained in the law, although the risk of their rejection was indeed high.

The primary role of the High Commissioner in the initiation of drafting the provisions regarding stateless children into the Citizenship Law is evident. It is unlikely that the issue would come under serious consideration in 1998 had he not intervened. Similarly, it is not certain that the version of the provision which incorporated the underlying idea of the High Commissioner's recommendation would have been adopted, had the High Commissioner not closely followed the developments in the parliament, and intervened before the second reading. Therefore, in this aspect the High Commissioner's involvement can be described as extraordinarily effective.

At the same time, considering that the status of the non-citizens' children has been clearly differentiated from the status of stateless persons, it is probable that, should any further arguments be made invoking the provisions of the Convention on the Reduction of Statelessness, they will not be taken into account, as the Convention no longer applies to Latvia's non-citizens in general, and to their children in particular. The differentiation of the statuses may be viewed as a way of avoiding possible further international recommendations based on the mentioned Convention. Although the differentiation was roughly made with the adoption of the Law On the Status of those Former USSR Citizens Who are not Citizens of Latvia or Any Other State (April 12, 1995), the majority of international experts, including the High Commissioner, kept referring to Latvia's non-citizens as stateless persons. The explicit incorporation of this differentiation of statuses into the Citizenship Law may have been caused by the continuous international recommendations, many of which invoked the provisions of international legal instruments regarding stateless persons, which is specifically true of the recommendations of the High Commissioner. Thus, the HCNM's involvement may have constituted one of the factors that contributed to the unwillingness of the Latvian authorities to regard non-citizens as stateless persons in accordance with international law.

As to the effectiveness of the provision regarding children born in Latvia, it can be measured by the statistics. In 1998, there were approximately 18,400 children in Latvia born in Latvia after August 21, 1991 and who, thus, fell under the provisions of Article 3.1 of the Citizenship Law. Their number is steadily increasing as more children of non-citizen parents are being born each year. Between February 5, 1999 (following the entry of the provision into force) and June 30, 2003, 1,198 applica-

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<sup>245</sup> Ko paredz Saeimas pieņemtie grozījumi Pilsonības likumā [What the Amendments to the Citizenship Law Adopted by the Saeima Entail], leaflet provided by the Standing Parliamentary Committee for European Affairs.

tions were submitted by parents. 1,121 children were recognized as Latvian citizens during that period.<sup>246</sup>

Thus, the number of children granted citizenship under this procedure has, until today, not reached one tenth of all the children born in Latvia to stateless parents after August 21, 1991. Although the explanation often given by the authorities holds that parents do not make use of the procedure because they prefer to naturalise themselves thereby ensuring citizenship to their underage children, it is evident that the conditions contained in the procedure implied from the start that only a small number of parents were going to make use of it, which, as may have been expected, has turned out to be the case.

The provision on stateless children is complex and has little practical effect. The procedure is of symbolic rather than of practical significance. However, the Latvian government has achieved two objectives by introducing this provision: on the one hand, it demonstrated that international recommendations are not completely ignored. On the other hand, it ensured that no major changes compared to the existing situation took place in practical terms. One way or another, a warm international welcome of the provision was ensured. Both the HCNM and the EU praised Latvia for its introduction.

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<sup>246</sup> Official data of the Naturalization Board, as of 30 June 2003, at: [http://www.np.gov.lv/index.php?lv=fakti\\_lv&saite=statistika.htm](http://www.np.gov.lv/index.php?lv=fakti_lv&saite=statistika.htm).

## Chapter 5. Naturalisation Procedures

When the citizenship issue was still hotly debated in the early 1990s, the High Commissioner examined the various options available to the Latvian government and, in principle, accepted the idea of granting citizenship by naturalisation on certain conditions to those who settled in Latvia during the Soviet period and their descendants. The High Commissioner accepted that such persons would have to show their interest in integrating into the Latvian society by 1) acquiring a basic knowledge of the Latvian language, 2) acquiring a knowledge of the basic principles of the Latvian Constitution and 3) swearing an oath of loyalty to the Republic of Latvia. This option, he argued, "provides for the non-Latvian residents a clear prospect of acquiring citizenship, provided that they make a real effort to integrate into Latvian society. On the other hand, the conditions attached to the acquisition of citizenship provide adequate guarantees that the new citizens will respect the Latvian identity."<sup>247</sup>

When adopted, the Citizenship Law contained a list of conditions required of the naturalisation applicants. Those included: five years of residence calculated from 4 May 1990, fluency in the Latvian language, knowledge of the basic principles of the Constitution and the Constitutional Law Rights and Obligations of a Citizen and a Person, knowledge of the text of the national anthem and the history of Latvia, having a legal source of income, not being subject to naturalisation restrictions specified in the Law, renunciation of former citizenship and payment of a state fee. The procedures for testing language and other knowledge as well as the amount of the state fee would be determined by the Cabinet of Ministers.<sup>248</sup>

In the course of his involvement, the High Commissioner discussed the nature and the difficulty of the specific naturalisation requirements with the Latvian authorities on numerous occasions. He issued recommendation regarding such requirements as the term of residence, the oath of loyalty, the legal source of income and others. In fact, based on the results of various social surveys, he concluded that the requirements, particularly those pertaining to language knowledge, the test of history and constitution as well as the amount of the state fee, precluded many non-citizens from applying for naturalisation and slowed down the process. He continuously recommended easing the requirements.

This chapter deals with the High Commissioner's recommendations relating to the requirements for naturalisation. Roughly half of the chapter is devoted to miscellaneous issues such as the fee for naturalisation, the time frame of naturalisation, etc., while the other half of the chapter is devoted to the analysis of the language and history knowledge requirements and their modifications under the influence of the High Commissioner. The issue of public information on naturalisation is also discussed in this chapter.

### *5.1. The Term of Residence Required for Naturalisation*

The Resolution of the Latvian Supreme Council of October 15, 1991, which established the guiding principles for naturalisation, required applicants to have lived and have had permanent residency in Latvia for no less than 16 years at the time when the resolution took effect.<sup>249</sup> In the High Commissioner's opinion, a five year residence term was sufficient. His arguments in a letter dated April 6, 1993, were as follows:

As far as the requirement of a minimum period of residence in Latvia is concerned, such period should not exceed 5 years. This is the period frequently adopted by states and in this case there do not seem to be good reasons not to adopt it. In terms of non-citizens eligible for citizenship, the difference between

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<sup>247</sup> Ibid.

<sup>248</sup> Article 12 of the Citizenship Law, General Provisions for Naturalisation.

<sup>249</sup> Art. 3.4. (3) of the 1991 Resolution.

16, 10 or 5 years period of required residence is not great (93 percent, 96 percent and 98 percent respectively). Adopting a shorter period would also be a good decision for psychological reasons, since it would be seen as proof of the Government's determination to resolve the citizenship issue. For those who are already residents of Latvia, the period of 5 years mentioned in Recommendation No 3 should be reckoned from the date they came to Latvia or were born there, whichever may be the case.

The draft Citizenship Law as adopted in first reading set the residence term requirement at a minimum of ten years of continued residence upon filing a request for naturalisation (Art. 10, Para. 1). The Article also provided that "[s]tudies, compulsory military service in the army or other armed units, or long business trips outside the territory of Latvia do not prohibit the application of the provisions of this Article concerning the term of residency in Latvia."<sup>250</sup> The High Commissioner seems to have accepted this provision in principle.

However, the High Commissioner's satisfaction was premature. Before the second reading of the Citizenship Law, Latvia's Way submitted a proposal to require a five-year permanent residency counting from May 4, 1990 (date of adoption of the Declaration of Independence). This implied that no naturalisation was foreseen before 1995. For those who entered Latvia after July 1, 1992, the five-year term was to be counted from the date of issuance of a permanent residence permit.<sup>251</sup> The proposal was accepted by the Legal Committee and was adopted by the Saeima, and the requirement has remained unchanged up until now.<sup>252</sup> In this way, the recommendation of the High Commissioner was, in fact, ignored, as his idea was to count the term of residence from the moment an individual was born or settled in Latvia. However, in practice, by the time the naturalisation process actually started (February 1995), five years had passed since 1990 and the majority of eligible applicants fulfilled the requirement anyway, unless they had spent a long period of time outside Latvia during those years.

## *5. 2 Restrictions from Naturalisation by a Court Degree*

The 1991 Resolution On the Renewal of the Republic of Latvia Citizens' Rights and the Fundamental Principles of Naturalisation contained a whole section dealing with those groups of people who would not be eligible for naturalisation at all. In his first letter to the Latvian Foreign Minister, the HCNM made a recommendation concerning this issue, emphasising the necessity to establish whether a person belongs to any such group by a court decree:

If certain persons would be explicitly excluded by law from acquiring citizenship, the law should stipulate that the validity of any allegation that a person would be the subject of such exclusion would, if denied, have to be established by court, in order to forestall any attempt at improper use of such provision.<sup>253</sup>

The draft Law adopted in first reading on November 25, 1993, provided for this, but only with respect to anti-constitutional acts. The wording of draft Article 14 as adopted in the first reading was as follows:

- Citizenship shall not be granted to persons, who:
- 1) through anti-constitutional methods have turned against the independence of the Republic of Latvia, the democratic parliamentary state system or the existing state power in Latvia, if this is determined by a court judgement;
  - 2) have been convicted with imprisonment for a serious crime for a term of no less than one year and have not had their punishments expunged, or have been called to criminal responsibility at the time when the issue on granting citizenship is being determined;
  - 3) are serving in the armed forces, internal military troops or security services of a foreign country;

<sup>250</sup> Republic of Latvia Draft Citizenship Law as adopted in the first reading on 25 November 1993, Art. 10(1).

<sup>251</sup> Latvijas Republikas Pilsonības likums. Projekts otrajam lasījumam [Republic of Latvia Citizenship Law. Draft for the Second Reading] to be considered on 9 June 1994, p. 10.

<sup>252</sup> Republic of Latvia Citizenship Law, Art. 12 (1).

<sup>253</sup> HCNM's letter to Andrejevs, 6 April 1993.



- 4) have been secret informants or employees of the special services of a foreign country;
  - 5) after June 17, 1940, have chosen the Republic of Latvia as their place of residence after demobilisation from the USSR Armed Forces, the USSR Interior Armed Forces or the State Security Service and who, when called into service, did not permanently reside in Latvia.
- This restriction does not apply to the persons mentioned in Article 11.<sup>254</sup>

The requirement for a court decree to establish whether the individual is serving in the armed forces, internal military troops or security services of a foreign country, or has been a secret informant or employee of the special services of a foreign country, was not included. Furthermore, the restrictions required other further clarification, which was later grasped by the HCNM. After having analysed the provisions of the draft as adopted in first reading, the HCNM made the following recommendations concerning the restrictions for naturalisation in his letter to the Latvian Foreign Minister Georgs Andrejevs of December 10, 1993:

Concerning restrictions for naturalisation, I would like to make three comments. The first paragraph deals with certain anti-constitutional methods. While it is proposed, which is essential, that such activities must be determined by court judgement, it is not clear what kind of acts and what kind of court proceedings are considered. If the activities are penalized by Latvian law, it seems that the purpose of this paragraph is covered by paragraph 2, which refers to restrictions for persons sentenced for serious crimes. If, however, other activities than illegal ones are aimed at, further clarification would be needed also about the proceedings before the court, including the right to defend oneself. In the second paragraph, I would suggest that the fact that an applicant has been called to criminal responsibility but not yet brought to trial and convicted, would not be a reason for refusing citizenship, but for deferring the decision until the court has made its ruling.<sup>255</sup>

Following these recommendations, draft Article 14 that now became Article 11, dealing with restrictions for naturalisation, underwent modifications on several occasions. While the Law as adopted in the first reading contained five groups that would not be allowed to naturalise, the final version of the Article adopted in the fourth (repeated) reading on June 22, 1994, contained eight such groups. Individuals who, after Latvian independence had been declared, had spread totalitarian ideas were added to the list, in addition to foreign state officials and members of organisations threatening the independence of Latvia. Most restrictions were to be established by a court decree. A clause was also added stipulating that if criminal proceedings had been initiated against the applicant, his/her application would not be reviewed before the final court decree was issued. This was in line with the recommendation of the HCNM.

With respect to those persons who, allegedly, had been employees, informants, agents or had been in charge of conspiracy premises of the former USSR (LSSR), KGB, or other foreign security services, intelligence services or other special services, the fact of their collaboration with these institutions had to be established according to the procedures prescribed by law.<sup>256</sup>

Article 11 was further amended on March 16, 1995, and June 22, 1998. The current wording is as follows:

- (1) Persons shall not be admitted to Latvian citizenship who:

<sup>254</sup> Republic of Latvia Draft Citizenship Law (as adopted in first reading, 25 November 1993) Art. 14, Restrictions for Naturalisation (unofficial translation). N.B.: Draft Article 11 dealt with the groups exempt from naturalisation requirements, such as persons having at least one ascending relative from the second degree who is a Latvian or a Liv, and other groups.

<sup>255</sup> HCNM's letter to Andrejevs, 10 December 1993.

<sup>256</sup> The Cabinet of Ministers Regulations No. 34, The Procedure for the Acceptance and Review of Naturalization Applications Title IV, Art. 22 establishes that in order to check the correctness of the information provided by the applicant and in order to verify whether the applicant falls under any of the categories of persons mentioned in Article 11, the Naturalization Board shall request information from the Operative Registrations and Statistics Board, the Ministry of the Interior, the Totalitarianism Consequences Documentation Centre, state security institutions, and the Board for Citizenship and Migration Affairs.

- 1) have, by unconstitutional methods, acted against the independence of the Republic of Latvia, the democratic parliamentary structure of the State or the existing State power in Latvia, if such has been established by a judgement of a court;
  - 2) after 4 May 1990, have propagated fascist, chauvinist, national-socialist, communist or other totalitarian ideas or incited ethnic or racial hatred or discord, if such has been established by a judgement of a court;
  - 3) are officials of state power, administration or law-enforcement institutions of a foreign state;
  - 4) serve in the armed forces, internal military forces, security service or police (militia) of some foreign state;
  - 5) after 17 June 1940, have chosen the Republic of Latvia as their place of residence directly after demobilisation from the armed forces of the U.S.S.R.<sup>257</sup> (Russia) or the internal military forces of the U.S.S.R. (Russia), and who did not, on the day of their conscription into service or enlistment, permanently reside in Latvia. This restriction shall not apply to persons specified in Article 13, Paragraph one, Clauses 6 and 7, and Paragraph five;
  - 6) have been employees, informers, agents or safehouse keepers of the U.S.S.R. (L.S.S.R.<sup>258</sup>) K.G.B.<sup>259</sup>, or of the security service, intelligence service or other special service of some other foreign state, if this fact has been established in accordance with the procedures prescribed by law;
  - 7) have been punished in Latvia or some other state for committing an offence which is also a crime in Latvia at the moment this Law comes into force;<sup>260</sup> or
  - 8) after 13 January 1991, have worked against the Republic of Latvia in the C.P.S.U.<sup>261</sup> (L.C.P.<sup>262</sup>), the Working People's International Front of the Latvian S.S.R., the United Council of Labour Collectives, the Organisation of War and Labour Veterans, the All-Latvia Salvation of Society Committee or their regional committees or the Union of Communists of Latvia.
- (2) If a person who has submitted an application for naturalisation may be held criminally liable, or the verification procedure with regard to establishing the fact of co-operation with K.G.B. has been instituted regarding them, the examination of the application shall be stayed until a judgement of a court comes into effect or the case has been dismissed.<sup>263</sup>

It is important to note that on June 22, 1998, Paragraph 7 of Section 1 of the Article was amended so that it now refers to any criminal punishment. Before that, the provision only referred to punishments that exceeded one year. Thus, also those individuals who, at any time in their life, have been subject to any sort of criminal punishment are now permanently banned from naturalisation. In this respect the Law has been restricted.

To summarise, the recommendation to support all allegations that an applicant might belong to a group not eligible for naturalisation by a court decree has been implemented in most areas. However, the Law does not require a court decree to establish the fact that an applicant had been an employee of a foreign state, administration or law-enforcement institution, or served in the armed forces, internal military forces, security service or police of some foreign state. Instead, the Naturalisation Board recurs to a special procedure to verify such information.<sup>264</sup> The recommendation to introduce a clause that, if criminal proceedings have been initiated against the applicant, the naturalisation application be withheld before the final judgement of the court is issued, has been implemented.

### 5.3 *The Budget of the Naturalisation Board*

The HCNM has always attempted to raise funds for naturalisation and integration-related projects carried out by various institutions and organisations in Latvia by approaching potential donors. The Latvian Government was not an exception in this regard. In March 1996 the HCNM expressed his preoccupation with the anticipated budget cuts for the Naturalisation Board, which was motivated

<sup>257</sup> The former Union of Soviet Socialist Republics.

<sup>258</sup> The former Latvian Soviet Socialist Republics.

<sup>259</sup> Komitet Gosudarstvennoi Bezopasnosti [Committee of State Security].

<sup>260</sup> Modified by amendment, 22 June 1998.

<sup>261</sup> The former Communist Party of the Soviet Union.

<sup>262</sup> The former Latvian Communist Party.

<sup>263</sup> The text of the Law can be found at: [http://www.np.gov.lv/en/faili\\_en/Pils\\_likums.rtf](http://www.np.gov.lv/en/faili_en/Pils_likums.rtf).

<sup>264</sup> The relevant Regulations may be consulted at: [http://www.np.gov.lv/index.php?en=akti\\_en&saite=mk.htm](http://www.np.gov.lv/index.php?en=akti_en&saite=mk.htm).

by the low number of applicants that the sixteen regional branches and sixteen sub-branches of the Board had to deal with during the first year. On that occasion, the HCNM wrote to the Latvian Foreign Minister Valdis Birkavs with the following concerns:

Please allow me to express my concerns about the cuts foreseen in the 1996 budget for the Naturalisation Board, including a reduction of Lats 87,000 in the salary fund. One of the likely consequences is the closure of a number of branches of the Naturalisation Board in various parts of Latvia. The resulting complications for potential applicants might lead to a further drop of the number of persons actually applying. I express the hope, therefore, that ways can be found in the near future to restore the old budget.<sup>265</sup>

Birkavs's reply did not, however, imply reconsideration of this issue. He argued that the cut was due to "severe budgetary constraints" that the Government faced, and that the budgets of many other state institutions were also being cut.<sup>266</sup>

The budget was indeed cut in 1996 in spite of the Naturalisation Board's forecast that the pace of naturalisation would increase in the future. As a result, several regional branches in Riga were closed down, contrary to the HCNM's recommendation. Where originally the Naturalisation Board had 16 regional branches and 16 sub-branches, today it has ten regional branches and 19 sub-branches. Despite these cuts, the Board was later held in high value by the Government, and the scope of its duties was expanded. Several new functions related to citizenship issues were included in these tasks, and additional funding was also granted for these purposes. In addition, on January 1, 1999, the Information Centre of the Naturalisation Board was established, and new staff members were hired.<sup>267</sup>

#### *5.4 The State Fee for Naturalisation*

The High Commissioner began addressing the issue of the state fee charged from the applicants for naturalisation in early 1996. The naturalisation process started in January 1996 for those born in Latvia and who were aged 16 to 20 years. Throughout 1995, extraordinary naturalisation for certain privileged categories had taken place. However, as the pace of naturalisation appeared extremely slow, the High Commissioner attempted to draw the attention of the Latvian authorities to the possible reasons for the low activity of the potential applicants. Among them was, in his opinion, an excessively high fee charged by the state for naturalisation. The amount of the fee was set at 30 LVL (approx. 55 USD), which almost equalled to the minimum monthly salary in Latvia at that time.

The naturalisation fee was first set by the Cabinet of Ministers Regulations No. 22 of January 24, 1995, On the Amount of State Duty Payable for the Consideration of a Naturalisation Application.<sup>268</sup> The Regulations set the amount of the fee at the above-noted 30 LVL (Art. 4). For pensioners and the Category II disabled persons, the fee amounted to 15 LVL (Art. 2). The politically repressed, if recognised as such by law, and Category I disabled persons were altogether exempted from the fee (Art. 3). The Head of the Naturalisation Board was also granted the right to exempt pensioners and Category II disabled persons from the fee on the basis of their motivation in their application (Art. 5). However, in practice only few applicants proved eligible for these exemptions.

Therefore, in his letter to the Foreign Minister of March 14, 1996, the High Commissioner argued for a 50 per cent reduction of the fee for all applicants (which would mean reducing it from 30 to 15 LVL):

<sup>265</sup> HCNM's letter to Birkavs, 16 March 1996.

<sup>266</sup> Birkavs's letter to HCNM, 22 April 1996.

<sup>267</sup> Information provided on the web page of the Naturalisation Board, under "The Main Facts from the History of the Naturalisation Board". Available at: [http://www.np.gov.lv/index.php?en=par\\_en&saite=vesture.htm](http://www.np.gov.lv/index.php?en=par_en&saite=vesture.htm).

<sup>268</sup> Latvijas Republikas Ministru Kabineta noteikumi Nr. 22 (1995. g. 25. janvārī), Noteikumi par valsts nodevas apmēru naturalizācijas iesnieguma izskatīšanai [Republic of Latvia Cabinet of Ministers Regulations No. 22 (January 25, 1995), On the Amount of State Duty Payable for Consideration of a Naturalisation Application].

A reduction of the fee to be paid on receiving citizenship is also advisable. According to the two parallel polls conducted by the Naturalisation Board, 18.7% and 17.5%, respectively, of the respondents stated that they could not afford to pay 30 Lats. I therefore suggest that, apart from the reductions granted to special categories, a 50% reduction of the fee for all applicants be introduced as soon as possible.<sup>269</sup>

Further developments are well documented in the correspondence on the issue of the fee between the HCNM and the Latvian Foreign Minister. In his first reply, the Latvian Foreign Minister mentioned the possibility for the Cabinet of Ministers to consider the issue in 1997:

The Naturalisation Board has also recommended that the naturalisation fee be reduced by 50% for students aged 16 to 20, day students, and orphans. On 20 February 1996 the Cabinet of Ministers affirmed the previous naturalisation fee for 1996. However, the issue concerning reduction of the fee for several categories of inhabitants will possibly be discussed in 1997.<sup>270</sup>

On the one hand, the reply of the Foreign Ministry clearly demonstrates that the High Commissioner's recommendations had been considered. On the other hand, reasons were given that implied that the reconsideration of the fee could be delayed into the distant future. Nevertheless, the High Commissioner tried to influence the forthcoming decision by consistently reiterating his recommendation and concerns to the Foreign Minister. However, the replies from the Latvian side continued to suggest that the decision regarding the fee would not be immediate, and that actual reductions would only take effect in 1998. The reason for the delay was again noted to be restrictions on financial spending, as the 1997 Budget had already been "carefully planned and balanced for the next year."<sup>271</sup>

Taking into account that in total 64,000 persons aged 16-25 were eligible to apply for citizenship during 1996 and 1997,<sup>272</sup> it appears that the authorities were unwilling rather than unable to speedily introduce reductions of the naturalisation fee that had been recommended by the High Commissioner. In his letter of May 23, 1997, the High Commissioner cited the data of a social survey carried out by the Naturalisation Board in which 19.8 per cent of the respondents complained that the naturalisation fee was too high. However, at this stage the High Commissioner narrowed down his recommendation, arguing for a reduction of the fee for applicants from lower income groups rather than for all applicants.<sup>273</sup>

The High Commissioner attached major importance to the amount of the fee and argued for its reduction persistently. He enjoyed full support of the Naturalisation Board staff that also considered it desirable to lower the fee. Finally, an optimistic reply was received from the Latvian Foreign Minister regarding the fee, informing the HCNM that the naturalisation fee would be set at 15 LVL for high school students and university students from indigent families, had been abolished for orphans, and that the Naturalisation Board had been given the right to exempt from the naturalisation fee persons who were recognised as indigent. However, it was added that:

[s]uch a reduction should eliminate or at least diminish significantly applicants' problems with covering the naturalisation fee. It should be stressed that this is currently a conceptual decision which provides a framework for the contents of the final decision. According to the existing procedures, a corresponding draft decision shall be submitted to the Cabinet of Ministers and voted on at a later stage. The draft decision is currently being reviewed by the ministries.<sup>274</sup>

Indeed, the new Regulations of the Cabinet of Ministers concerning the state fee for naturalisation, which were finally adopted on December 2, 1997, differed significantly in their provisions from the

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<sup>269</sup> HCNM's letter to Birkavs, 16 March 1996.

<sup>270</sup> Birkavs's letter to HCNM, 22 April 1996.

<sup>271</sup> Birkavs's letter to HCNM, 24 December 1996.

<sup>272</sup> UNDP Latvia 1998b, p. 54.

<sup>273</sup> HCNM's letter to Birkavs, 23 May 1997.

<sup>274</sup> Birkavs's letter to HCNM, 11 September 1997.

ones anticipated by the Foreign Minister. Notably, university students, many of whom were eligible for naturalisation in 1996 and 1997 because of their age (the eligible groups were 16-25 and up to 30 in 1998) did not benefit from a 50 per cent reduction of the fee. On the positive side, in addition to pensioners and Category II disabled persons, also students of the certified state comprehensive schools, students of vocational training and secondary special educational establishments were now entitled to a state fee of 15 LVL.<sup>275</sup>

The provision concerning the exemption of the acknowledged poor was later leniently implemented by the Naturalisation Board. Although the Regulations do not specify to what amount the fee may be reduced by the Head of the Naturalisation Board, the practice has been to reduce the fee to 3 LVL for all those recognised as belonging to the poor.<sup>276</sup> By August 31, 1999, 1,369 persons paid the reduced state fee.<sup>277</sup>

These provisions acquired greater significance after the abolition of the "windows" system, as all age groups became eligible for naturalisation. A major drawback still remaining with regard to the fee was the fact that there was no reduction for university students, Category III disabled persons or the unemployed. This unchanged fee of 30 LVL still posed a barrier for many applicants, as is evident from the data of the Towards a Civic Society survey of 1998. Of the respondents, 37 per cent aged 15-30 and 48 per cent of those over 30 mentioned the amount of the fee as one of the major reasons for not applying for citizenship.<sup>278</sup>

On June 5, 2001, the Cabinet of Ministers finally adopted new regulations regarding the fee, introducing significant changes. The standard amount of the fee was reduced from 30 to 20 LVL. The amount of 10 LVL (or 50 per cent of the standard fee) was set for those groups who were previously entitled to a reduction, adding Category III disabled persons and full-time university students to the list.<sup>279</sup> Thus, the recommendations of the High Commissioner to reduce the naturalisation fee were gradually implemented in the course of five years, with numerous delays. The latest initiatives were very closely associated with the anticipated closure of the OSCE Mission to Latvia and could have constituted one of the pre-conditions for virtually closing the Mission.<sup>280</sup>

### *5.5 The Requirement to Have a Legal Source of Income*

One of the provisions of the 1991 Resolution stipulated that persons who do not have a legal source of income shall not be granted Latvian citizenship.<sup>281</sup> The recommendation of the High Commissioner in this connection was that it be made explicit that this requirement should not apply to the unemployed.<sup>282</sup>

The draft Citizenship Law as passed in first reading in November 1993 indeed contained a requirement that an individual must have a legal source of income in order to be eligible for naturalisation (draft Art. 10, Para. 4). It was, however, not made clear whether this requirement also concerned the unemployed. Therefore, the High Commissioner repeated and clarified his recommendation on December 10, 1993:

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<sup>275</sup> Republic of Latvia Cabinet of Ministers Regulations No. 397 (Record No. 67, Para. 10), Riga, December 2, 1997, On the State Duty Payable for Consideration of a Naturalisation Application (unofficial Translation), Art. 3.

<sup>276</sup> Interview with the Deputy Head of the Naturalisation Board J. Kohanovičs, Riga, 15 September 1999.

<sup>277</sup> Republic of Latvia Naturalisation Board 1999, p. 1.

<sup>278</sup> Baltic Data House 1998, Fig. 23-24, pp. 40-41.

<sup>279</sup> Republic of Latvia Cabinet of Ministers Regulations No. 234, 5 June 2001, On the State Duty Payable for Submission of a Naturalisation Application, Art. 3 (unofficial English Translation of the Naturalisation Board). The Regulations also set the amount of the fee at 3 LVL for the poor and the unemployed.

<sup>280</sup> At the time when this study went to print, the Regulations 234 were further amended to reduce the fee for all students and other low income groups to 3 LVL (September 2003). This initiative is closely associated with the Special Tasks Minister of Integration Affairs N. Muiznieks.

<sup>281</sup> Art. 3.5 (8) of the 1991 Resolution.

<sup>282</sup> HCNM's letter to Andrejevs, 6 April 1993.

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

Nevertheless, the wording of Article 10, Paragraph 4, was not significantly changed throughout the readings. The phrase "source of existence" was replaced by "source of survival"<sup>283</sup> (although all other English versions available contain the term "source of income"). However, the recommendation of the High Commissioner to make explicit in the text of the Citizenship Law that the requirement for a legal source of income would not apply to the unemployed was not implemented.

In practice, the unemployed who are officially registered and recognized as such and who receive unemployment benefits from the state can apply for naturalisation if they present a certificate issued by the relevant authority. An individual may receive unemployment benefits for only a limited period of time. Upon the expiration of this period, a person is not entitled to any state benefits and is, therefore, considered not to have a legal source of income. The long-term or unregistered unemployed are, thus, not eligible for naturalisation.

#### *5.6 The Waiting Period for Naturalisation and the Appeals Procedure*

In his first recommendations regarding the anticipated naturalisation procedure, the HCNM pointed out the necessity of introducing such legal provisions that would guarantee the granting of citizenship without delay and without a further waiting period for those who met the legal requirements. The HCNM also emphasised the necessity to establish an appeals procedure in case of a rejection of a naturalisation application or failure to meet language or other requirements.<sup>284</sup>

The draft Law adopted in the first reading provided for an appeals procedure, stating that "the institution's decision to deny naturalisation may be appealed in court."<sup>285</sup> The provision was modified as the Law progressed towards its final adoption. It was decided that the Ministry of Interior would receive and consider naturalisation applications. Therefore, the provision adopted in third reading on June 21, 1994, was clarified. In Article 17, it was now specified that "[r]efusal by the Ministry of the Interior of naturalisation can be appealed to the courts."<sup>286</sup> Additionally, a provision in Article 12 stipulated that "[p]ersons whose applications regarding matters of citizenship have been rejected, may resubmit them a year after the previous decision was taken."<sup>287</sup>

Following the President's veto, Article 17 underwent changes and a provision guaranteeing an answer from the Ministry of the Interior within one year from the date of submission of the application was included. The provision for the possibility of appeal in case of refusal of an application was retained. The more detailed procedures were to be elaborated by the Cabinet of Ministers. The above provisions were adopted in the repeated reading of the Law on July 22, 1994. After the establishment of the Naturalisation Board, the words "Ministry of the Interior" were substituted by "Naturalisation Board" with an amendment that was introduced on March 16, 1995. The current wording of Article 17 is as follows:

- (2) The procedures for receiving and examining applications shall be determined by regulations of the Cabinet. Applications shall be examined and an answer given to the applicant not later than one year after the day all documents specified in the regulations of the Cabinet are submitted. A decision regarding admission to citizenship shall be taken by the Cabinet.

<sup>283</sup> Latvijas Republikas Pilsonības likums. Projekts otrajam lasījumam [Republic of Latvia Citizenship Law. Draft Prepared for the second Reading], to be considered on 9 June 1994, p. 11.

<sup>284</sup> HCNM's letter to Andrejevs, 6 April 1993.

<sup>285</sup> Republic of Latvia Draft Citizenship Law (as adopted in first reading, 25 November 1993). Art. 15, Procedure for the filing and review of naturalisation requests (unofficial translation).

<sup>286</sup> Republic of Latvia Citizenship Law (as adopted in the third reading, 21 June 1994) Art. 17, (unofficial translation).

<sup>287</sup> Ibid., Art. 12.6. This provision has not been changed and is in force today.

- (3) A decision of the Naturalisation Board regarding refusal of naturalisation may be appealed to a court.<sup>288</sup>

Thus, the Naturalisation Board reserves the right to review the applications during one year before it provides an answer to the applicant. This provision, however, is being interpreted by the Naturalisation Board as referring to the whole process of naturalisation including the tests of the Latvian language, history and constitution, the oath of loyalty and the time the Naturalisation Board takes to verify the information provided by the applicant by contacting the relevant institutions. According to the statistics of the Naturalisation Board, the answer as to whether the applicant has qualified for citizenship or not is provided, on average, within 4-6 months from the date of submission of the naturalisation application (on condition that the tests are passed on first attempt).<sup>289</sup> The Naturalisation Board also implemented a project supported by the EU PHARE programme, which aimed at the computerisation of the processing of applications in order to speed up naturalisation by the year 2002.<sup>290</sup> There are, however, no legal limitations as to how long it may take before the applicant is granted citizenship by a decision of the Cabinet of Ministers and before a citizen's passport is issued to the individual. Adding the time it takes for the Cabinet of Ministers to adopt its final decision with respect to the applicant's citizenship status and the time required for an acquisition of a passport, the whole process of becoming a Latvian citizen may take from seven to twelve months.

The Cabinet of Ministers' Regulation No. 33, "On the Examination of the Proficiency of the Latvian Language and the Examination of the Knowledge of the Basic Principles of the Satversme (the Constitution), the Text of the National Anthem and the History of Latvia for Persons Who Wish to Acquire the Citizenship of Latvia through Naturalisation" deals with cases where a test has been failed. The Regulations set a waiting period of three months for those applicants who fail the language test before they can repeat the test, and a waiting period of one month for those who fail the test of history and constitution. The same rules apply to the applicants who fail to present themselves at the test venue without a valid reason or who violate the rules during the test.<sup>291</sup>

With regard to the HCNM's recommendations, it is clear that the High Commissioner's recommendations were indeed generally speaking followed. The HCNM's recommendation regarding the appeals procedure in case of a rejection of a naturalisation application was implemented, and the possibility to retake the tests in case of failure was also guaranteed. Waiting periods of limited duration are, however, applicable to these cases. With regard to these waiting periods and the recommendation that "once applicants fulfil the legal requirements for citizenship they should be granted citizenship without delay and no further waiting period should be introduced," the recommendation's implementation should be analysed keeping in mind the "windows" system that was in place between 1995 and 1998. As mentioned above, the "windows" system, enshrined in the Citizenship Law adopted in 1994, was designed in such a way as to oblige large groups of non-citizens wait for up to eight years before they could submit a naturalisation application, i.e. before they fulfilled the legal requirement of eligibility for naturalisation. The HCNM's recommendation concerned the introduction of a waiting period after all the legal requirements had been fulfilled. However, it is doubtful that back in April 1993 the HCNM could foresee the introduction of the kind of waiting periods the "windows" system contained before the legal requirements could be fulfilled.

Presently, although naturalisation remains a lengthy process, determined to a large extent by the administrative capacity of the Naturalisation Board and the Cabinet of Ministers, an applicant is guaranteed that the process will not take longer than one year owing to the liberal interpretation of the relevant provision of the Law by the Naturalisation Board.

<sup>288</sup> The Republic of Latvia Citizenship Law, Art. 17 (currently in force). Translation by the Translation and Terminology Centre.

<sup>289</sup> Information on the web page of the Naturalisation Board, under "Biežāk uzdotie jautājumi" [Frequently Asked Questions], at: [http://www.np.gov.lv/index.php?lv=faq\\_lv](http://www.np.gov.lv/index.php?lv=faq_lv).

<sup>290</sup> Information on the web page of the Naturalisation Board, under "Projects of the Naturalisation Board", able at: [http://www.np.gov.lv/index.php?en=par\\_en&saite=projekti.htm](http://www.np.gov.lv/index.php?en=par_en&saite=projekti.htm).

<sup>291</sup> Cabinet of Ministers of the Republic of Latvia. Regulations No. 33, On the Examination of the Proficiency of the Latvian Language and the Examination of the Knowledge of the Basic Principles of the Satversme (the Constitution), the Text of the National Anthem and the History of Latvia for Persons Who Wish to Acquire the Citizenship of Latvia through Naturalisation, Chapter II, Para. 9.

### 5.7 Granting Citizenship for Outstanding Accomplishments

Article 9 of the draft Citizenship Law as passed in the first reading in November 1993 envisaged naturalisation quotas to be determined each year by the Cabinet of Ministers, taking into consideration the economic and demographic situation in the country, while Article 10 set the requirements for naturalisation. Article 11, in its turn, defined the groups that could be naturalized in addition to the quotas. One of these groups included those persons who "are granted citizenship for outstanding accomplishments for the benefit of the Republic of Latvia with a resolution of the Cabinet of Ministers."<sup>292</sup> This group, similarly to the other groups entitled to extraordinary naturalisation beyond the quotas, was expected to fulfil all the naturalisation requirements. The only facilitation was the possibility to naturalise outside the quotas according to the text of the law.

In his December 10, 1993 letter the High Commissioner suggested that this group be exempt from all naturalisation requirements: "[w]hen it comes to citizenship for outstanding accomplishments [...], it might be considered whether the various naturalisation criteria in Article 10 should necessarily apply [...], as this limits the possibility for the Government to grant citizenship under this special procedure."

After the second reading, however, persons being granted citizenship for outstanding accomplishments were still expected to undergo the process of naturalisation.<sup>293</sup> The aspect of the article that provoked heated discussions was the issue of which branch should have the competence for granting citizenship for outstanding accomplishments - the Cabinet of Ministers or the Saeima. Thus, before the third reading the Legal Committee reworked the provision into Section 5 of Article 13 which provided that "a person who has rendered outstanding services for the benefit of Latvia can be granted the citizenship of Latvia upon a resolution of the Saeima which shall be published in an official newspaper."<sup>294</sup> Since the provision now constituted a separate section of Article 13, it appeared that the individual being granted citizenship for outstanding accomplishments was not expected to fulfil the naturalisation requirements (including language and history tests).

In practice, the Saeima has been including each individual case in its sessions' agenda and the deputies voted upon each individual's acceptance into Latvian citizenship for outstanding accomplishments. In some cases citizenship was granted, in some cases it was not. This practice continued until the amendments of June 2, 1998, came into force.

As a result of the adoption of a package of amendments in 1998 (to 25 articles of the Citizenship Law), the procedure for granting citizenship for outstanding accomplishments was significantly restricted, which, however, went rather unnoticed in the international circles. Currently, according to Article 13, "[a] person who has rendered special meritorious service for the benefit of Latvia, but who does not have the right to naturalisation in accordance with the general procedures provided for in this Law, may be admitted to Latvian citizenship by a decision of the Saeima which shall be published in the official newspaper." The person in question has to present an application requesting admission to citizenship along with his/her Curriculum Vitae. The person does not have to denounce his/her former citizenship.<sup>295</sup>

The majority of the non-citizens currently living in Latvia now do have the right to apply for naturalisation, as the "windows" system which restricted naturalisation only to certain age groups each year has been abolished. This means that the majority of the non-citizens cannot be granted citizenship for special accomplishments as this procedure is now available only for those who do not have the right to naturalisation under the general procedure. Although a non-citizen may have rendered special meritorious service to the Republic of Latvia, he/she cannot be considered for citizenship

<sup>292</sup> Republic of Latvia draft Citizenship Law as adopted in the 1<sup>st</sup> reading, 25 November 1993, Article 11 (6).

<sup>293</sup> Latvijas Republikas Pilsonības likums. Projekts trešajam lasījumam. [Republic of Latvia Citizenship Law. Draft Prepared for the 3<sup>rd</sup> Reading], to be considered on 22 June 1994, Art. 13, section 1, para. 8 of the second reading edition, p. 13.

<sup>294</sup> Ibid., suggested Art. 13, section 5, p. 13.

<sup>295</sup> Translation of the Translation and Terminology Centre, except as in footnote 233.



under this special procedure and would have to undergo naturalisation anyway. It is evident that the above procedure is meant primarily for the citizens of other states, as the provisions of Article 12 (1)<sup>7</sup> which require candidates for Latvian citizenship to renounce their previous citizenship, do not apply.

Therefore, the recommendation of the High Commissioner not to apply any naturalisation requirements to individuals to be granted citizenship for outstanding accomplishments for the benefit of the Republic of Latvia was implemented during the process while the Citizenship Law was being debated (1993-1994). The version of the Citizenship Law as adopted in the final reading on July 22, 1994, was in line with the HCNM recommendation. At a later stage, however, the procedure for granting citizenship to individuals who have rendered special meritorious service to the Republic of Latvia was closed to virtually all non-citizens. This was done simultaneously with the implementation of other important recommendations of the High Commissioner, such as the abolishment of the "windows" system.

After the voters approved of the amendments to the Citizenship Law at the National Referendum on October 3, 1998, the High Commissioner issued a press release welcoming the result of the referendum. Clearly, all attention was concentrated at the abolition of the "windows" and the provision for the granting of citizenship to children born in Latvia after 1991. However, there were 25 amendments adopted by the Saeima on June 22, 1998, and approved by the Referendum on October 3, 1998, some of which - such as the one regarding the procedure for the granting of Latvian citizenship for outstanding accomplishments - may be viewed as "compensatory" for any liberalisation of the law that was carried out.

### *5.8 Language Requirements for Naturalisation*

The High Commissioner paid extensive attention to naturalisation requirements, particularly the Latvian language test, the test of the knowledge of the Latvian Constitution and history. In connection with the tests, the High Commissioner repeatedly stressed the necessity to ease the requirements, especially for those older than 60, stressing that the tests should not constitute a major obstacle to naturalisation.

#### *5.8.1 Language Knowledge and Exemptions from the Language Test, 1993-1994*

Already in his first letter of April 6, 1993, the High Commissioner expressed the view that the language requirements "should not exceed the level of conversational knowledge", and recommended the inclusion of "a clause exempting elderly persons (60 years and over) and disabled persons from language requirements."<sup>296</sup>

Indeed, the draft Citizenship Law adopted in the first reading on November 25, 1993, contained provisions that were to a large extent in line with the recommendations of the High Commissioner. Partly approved of by the HCNM after its adoption, Article 10 of the draft Law now stipulated that:

Republic of Latvia citizenship through naturalisation shall be granted only to those persons [...] who are proficient in the Latvian language at a conversational level. This provision shall not apply to persons who are older than sixty-five. The procedure for the verification of Language proficiency shall be determined by the regulations adopted by the Cabinet of Ministers.<sup>297</sup>

However, the draft Law did not contain a clause exempting disabled persons from the language test. Thus, the High Commissioner addressed the issue once again in his letter of December 10, 1993. In

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<sup>296</sup> HCNM's letter to Andrejevs, 6 April 1993.

<sup>297</sup> Republic of Latvia Draft Citizenship Law (as adopted in first reading, 25 November 1993) Art. 10, Prerequisites for Naturalisation, Para. 2 (unofficial translation).

this letter, he reiterated that "[i]n addition to the exemption of language requirements for elderly persons [...] I also recommend... an exemption for disabled persons."<sup>298</sup>

Subsequently, the draft Law proposed by the Saeima's Legal Committee for the second reading included provisions for exempting certain categories of people from the language test. Article 21 of the draft Citizenship Law adopted in the second reading on June 9, 1994, exempted persons who had accomplished general education at a school with the Latvian language as the language of instruction, as well as persons with Category I disability status,<sup>299</sup> if such a status had been permanently conferred upon them.<sup>300</sup> Therefore, the recommendation of the High Commissioner concerning disabled persons was partially taken into account. However, the provision with regard to elderly persons was omitted from the draft.

Furthermore, the language requirements of the draft Law in the second reading were made stricter in comparison with the draft Law of the first reading. The requirement of conversational knowledge of the Latvian language was altered, and Article 12 now stated that "Latvian citizenship through naturalisation shall be granted only to persons who are registered in the Register of Inhabitants and who have a command of the Latvian language."<sup>301</sup>

For clarification, Article 20 of the draft Citizenship Law as adopted in the second reading specified the above requirement. The definition of what it meant to have "command of the Latvian Language" was stipulated as follows:

A person shall be regarded as having a command of the Latvian language if he/she:

- 1) fully understands everyday and official information;
- 2) can freely speak, discuss, and answer questions on everyday subjects;
- 3) can fluently read and understand any text of an everyday nature, laws and other normative acts, instructions and directions of an everyday nature;
- 4) is able to write a reproduction on a topic from everyday life.<sup>302</sup>

Before the third reading of the Citizenship Law, which took place on June 21, 1994, the People's Harmony Party submitted a proposal to strike out Paragraph 4 of Article 20 (i.e. the requirement for writing a reproduction). It also proposed to bring back the clause exempting the elderly from the language test. However, both proposals were in the end rejected. The provisions of the Law in these areas (Art. 20 and 21) remained unchanged after the third reading, as well as after the fourth extraordinary and final reading of the Citizenship Law on July 22, 1994.

Thus, in 1994 the three main recommendations of the High Commissioner (limiting the language requirement to conversational knowledge, exempting the elderly and exempting the disabled from the language test), which he submitted to the Latvian authorities during the period while the Citizenship Law was debated until its final adoption in July 1994, were not implemented. In terms of language knowledge, the Law required a high degree of fluency in the Latvian language (both oral and written). Also, the clause exempting the elderly from the language test was removed from the Law entirely, and only one group of disabled persons, those with permanent Category I (gravest) disability, was exempted from the language test.

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<sup>298</sup> HCNM's letter to Andrejevs, 10 December 1993.

<sup>299</sup> There are three disability categories in Latvia that determine the working capability of an individual. Depending on the category, the disabled are entitled to varying social benefits. A disability category may be temporary or permanent depending on the nature of the disability.

<sup>300</sup> Latvijas Republikas Pilsonības likums. Projekts trešajam lasījumam. [Republic of Latvia Citizenship Law. Draft Prepared for the third Reading], to be considered on 22 June 1994, Art. 21 of the second reading edition, paras. 1 and 2., p. 19.

<sup>301</sup> Ibid., Art. 12 General Regulations for Naturalisation, para. (1), (2), p. 8.

<sup>302</sup> Ibid., Art. 20. The Level of Command of the Latvian Language, p.18.

### 5.8.2. The 1995 Amendments

Extraordinary naturalisation for the privileged categories of persons was started on January 1, 1995, in accordance with Article 13 of the Citizenship Law. It immediately became clear that many of those undergoing extraordinary naturalisation were elderly persons who encountered difficulties with the tests. This led to the reconsideration of Article 21 of the Citizenship Law that dealt with the groups exempt from the tests. A number of amendments were introduced as a result on March 16, 1995.

With these amendments, in addition to exempting permanent Category I disabled persons from the language test, persons with Category II and III hearing and speech disability were also exempted.<sup>303</sup> The amended Article 21 also provided that two groups of persons eligible for extraordinary naturalisation were excused from the language requirement if they had reached pension age.<sup>304</sup> Besides, in addition to the graduates of Latvian-language secondary schools, also the graduates of Latvian-language vocational, higher or specialised educational institutions were now exempt from the language test.<sup>305</sup>

Under the amended provisions of Article 12, Paragraph 4, all of the groups mentioned in Article 21 were now also exempted from all the other tests as well, including the tests of the knowledge of the basic principles of the Latvian constitution, history, etc. Although the provisions of the Citizenship Law concerning the disabled and the elderly were somewhat eased by these amendments, they only applied to a limited number of persons, particularly in the case of the elderly. The 1995 amendments were rather evidently not a result of the HCNM's involvement, and went rather unnoticed internationally. Clearly, the initial HCNM's recommendations were still not fully implemented.

### 5.8.3 The Issue of Exempting the Elderly and the Disabled from the Language Test Back on the Agenda, 1996-1998

Throughout the following years, the High Commissioner continued expressing his concern over the provisions of the Citizenship Law dealing with the categories exempt from the language test. In March, 1996 he addressed the issue one more time: "I would make a plea to extend these exceptions to include persons over the age of 65. It is a well-known fact that elderly persons find it extremely difficult to acquire a basic knowledge of a language they were not familiar with previously."<sup>306</sup>

At this point, it must be noted that the initial suggestion of the High Commissioner was to exempt persons over the age of 60 from the language test. However, he made a certain concession in this case, having now recommended the exemption for those over 65 (as was stipulated in the draft Law passed in the first reading).

Although the Naturalisation Board specialists were in principle ready to conform (at least in part) with the High Commissioner's recommendation (i.e., to exempt elderly persons from the written part of the test), the main difficulty of implementing the decision lied in the fact that the provisions concerning exemption from the language test were stipulated in the Citizenship Law itself. Had they been contained in sub-legal acts (such as internal regulations of the Naturalisation Board), it would have been easier to amend them. The fact that the Law would have to be amended if the recommendation was to be implemented was the main argument presented by the Latvian Foreign

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<sup>303</sup> Republic of Latvia Citizenship Law, Art. 21, para. 2, as modified by the 16 March 1995 amendment.

<sup>304</sup> Ibid., Art. 21, para. 3, as modified by the 16 March 1995 amendment. These two categories included persons who had legally entered Latvia and permanently resided there on June 17, 1940, as well as their descendants, who on the day the Citizenship Law came into force were permanent residents of Latvia and 2) persons who were Lithuanian or Estonian citizens on June 17, 1940, as well as their descendants, if they or their descendants had permanently resided in Latvia for no less than five years from the submission of their application for naturalisation. (Art. 13.3 and 13.6)

<sup>305</sup> Article 21, para. 1, as modified by the 16 March 1995 amendment.

<sup>306</sup> HCNM's letter to Birkavš, 14 March 1996.

Minister in response to the High Commissioner's recommendation: "[t]he Naturalisation board strongly supports the freeing of these persons from the written part of the language test, however, this would entail an amendment to Article 21 of the Citizenship Law."<sup>307</sup>

On the one hand, this argument can be understood if one recalls the complex domestic context in which the ruling factions were bound by the official coalition agreement not to "touch" the Citizenship Law. Fatherland and Freedom kept threatening to bring down the coalition should the Law be liberalised in any way. Amending the Law in a way that would be favourable to the non-citizens was a taboo theme both in Parliament and in public throughout 1995, 1996 and largely also 1997. On the other hand, however, one could argue that the explanation provided to the High Commissioner was more of an excuse than a well-founded reason for the non-implementation of the HCNM's recommendation. This view is supported by the fact that it had not been a problem to amend the Law in March 1995 when the issue concerned, for example, the elderly former citizens of Lithuania and Estonia. In any case, in April 1996 the implementation of the above-mentioned recommendation appeared remote.

However, the OSCE, the Council of Europe and other foreign experts were actively involved in analysing the procedure for testing the knowledge of the Latvian language, and worked closely with the staff of the Naturalisation Board. The Board shared the opinion of the experts on a variety of issues, including facilitating the language requirements for the elderly. Following consultations with the experts, the Naturalisation Board submitted a proposal to the Saeima to exempt persons over 65 from the written part of the language exam. The High Commissioner took this opportunity to reiterate his recommendation: "I also hope that the recommendation of the Naturalisation Board to exempt persons over the age of 65 from at least the written part of the language test, which would require an amendment to article 21 of the Citizenship Law, will be received favourably by the Saeima."<sup>308</sup>

However, the proposal was not considered by the Saeima until May 1998, following the international diplomatic crisis when EU membership negotiations were being threatened and international pressure was strong. It is important to note that the High Commissioner once again made a certain concession in this case having limited his recommendation to suggesting an exemption for the elderly from the written part of the test only. It is also worth mentioning that the High Commissioner never raised the issue of exempting the elderly from the other tests required for naturalisation (the Constitution, the history of Latvia, the text of the National anthem, etc.) which had to be taken in the Latvian language.

Finally, in June 1998 the Saeima approved the amendments to the Citizenship Law in the third reading. Along with other important changes, such as the abolition of the "windows" system, certain changes regarding the language test for the elderly and the disabled were also introduced. As a result, Regulation No. 33 on "Testing the Knowledge of the Latvian Language, the Basic Principles of the Latvian Constitution, the Text of the National Anthem and the History of Latvia of Persons Wishing to Acquire Latvian Citizenship by Way of Naturalisation"<sup>309</sup> was issued. These regulations provided for simplified procedures for testing the knowledge of the Latvian language and other required knowledge. Also, the procedures for exempting disability categories I, II and III were again changed.

Strictly speaking, the recommendation of the High Commissioner to fully exempt all disabled persons from the Latvian language test has not been implemented. However, certain simplifications in

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<sup>307</sup> Birkavs's letter to the HCNM, 22 April 1996.

<sup>308</sup> HCNM's letter to Birkavs, 28 October 1996.

<sup>309</sup> Latvijas Republikas Ministru Kabineta noteikumi Nr. 33/1999, prot. Nr. 8, para. 12, Noteikumi par latviešu valodas prasmes un Latvijas Republikas Satversmes pamatnoteikumu, valsts himnas teksta un Latvijas vēstures zināšanu pārbaudi personām, kuras vēlas iegūt Latvijas pilsonību naturalizācijas kārtībā [Regulations for Testing the Knowledge of the Latvian Language, the Basic Principles of the Latvian Constitution, the Text of the National Anthem and the History of Latvia of Persons Wishing to Acquire Latvian Citizenship by Way of Naturalisation], p. 54.

the testing procedures apply to certain categories of the disabled, depending on the nature of their disability. Furthermore, simplifications apply not only to the language test, but also to the other required tests. At present, the groups that in one way or another are exempt from either the written or the oral part of the tests include: Category I disabled persons; Category II and III disabled persons with speech, hearing and sight disabilities; and Category II and III disabled persons who do not have the right or left hand or palm, depending on whether they are right- or left-handed. Therefore, over the course of six years, the recommendations of the High Commissioner on exemptions from the language test were only partially implemented.

As noted above, the HCNM's recommendation issued in 1993 to exempt elderly persons 60 years of age and older from the language test was not implemented. However, the recommendation of the Naturalisation Board issued in 1996 and backed by the HCNM to exempt those over the age of 65 from only the written part of the language test has been implemented. Article 21, Paragraph 1 of the Citizenship Law as of June 22, 1998, guarantees that this group of persons is now exempted from the requirement to write an essay (or, in the preferred terminology of the Naturalisation Board, a "written work").

Additionally, the Ministry of Justice Instruction No. 2 of 1999 set special rules for the oral procedure for testing and evaluating the language knowledge of persons over the age of 65. The normal language test currently consists of four sections (reading comprehension, essay [written work], listening comprehension and interview). For those over 65 it consists of only two of the above sections (reading comprehension and interview). While other applicants may receive a maximum of 25 points on the reading comprehension section and must obtain at least 16 points (or 64 per cent) in order to pass, persons over 65 years may receive a maximum of 10 points and must score a minimum of 6 (or 60 per cent) to pass.<sup>310</sup>

#### *5.8.4 Lowering the General Language Requirements, 1996-1998*

While pushing for lowering the naturalisation requirements for the elderly and the disabled, the High Commissioner also continued to take an active interest in the general testing procedures involved in the naturalisation process and applied to all applicants. He felt that the high language requirements were among the main reasons for the slow pace of naturalisation, as they discouraged those eligible from applying for citizenship. In his letter of March 14, 1996, the High Commissioner argued the following:

Of course I am aware that a number of non-citizens are not interested in acquiring Latvian citizenship because they want to avoid consequences such as being called up for Latvian military service or having to apply for a visa in order to visit Russia. In fact half of the minority of 11% of the pupils who showed no interest in citizenship in the survey of the Naturalisation Board mentioned these reasons. But this cannot explain the wide discrepancy between the high percentage of young people interested in acquiring Latvian citizenship and the small number of them who do actually apply. In my view the number and difficulty of the barriers to be overcome in order to acquire Latvian citizenship can be the only explanation. This is confirmed by the poll conducted by the Naturalisation Board. Asked about circumstances which hindered them in acquiring the citizenship of Latvia, virtually all respondents referred to one or more requirements for citizenship mentioned in the relevant law. My conclusion is, therefore, that quite a large number of non-citizens, who show in principle an interest in integrating into Latvian society in order to get Latvian citizenship, are at present deterred from making such an effort because their perception is that they might not be able to meet the requirements.<sup>311</sup>

<sup>310</sup> Latvijas Republikas Tieslietu Ministrijas Instrukcija Nr. 2 (1999.g. 9. martā), Par latviešu valodas prasmes, Latvijas Republikas Satversmes pamatnoteikumu, valsts himnas teksta un Latvijas vēstures zināšanu pārbaudes organizāciju un pretendenta prasmes un zināšanu vērtēšanu [Republic of Latvia Ministry of Justice Instruction No.2 of 9 March 1999, On the Organization of the Tests of the Command of the Latvian Language, the Basic Principles of the Republic of Latvia Satversme, the Text of the National Anthem and the History of Latvia and on the Evaluation of the Command and Knowledge of the Applicant].

<sup>311</sup> HCNM's letter to Birkavs, 14 March 1996.

On May 23, 1997, the High Commissioner once again emphasised the problem of high requirements involved in the naturalisation tests. Trying to explain the discrepancy between the number of those eligible for naturalisation and the low percentage of actual applicants, the HCNM drew on the data of the survey conducted by the Naturalisation Board. This survey made evident that nearly half of those questioned were deterred by the high requirements.<sup>312</sup>

These above-mentioned recommendations were not the first to be issued by the HCNM on the matter. It is important that the High Commissioner had given a recommendation regarding the implementation of the conversational language knowledge requirement already in 1993, asking for a fair, lenient and uniform interpretation and examination throughout the country. He also called for the assistance of the Council of Europe to help develop a system for standardised language tests. Such assistance was indeed provided. Co-operation with the Modern Languages Division of the Council of Europe's Directorate on Education, Culture and Sports began in November 1994, as soon as the Naturalisation Board had been established.<sup>313</sup>

This co-operation involved Council of Europe experts from Cambridge University, who analysed the existing tests and made recommendations as to their improvement. Between the years 1994-1998, seven study visits and seven seminars were organised by the Council of Europe experts for the Methodology Department. As a result, three models of carrying out the language examination were worked out and tested, each one being increasingly approximated to the internationally recognised standard language tests.<sup>314</sup> The OSCE experts also took an active part in analysing and evaluating the system of language testing by the Naturalisation Board, monitoring the work of the evaluation commissions and taking part in the tests themselves.<sup>315</sup>

In this sense, it can be stated that the Naturalisation Board has been open to international monitoring and assistance, as recommended by the High Commissioner, from the moment of its establishment. Apart from a slow pace of naturalisation, due to the small number of applicants, the Naturalisation Board experienced no serious problems in its work.<sup>316</sup> Although the optimisation of the tests has been a lengthy process, the overall evaluation of the work carried out by the Naturalisation Board in this area is generally in line with the High Commissioner's recommendations.

Throughout 1996 and 1997, the HCNM continued to advocate liberalisation of the language requirements, voicing his view that the tests still needed improvement. In March 1996, the High Commissioner gave a specific recommendation concerning the language test based on the opinion of the OSCE experts following their visit to Latvia. He supported their view that the total score for the written and the oral sections of the test ought to determine whether a candidate passes the test, and not, as was the case, that sufficient marks were required both for the written and oral section separately.<sup>317</sup>

Similarly to the issue involving easier requirements for the elderly, the Latvian Foreign Ministry once again emphasised the difficulty connected with the necessity to change the Citizenship Law itself in order to implement the recommendation. Furthermore, the Latvian Foreign Minister Birkavs drew the HCNM's attention to the fact that the language exam had already undergone substantial changes, and argued that the degree of difficulty was no longer excessive.<sup>318</sup>

Considering the stance taken by the nationalistic factions of the Saeima with regard to the Citizenship Law, it was certainly very difficult to expect any liberalisation of its provisions at the point when the recommendations were issued, even under significant international pressure. However,

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<sup>312</sup> HCNM's letter to Birkavs, 23 May 1997.

<sup>313</sup> Danga, 1999, p. 2.

<sup>314</sup> Ibid., p. 3.

<sup>315</sup> Ibid., p. 2.

<sup>316</sup> Such serious problems were encountered in the work of the Citizenship and Immigration Department, which practiced numerous illegalities and internationally recognized cases of human rights violations, see: Panico 1993.

<sup>317</sup> HCNM's letter to Birkavs, 14 March 1996.

<sup>318</sup> Birkavs's letters to HCNM, 22 April 1996 and 11 September 1997.

the difficulty involved in initiating the process of amending the Law was sometimes used as a universal argument presented in order to justify the inability and/or unwillingness of the authorities to consider the High Commissioner's recommendations at that stage.

In 1998, when insisting on the abolition of the age quotas or "widows" system for naturalisation and the introduction of the provision into the Citizenship Law that would allow for the recognition of stateless children born in Latvia after 1991 as citizens, the High Commissioner also insisted on the simplification of the test of the Latvian history and constitution. Language requirements were not as much of an issue; however, this was also discussed. The package of the amendments to the Citizenship Law adopted in 1998 following unprecedented international pressure contained only one amendment dealing with language requirements: Article 20, Paragraph 4, was amended to require an applicant to write an essay (or "written work") rather than a reproduction required previously. It is not obvious that this was a simplification of language requirements. It has been argued, however, that a written work allows for a fairer evaluation of language skills: the reproduction is seen as a memory test rather than a language test.

The issue of the language test, however, was taken by international organisations into 2000-2001. The Latvian government was encouraged to provide further incentives for the non-citizens to naturalise, for example, by recognising the centralised secondary school exams in the Latvian language at Russian-language schools as naturalisation language exams. This recommendation was explicitly given in the PACE Resolution No. 1236 (2001) on Honouring of obligations and commitments by Latvia.<sup>319</sup> This was also one of the unwritten conditions for closing the OSCE Mission to Latvia. Particularly, with the incentive of the anticipated closure of the Mission, the Cabinet of Ministers approved the initiative on June 5, 2001, by recognising that the results of the successful passing of the centralised Latvian language exams will be considered as the passing of the naturalisation language test.<sup>320</sup> This was indeed a significant initiative.

Another initiative that has often been proposed by the minority implies the recognition of the results of the centralised language attestation (discussed in the chapter dealing with the Language Law) as proof of the Latvian language knowledge for naturalisation. The authorities, however, have not accepted this. Nor has this been an official recommendation of the international organisations. Most Russian-speakers, thus, must go through both the language attestation in order to get a certificate for the purposes of legitimising themselves at the labour market and through the naturalisation language test for acquiring citizenship.

### *5.8.5 Summary and Assessment*

Generally speaking, the language requirements for naturalisation have been made somewhat easier over the period 1996-2001. However, the applicants still have to demonstrate their knowledge of the Latvian language in four aspects: reading, writing, speaking and listening comprehension. The language requirements contained in Article 20 of the Citizenship Law have remained largely unchanged, except for Paragraph 4, which now requires the applicant to be able to write an essay [written work] rather than a reproduction. Public perceptions of the requirements, however, have somewhat changed: while, in 1997-1998, 48 per cent of non-citizens considered language requirements too difficult, this number decreased to 30 per cent according to a 2000 survey, which, however, is still a rather high indicator. Only 43 per cent of non-citizens considered the requirements "acceptable" in 2000.<sup>321</sup>

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<sup>319</sup> Document available at:  
<http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FAdoptedText%2Fta01%2FERES1236.htm>.

<sup>320</sup> The Cabinet of Ministers' Regulations No. 33 that deal with the testing procedures were amended to the effect. The provision applied to those graduates who passed the centralised exam in the Latvian language and literature after 28.06.2001 (in practice that means as of the 2002 school year).

<sup>321</sup> Latvijas Sociālo Zinātņu Institūts/Naturalizācijas Pārvalde 2001, p. 29.

The form of the language tests has been improved. The tests have been re-designed with the help of the Council of Europe experts in order to ensure standardised testing procedures and objective evaluation of the applicant's knowledge. The attitude of the Naturalisation Board staff towards the applicants has been generally friendly and tolerant.

To summarise, the High Commissioner issued ten main recommendations regarding the language exam for naturalisation between 1993 and 1999. These were:

- 1) to limit language knowledge to conversational (April 6, 1993; Dec. 10, 1993. June 7, 1994);
- 2) to ensure a lenient interpretation of this requirement by administrative authorities and courts (April 6, 1993);
- 3) to ensure fair, lenient and uniform interpretation and examination throughout the country (December 19, 1993);
- 4) to involve the Council of Europe experts for assistance in developing a system of standardised language tests (December 10, 1993);
- 5) to exempt the elderly over 60 from the language test (April 6, 1993; Dec. 10. 1993);
- 6) to exempt the elderly over 65 from the language test (March 14, 1996);
- 7) to exempt the elderly over 65 from the written part of the language test (October 28, 1996);
- 8) to exempt the disabled from the language test (April 6, 1993. Dec. 10. 1993);
- 9) to generally simplify the language requirements (March 14, 1996, May 23, 1997); and
- 10) to determine whether the applicant has passed the language test by adding up the scores for the oral and the written part of the test (March 14, 1996).

Most of these recommendations have been implemented only partially. Only three of the above recommendations have been implemented to the word (No. 3, No. 4 and No. 7). It can also be concluded that three of the above recommendations have not been implemented at all (No. 5, No. 6 and No. 10). Neither the elderly over 60 years nor those over 65 have been completely exempted from the language test. As to the evaluation procedure, the different sections of the test are still being evaluated separately.

As to recommendation No. 1, at present it appears to be the case that the applicants are expected to demonstrate the knowledge of the Latvian language that goes beyond a conversational level. Apart from being able to converse, the applicant is required to demonstrate also reading and writing skills. Also recommendation No. 8 has been implemented only partially. Certain categories of the disabled have been exempted from all or from certain parts of the language test, depending on the degree and nature of disability.

As to recommendation No. 9: on the one hand, the general language requirements as contained in the Citizenship Law have not undergone any substantial changes and remain rather high. On the other hand, the Naturalisation Board has modified both the form and the content of the language test. Thus, the recommendation has been implemented in part.

All in all, the authorities and, most notably, the Naturalisation Board, have shown their ability to interpret and implement the law leniently. However, it has been difficult for the HCNM to achieve the implementation of those recommendations that would have required fundamental reconsideration of the provisions of the Citizenship Law. The most important step forward in the area of easing the procedures involving the testing of language knowledge is the recognition of centralised secondary school exams as proof of such knowledge for naturalisation. This, however, was decided upon only in 2001, and was not a direct result of the HCNM's involvement: rather, this was done in exchange for the forthcoming closure of the OSCE Mission.

### *5.9 The Test of Latvian History and Constitution*

The framework document on citizenship and naturalisation issues, the Supreme Council Resolution of 1991, contained a provision that an applicant for citizenship should know the fundamental



principles of the Latvian Constitution.<sup>322</sup> The High Commissioner advised the authorities to formulate the requirement in an unambiguous way should it be included in the Citizenship Law, and recommended that the requirement "should not be a major obstacle to the acquisition of citizenship."<sup>323</sup>

Indeed, the Citizenship Law as adopted by the Saeima in the first reading on November 25, 1993, contained a requirement that the fundamental principles of the Latvian Constitution be known.<sup>324</sup> However, the adoption of the specific regulations establishing the procedure for testing such knowledge was delegated to the Cabinet of Ministers. At that stage it was difficult to judge whether the requirement would constitute an obstacle to the acquisition of citizenship. The provision was assessed by the High Commissioner as reasonable, given that a fair, lenient and uniform interpretation and examination throughout the country would be guaranteed.

However, as the draft Citizenship Law was being debated, the naturalisation requirements were gradually raised. After the second reading, the applicants were required not only to know the fundamental principles of the Latvian Constitution, but also the history of Latvia.<sup>325</sup> Furthermore, after the third reading, the text of the Latvian national anthem and the basic principles of the Constitutional Law on the Rights and Obligations of a Citizen and a Person were added to the requirements.<sup>326</sup> Thus, although the requirement of the knowledge of the Constitution was kept to its fundamental principles (formally in line with the HCNM's recommendation), the introduction of the additional requirements made it harder for the applicants to acquire citizenship.

The Regulations of the Cabinet of Ministers that were to establish the procedure for testing all the required knowledge were, however, not adopted until February 1995.<sup>327</sup> When adopted, the Regulations outlined the general procedure for testing the knowledge, while the detailed rules were developed by an internal Instruction of the Naturalisation Board. Notably, the Regulations specifically established that the testing of all required knowledge was to be carried out in the Latvian language,<sup>328</sup> both orally and in writing, while the scope of the knowledge required was not defined. It therefore became impossible to assess the difficulty involved in the test and to draw conclusions as to whether or not these tests constituted an obstacle to the acquisition of citizenship, as was feared by the High Commissioner.

In practice, from the beginning of 1996 applicants could choose either the oral or the written form of the test.<sup>329</sup> The candidates had to write down the text of the National Anthem (which consists of eight lines), answer a number (around 15) multiple choice questions on the history of Latvia, the Constitution and the aforementioned Constitutional Law. In addition, four questions on the history of Latvia had to be answered in writing in the space provided for each answer (about half a page for each question).<sup>330</sup> This last requirement was abolished in March 1996 and replaced by more multiple choice questions.

The Naturalisation Board issued a brochure containing the programme for the preparation for the tests on the Constitution, history, the aforementioned constitutional Law and the text of the national anthem as well as sample questions and a list of recommended literature to the applicants. Over 300

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<sup>322</sup> The 1991 Resolution, Art. 3. 4 (4).

<sup>323</sup> HCNM's letter to Andrejevs, 6 April 1993.

<sup>324</sup> Republic of Latvia Citizenship Law as adopted in the first reading, 25 November 1993, Art. 10 (3).

<sup>325</sup> Latvijas Republikas Pilsonības likums. Projekts tresajam lasījumam. [Republic of Latvia Citizenship Law. Draft Prepared for the third Reading], to be considered on 22 June 1994, Art. 12, Para. 3, of the second reading edition, p. 9.

<sup>326</sup> Republic of Latvia Citizenship Law, Art. 12, Section 1, Para. 3 and 4.

<sup>327</sup> Latvijas Republikas Ministru Kabineta Noteikumi Nr. 29 (Protocol Nr. 8, Para. 2), Zināšanu pārbaudes noteikumi personām, kuras vēlas iegūt Latvijas pilsonību naturalizācijas kārtībā, 1995. g. 7. februārī. [Republic of Latvia Cabinet of Ministers Regulations No. 29 (prot. No. 8, para. 2), Regulations for Testing the Knowledge of Persons Wishing to Acquire Citizenship by Way of Naturalisation, February 7, 1995].

<sup>328</sup> Ibid., Chapter 1, Art. 4.

<sup>329</sup> Danga 1999, p. 4.

<sup>330</sup> For example: "changes in the population and ethnic composition of Latvia in the 20<sup>th</sup> century", "characterize the economic situation in Latvia during the years of the 1<sup>st</sup> Republic", etc.

possible themes for questions on the history of Latvia (from the first tribal settlements on the territory of Latvia to modern times, containing also a set of questions on Latvian literature, culture and traditions), the Constitution and the Constitutional Law on the Rights and Obligations of a Citizens and a Person were formulated.<sup>331</sup> The first brochure was circulated until May 1995. The next one was published with a view to be used for a longer period of time.<sup>332</sup> However, its content was not considerably different from that of the first brochure (once again, including over 300 possible topics for preparatory purposes).<sup>333</sup>

The number of topics in itself suggests that the applicants were expected to have detailed knowledge of Latvian history, the Constitution and the aforementioned Law, and not merely have an understanding of their basic principles and facts. The introduction to the brochure, however, insisted that only the most important historical facts were to be known and that the list of topics was provided to help the applicants plan their answer. At the same time, the applicants were expected to understand the essence of the historical processes included in the guidelines as well as their inter-connection and interaction; to be able to support their opinion; and to be able to express their thoughts in a coherent way.<sup>334</sup> The demanding nature of the requirements can perhaps be explained by the fact that the authorship of the brochure was comprised of two habilitated doctors of history and three doctors of history. In any case, the problem with the preparatory brochure lied in the fact that the requirements were not formulated clearly, as the applicants did not know what exactly to expect and which questions (if not all) to prepare for.

#### 5.9.1 Recommendations on the Test of the Latvian History and Constitution

The High Commissioner addressed the issue on March 14, 1996, drawing in particular the attention of the Latvian Foreign Minister to the test of history and constitution:

A change is also desirable in the history and constitutional tests. Several of the questions which could potentially be asked in this field require a detailed knowledge of the history and constitution of Latvia. I would recommend a reduction of these requirements to the basic facts of Latvian history and the main elements of the constitutional system.<sup>335</sup>

Referring to the new book intended for the preparation of the applicants for the history and Constitution test, the Foreign Minister argued that the requirements did not exceed basic knowledge questions. He also referred to a new substantive book titled *The Basic Issues of Latvian History and the State Constitutional Principles*. This book, he argued, contained all the required information.<sup>336</sup> However, naturalisation statistics and social surveys taken at that stage implied that the naturalisation requirements prevented a large number of eligible candidates from applying for naturalisation. By May 1997, about 124,000 non-citizens aged 16-25 had the right to apply; however, only around 5,000 people were naturalised between February 1995 and May 1997 (including those eligible for extraordinary naturalisation).<sup>337</sup> Thus, only around 5 per cent of all eligible candidates were actually naturalised, which was a very low indicator. The High Commissioner wrote to the Latvian Foreign Minister once again on May 23, 1997, expressing his concern over the slow pace of naturalisation and citing data obtained by a survey carried out by the Naturalisation Board:

<sup>331</sup> Inķis (red.) / Naturalizācijas pārvalde 1995a.

<sup>332</sup> Inķis (red.) / Naturalizācijas pārvalde 1995b.

<sup>333</sup> For example: "The National Awakening of the Latvian nation:

Preconditions of the Awakening, purpose and activities of the New Latvians movement, the most prominent activists of the Awakening: K. Valdemārs, K. Barons, A. Kronvalds, J. Alunāns, A. Pumpurs and others" (op.cit, 10); "The Nationality Policy and Interethnic Relations of the Russian Empire: russification policy in schools and state institutions, "the Passport Law", the exit of the Latvian peasants to Russian counties; prohibition of printing in Latgale (1864)" (Ibid.), "imposing of the Communist ideology on spiritual life in the 40's and 50's (socialist realism in literature and art, censorship, ideologization of education" (Ibid., 14), "Threats to the survival of the Latvians and Livs," (Ibid., 15).

<sup>334</sup> Ibid.

<sup>335</sup> HCNM's letter to Birkavs, 14 March 1996.

<sup>336</sup> Birkavs's reply to HCNM, 22 April 1996.

<sup>337</sup> UNDP Latvia 1998b, p.54.

Clearly aware that, in order to acquire citizenship, they would have to pass [...] a test of their knowledge of the history and the Constitution of Latvia [...]; 40.8% stated that they were insufficiently acquainted with the history and the Constitution of Latvia; [...]

Regarding the tests on the history and the Constitution of Latvia, I recognise the solidity of the argument that a candidate for citizenship must show his willingness to integrate by acquainting himself or herself with some basic facts relating to these subjects. However, even taking into account the fact that the history test has recently been somewhat simplified and that a book has recently been published with the help of the Norwegian Government which can be of considerable help in preparing for these tests, I do feel that they have to be made much easier.

The argument has been used that of those who submitted themselves to these tests over 90% passed it successfully. But the high percentage I just quoted of those afraid that the test might be too difficult for them, and the fact that according to the Naturalisation Board 32% of those who did pass stated that they had certain difficulties in succeeding, are aspects which ought not to be overlooked. Reading the list of questions which can be asked, I wonder whether it is really necessary for candidates for citizenship to know what Swedish educational policy was like in Vidzeme in the seventeenth century, or which religion was supported in Latgale during the period of Polish reign, or which state officials hold the most merits for achieving diplomatic recognition of Latvia in the beginning of the twentieth century. Equally, I wonder about questions in the test on the Constitution like: from what age may a person be a candidate for the post of State President of Latvia?; on what occasions shall the Cabinet of Ministers resign?; are legitimate and illegitimate children equal in courts? I wonder whether many citizens of other European states, and perhaps of Latvia as well, would not have difficulties in answering such questions.<sup>338</sup>

The Foreign Minister's reply followed on September 11, 1997. He repeated his earlier arguments that the knowledge required was not excessive and was easy to obtain, reminding the HCNM that the test had been designed in collaboration with the Council of Europe and stressing that it had been recently simplified: "Initially, the applicants had to prepare 300 possible questions, which were unknown beforehand; now there are only 150 questions which have been published [...] Given all these simplifications, it is unlikely that the tests will be reformatted significantly."<sup>339</sup> He also pointed to the high number of successful applicants and to the readiness of the Naturalisation Board to continue optimising the tests.

As in the case of the language tests, the Council of Europe and the OSCE experts took an active part in the regular reviewing of the history and Constitution test, and were involved in the redesigning and restructuring of the test. They both considered the content of the test to be too broad and recommended to reduce it.<sup>340</sup> In 1997, a new information brochure was published by the Naturalisation Board.<sup>341</sup> The brochure contained separate lists of questions for the oral test (80 questions) and for the written test (150 questions). Sample tests and the description of the test procedures were also included. Thus, the brochure provided clear guidelines for the applicants and contained precise information on what could be expected.

Nevertheless, on April 17, 1998, the High Commissioner suggested further simplification of the history test in a press release that he issued in reaction to the government's conceptual agreement to initiate the process of introducing amendments to the Citizenship Law. His argument was that enhancing Latvian language training and further simplifying the history test would help to considerably increase the number of applications for Latvian citizenship. No direct response was made to this recommendation. The Naturalisation Board did, however, decide that the compiled list of questions would be changed every two years. The brochure issued in 1998 contained 64 questions for the oral test and 93 questions for the written test.<sup>342</sup>

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<sup>338</sup> HCNM's letter to Birkavs, 23 May 1997.

<sup>339</sup> Birkavs's reply to HCNM, 11 September 1997.

<sup>340</sup> Danga 1999, p. 4.

<sup>341</sup> Inķis (red.) / Naturalizācijas pārvalde 1997.

<sup>342</sup> Inķis (red.) / Naturalizācijas pārvalde 1998.

The Methodology Department of the Naturalisation Board reviewed the content of the tests in co-operation with the Council of Europe and the OSCE experts taking the following factors into account:

1. How essential is the issue in the history (or constitution) of Latvia?
2. What is the level of difficulty of the question?
3. How important is it for each citizen of the state to know about the issue?
4. Does the question arouse negative emotions in the applicant?<sup>343</sup>

Considering the changes that the history and Constitution test underwent since 1995, it becomes evident that significant improvement has been achieved. To summarise, applicants gained the opportunity to choose between the oral and the written version, multiple choice questions replaced the questions which required a written answer, the number of questions was lowered from over 300 to 93, and the questions were formulated clearly and published in advance. In addition, a book containing the answers to the questions was published, and efforts were taken to ensure a fair, lenient and uniform application throughout the country. The full or partial exemption from the history and constitution test applies to certain groups of disabled persons. Category I disabled persons are fully exempted from the test. Other facilitations are similar to those applied to the language test (see above).

It is, nevertheless, worth remembering that the High Commissioner had argued in his March 14, 1996 letter that "It is a well-known fact that elderly persons find it extremely difficult to acquire a basic knowledge of a language they were not familiar with previously" and recommended their exemption from the language test. Therefore, it is unclear why, while mentioning the language test, the High Commissioner did not consider that the test of history/constitution had to be taken in the Latvian language which makes the test especially difficult for the elderly. The High Commissioner's recommendations concerning the history/constitution test referred solely to the content/difficulty of the questions involved.

As to the difficulty of the current requirement, surveys show that many potential applicants still perceive it is as difficult. In 2000, 34 per cent of non-citizens considered it too difficult (as compared with 56 per cent in 1997) 34 per cent considered the history/constitutional requirements acceptable in 2000.<sup>344</sup> On the whole, the Naturalisation Board has done a great deal since 1995 to improve and simplify the test. In fact, it was apparently believed that the test had been made too easy, as a number of non-multiple choice questions were introduced in 2001.<sup>345</sup>

### *5.9.2 Assessment*

The role of the High Commissioner in the process of simplification of the history and Constitution test is clear. He influenced the process by repeatedly drawing the attention of the Latvian authorities to the difficulty of the test and to the necessity of its simplification. This effectiveness was enhanced by the close cooperation that took place between the Office of the High Commissioner and the members of the OSCE Mission to Latvia who were involved in assessing the tests, as well as with the Council of Europe experts who worked closely with the staff of the Naturalisation Board.

Evidence illustrates that there has been involvement from all sides, as well as an understanding of the problem on the part of the Naturalisation Board. Although the achievement of the final results (the actual simplification of the test that has taken place over the years) cannot be fully attributed to the High Commissioner alone, his involvement has, without doubt, played a major role. He was

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N.B.: The Latvian Constitution was supplied with the Human Rights section (that it did not contain previously) consisting of 27 articles on 15 October 1998. With that, the Constitutional Law on the Rights and Obligations of a Citizen and a Person lost its force (the Citizenship Law is yet to be amended accordingly).

<sup>343</sup> Danga 1999, p. 4.

<sup>344</sup> Latvijas Sociālo Zinātņu Institūts/Naturalizācijas Pārvalde 2001, p. 30.

<sup>345</sup> See, Dimitrov 2001b, *Minority Issues in Latvia*, No. 34.

particularly active in initiating and following up on the process of the simplification of the test, as well as in bringing it under the attention of the authorities at the highest levels.

It is important that the simplification of the history and Constitution test was formulated by the High Commissioner in the form of a clear-cut recommendation. In this form, it became one of the key OSCE recommendations and was almost universally supported. It was recognised as a standard and was continuously referred to by other international organisations (particularly the EU). As argued earlier, the implementation of the OSCE recommendations was practically made a condition for the favourable treatment of Latvia by the international community.

When the issue of what exactly constitutes an OSCE recommendations was debated in public in July 1998, causing some anxiety in Latvia as to whether further recommendations would be issued, the High Commissioner issued a press statement clarifying and reiterating the three main recommendations he had made. The simplification of the history and Constitution test was mentioned as one of them. The High Commissioner emphasised that his recommendations were contained in his letter to the Foreign Minister Valdis Birkavs of May 23, 1997, and dampened fears about possible new recommendations.<sup>346</sup> The fact that the High Commissioner invoked this recommendation in July 1998 implies that it had not been fully implemented by that time, and that measures would still have to be taken towards its implementation.

Nevertheless, after the favourable outcome of the National Referendum on October 3, 1998, the High Commissioner has not insisted on the further simplification of the naturalisation tests. The negotiations on bringing the new Law on the State Language to comply with Latvia's international obligations was the priority for the High Commissioner at that stage. Therefore, all citizenship and naturalisation-related issues were shifted into the background. Besides, addressing the citizenship field at that point in time could have endangered the process of consolidating the Language Law.

#### *5.10 Public Information on Naturalisation*

All throughout the course of his involvement in Latvia, the HCNM was concerned with the issue of informing the non-citizens about the provisions of the Citizenship Law and the naturalisation process. Already in his first recommendations that were submitted to the Latvian Government prior to the adoption of the Citizenship Law, the High Commissioner presented a vision of an information brochure that would explain the procedure and requirements, and that was meant for wide distribution among those who would be subject to naturalisation.<sup>347</sup>

In the recommendations that followed in December 1993, the HCNM once again stressed the need for providing adequate information on citizenship to the non-citizens, with the further objective of involving non-citizens in the legislative process, so that they could express their opinions regarding the decisions that would directly affect them.<sup>348</sup>

Ever since its creation, the Naturalisation Board has assumed the prime responsibility for informing the non-citizens of the naturalisation process and its requirements. Gradually, various kinds of informative materials were produced. In 1995 the Naturalisation Board published the first brochure, "The Citizenship of Latvia", the aim of which was to inform the applicants about the naturalisation procedure. In addition, at present various methodological and teaching aids have also been prepared by the Board. And finally, most printed materials published by the Board are now subject to annual revision.<sup>349</sup>

In 1995-1996, however, a great number of non-citizens still lacked information on naturalisation. The 1996 Naturalisation Board's survey showed that 24.1 per cent of the polled potential applicants

<sup>346</sup> M. van der Stūla paziņojums [Statement by M. van der Stoel], Diena, 18 July 1998.

<sup>347</sup> HCNM's letter to Andrejevs, 6 April 1993.

<sup>348</sup> HCNM's letter to Andrejevs, 10 December 1993.

<sup>349</sup> Information on the web page of the Naturalisation Board, under "Projects...", op.cit.

interested in naturalisation mentioned the lack of information as the reason for not applying.<sup>350</sup> In this connection, the HCNM applied for funds at the Foundation for Inter-Ethnic Relations in order to publish an informative brochure in Latvian as well as in Russian:

The Naturalisation Board informed me that there is still insufficient knowledge amongst non-citizens regarding the naturalisation process and the various procedures related to it. I have asked the Foundation on Inter-Ethnic Relations in The Hague to provide funds for production of an information brochure to be distributed amongst non-citizens. They have replied positively.<sup>351</sup>

The HCNM's initiative was welcomed by the Latvian Government. In his letter to the HCNM of December 1996, the Latvian Foreign Minister Birkavs stated that:

I would also like to thank you for your active involvement in the preparation of the information brochure on the naturalisation process. As knowledge regarding the naturalisation process has proved to be insufficient amongst persons eligible for naturalisation, I am sure that the brochure will serve to activate those who are interested in acquiring Latvian citizenship.<sup>352</sup>

The brochure was published in 1997. In addition, from July 1996 to July 1997 a series of ten TV broadcasts was prepared by the Naturalisation Board with the aim of acquainting the residents of Latvia with the norms of the Citizenship Law, the naturalisation process and its requirements. The Naturalisation Board also organised an essay competition among school students, called "On the Way to a Civil Society", in 1996-1997, the objective of which was to acquaint students with the questions of the history of Latvia, issues of citizenship, naturalisation and integration of society, as well as to develop their active attitude towards the processes taking place in society. The Naturalisation Board has also regularly carried out opinion polls on the questions of citizenship and naturalisation.<sup>353</sup>

In January 1999, the Naturalisation Board opened and staffed an Information Centre that contains a library and is entrusted with the task of providing information to the public on issues of citizenship, naturalisation and integration. The Centre prepares various informative materials, co-operates with mass media, and carries out a broad range of activities involving young people. In December 1999, the Naturalisation Board also began the implementation of a project, titled Integration of Society through Information and Education, which was aimed at providing the necessary equipment, software and financing for the preparation of informative materials.<sup>354</sup> In 1999, a bilingual teaching aid for the naturalisation test of Latvian history, constitution and national anthem was published in Latvian and Russian. A new brochure, Ten Questions about Integration of Society in Latvia, was published in May 2001 in Latvian, Russian and English.

The Programme for Informing the Residents of Latvia on Citizenship Issues was started in July 2001 and lasted until December 2001. The Programme was launched in co-operation with the UNDP Latvia, the OSCE Mission to Latvia and the Latvian Ministry of Justice. New materials on citizenship and naturalisation and meetings, discussions and other activities were organised in order to draw public attention to these issues. Furthermore, the Naturalisation Board has begun to issue a monthly bulletin called The Naturalisation Board News. 10,000 copies of this bulletin are published in Latvia and the project is financed by the EU PHARE Programme. The bulletin is distributed with the help of the regional branches of the Information Centre in local municipalities, schools and NGOs.<sup>355</sup>

The Russian-language press has also played a fundamentally important role in providing information on naturalisation to the general public. The process has been widely covered, for example, by

<sup>350</sup> Republic of Latvia Naturalisation Board 1997, p. 28.

<sup>351</sup> HCNM's letter to Birkavs, 28 October 1996.

<sup>352</sup> Birkavs's letter to HCNM, 24 December 1996.

<sup>353</sup> Information of the web page of the Naturalisation Board, under "Projects...", op.cit.

<sup>354</sup> Information available at the web page of the Naturalisation Board, under "The Information Centre of the Naturalisation Board", at: [http://www.np.gov.lv/index.php?en=info\\_en&saite=info\\_en.htm](http://www.np.gov.lv/index.php?en=info_en&saite=info_en.htm).

<sup>355</sup> Information available at the web page of the Naturalisation Board, at: <http://www.np.gov.lv/>.

the newspapers *Chas* and *Bizness i Baltija*. The legislative developments in the sphere of citizenship and naturalisation have also been closely followed by the press. The articles on the subject of naturalisation include personal accounts of the naturalised about the procedures and the tests, as well as journalists' opinions on the issue of naturalisation. Critical of many aspects of the citizenship legislation and the naturalisation procedure, the Russian-language newspapers have, nevertheless, invariably encouraged the non-citizens to naturalise in order to obtain political rights.<sup>356</sup>

Generally speaking, information on naturalisation became more accessible following the abolition of the "windows" system in 1998. The activity of the Naturalisation Board increased significantly following that decision. Foreign funds were also intensively used for the purposes of disseminating information on naturalisation. The Naturalisation Board now has adequate possibilities to inform the non-citizens properly about the naturalisation procedures and requirements, and the informative materials available are numerous. This is in line with what the HCNM recommended in 1993 and 1996.

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<sup>356</sup> For example, Kozakov 1997; Stroi 2001a.

## Chapter 6. The Law on the State Language

On December 9, 1999, the Latvian Parliament adopted the new State Language Law.<sup>357</sup> Eight months later, on August 22, 2000, the Cabinet of Ministers issued nine sets of language regulations that provided the specific guidelines for the implementation of the law.<sup>358</sup> The process of adopting the Law and the regulations that followed represents perhaps one of the longest and most complex examples of Latvian law-making in the post-independence period and offers an interesting example of the High Commissioner's and broader international involvement. In order to better grasp the essence of the new legislation, an overview of the language policy carried out shortly preceding as well as immediately following the restoration of Latvia's independence is required. Following that, the process of adopting the new Law on the State Language that lasted from 1994 until the end of 1999 and the HCNM's involvement in this process will be described without, however, going into the details of the content of the Law's provisions and the HCNM's recommendations. Further, the most controversial provisions of the Law and their modifications under the influence of the HCNM will be exemplified and conclusions as to the implementation of the HCNM's recommendations drawn.

### 6.1 Background

Linguistic controversies in Latvian society have been in place since the Supreme Council of the Latvian Soviet Socialist Republic (Latvian SSR) adopted its Resolution of October 6, 1988, declaring Latvian the only state (or official) language in Latvia.<sup>359</sup> This resulted in increasingly strict requirements for the use of the Latvian language and in restrictions on the use of the Russian language (a native language for over 36 per cent of the Latvian population<sup>360</sup>) in all spheres of life. It was considered necessary to strengthen the position of the Latvian language in Latvia as its role was seen as having been significantly weakened during the years of Soviet rule.<sup>361</sup> The policy of "asymmetric bilingualism" described earlier, had resulted in a situation where the overwhelming majority of the Latvians had excellent command of the Russian language, while only 22.3 per cent of the ethnic Russians, 18 per cent of the Belarusians and 9.8 per cent of the Ukrainians in Latvia had command of the Latvian language in 1989. Thus, in 1989, 62 per cent of the total population were fluent in Latvian while 81 per cent were fluent in Russian.<sup>362</sup>

Following heated debates both in the Supreme Council and in the mass media, the Law on Languages of the Latvian SSR that sought to regulate the use of languages in both public and private sphere, was adopted on May 5, 1989. It was to enter into force after three years, that is, on May 5, 1992, so that individuals, institutions, enterprises and organisations would be able to prepare for its implementation by, among other things, acquiring the Latvian language knowledge. Already prior to its adoption, the draft was heavily criticised by the Russophones, in spite of the fact that before its entry into force, the Law contained a number of provisions that preserved the rights of the Russian language in certain spheres (for example, in education), and guaranteed the right of citizens to language choice in their communication with state authorities. The preamble to the 1989 Law on Languages stated: "This Law takes into account that the Russian language is the most widely used language in the Latvian SSR after the Latvian language and is one of the languages of interethnic communication."<sup>363</sup> Allegations that the Law contradicted international human rights instruments were, nevertheless, often voiced by the Russophone community.<sup>364</sup>

<sup>357</sup> Published in *Latvijas Vēstnesis*, 12 December 1999.

<sup>358</sup> Published in *Latvijas Vēstnesis*, 29 August 2000.

<sup>359</sup> For an analysis of the developments of language legislation in Latvia, see Tsilevich and Antane 1999.

<sup>360</sup> 2000 Census data, at: <http://www.csb.lv/Satr/atsk2.htm>.

<sup>361</sup> Blinkena 1999, *Savu valodu savā tēvu zemē* [One's Own Language in One's Own Fatherland], in: *Latvijas Vēstnesis*, 5 May.

<sup>362</sup> Data of the 1989 Census cited by Tsilevich and Antane 1999, p. 108.

<sup>363</sup> The text of the Law was published in Russian in *Sovetskaja Molodezh*, 9 May, 1989.

<sup>364</sup> As, for example, in: Sokolov 1989, *Opravdat' doverie* [To live up to the Trust], *Sovetskaja Molodezh*, 5 April 5.



However, shortly before its entry into force that was to happen on March 31, 1992, the Law on Languages was significantly amended, making it much more restrictive with regard to the use of the Russian language and other languages.<sup>365</sup> It is important to note that while the initial text of the law was adopted when Latvia was still a part of the USSR, the 1992 amendments were introduced in the independent Republic of Latvia. The 1989 draft had allowed for bilingualism in some spheres; in contrast, the 1992 amendments attempted to eliminate all possibilities for bilingualism. The then director of the State Language Centre even went as far as to state that "[a] political recognition of bilingualism in the country would mean an official recognition of the end of the existence of the Latvian state."<sup>366</sup>

While the 1989 version of the Law on Languages contained clauses that made references to the Russian language, virtually all such clauses were removed before the law entered into force. Russian was now mentioned only in Article 8 which provided that "[t]he organs of state power are required to accept and examine documents from the residents of Latvia which are written in Latvian, English, German, or Russian." Language regulation was not restricted only to state institutions and public administration: Article 4 stipulated that all other institutions, enterprises and organisations must know and use the official State language and "other languages" to an extent established by a special Statute approved by the Council of Ministers.<sup>367</sup>

This provision had serious implications for those employees whose command of Latvian was insufficient as the Russian-speakers' knowledge of the Latvian language was to be tested on a wide scale (no tests of "other languages" were to be carried out).<sup>368</sup> It is important to note that during the three-year "preparation period," no financial support was provided by the government for the preparation of employees for the language tests. Also, regulations establishing the degrees of language knowledge required for various positions were not adopted before 1992, which aggravated the situation.

In February 1992, the State Language Centre of the Republic of Latvia that would, among other things, examine the command of Latvian among the non-Latvians was established. In August 1992 the State Language Inspectorate that formed part of the State Language Centre was set up in order to monitor compliance with the Law on Languages and to punish those who violated the provisions of the Law. The other institutions linked to the State Language Centre were the Head State Language Attestation Commission, the State Language Consultative Service, the Place Names Commission and the Latvian Language Experts Commission.

## 6.2 Language Examinations

The language skills of employees of institutions, enterprises and organisations in Latvia whose professional duties included contact with the general public or record-keeping, and who had not received education in the Latvian language, were to be examined. The Decree dealing with the examinations established three levels of language proficiency, dependent on the position or profession. The Ministries and the municipalities of the largest cities compiled lists of those positions and professions that were subject to language examinations, defining the necessary level of language proficiency for each position. In their turn, the directors of institutions, enterprises and organisations compiled the lists of those employees who had to undergo the examination. In 1992 and 1993, employees were examined in their respective institutions, enterprises or organisations. Later, however, permanent State Language Attestation Commissions (subject to the Head State Language Attestation Commission) were created and attached to the municipalities of 40 cities and districts. A

<sup>365</sup> Amendments were officially published on 16 April 1992.

<sup>366</sup> Hirša, Dzintra, director of the State Language Centre 1999, Valodu likumi Latvijā pēdējā desmitgadē [Language Law in Latvia in the Last Decade], in: Latvijas Vēstnesis, 5 May, 1999.

<sup>367</sup> Law of the Republic of Latvia on Languages of May 5, 1989 (amended March 31, 1992), Art. 4.

<sup>368</sup> The legal basis for the language examinations was the Decree on the State Language Knowledge Attestation adopted by decision of the Council of Ministers (predecessor of the Cabinet of Ministers), No. 189 of 25 May 1992.

fee for taking the examinations was also introduced. In total, between 1992 and 1998, 440,000 persons underwent language examinations.<sup>369</sup>

During the early years of the language examinations, there were no uniform standards on testing language knowledge and its correspondence to the three proficiency levels. The individuals' professional future was often in the hands of the language commission members, who could either "pass" or "fail" the examinees, or, at times, issue a verdict that the knowledge corresponded only to the level lower than required for the specific position. It was claimed that the permanent commissions were more effective. However, it was both argued that the commissions were too lenient towards their examinees,<sup>370</sup> and that commission members were interested in failing employees. It was also voiced that corrupted commission members accepted bribes in exchange for a language certificate of the required proficiency level.<sup>371</sup> On the one hand, many Russophones were convinced that dismissals were often based on ethnicity, and that insufficient language proficiency was used as a justification.<sup>372</sup> On the other hand, some Latvians believed that Russian-speaking employers were discriminating against Latvians.<sup>373</sup>

No comprehensive data exist on ethnic discrimination in personnel cuts of the early 1990s that accompanied the virtual collapse of Latvia's economy. The political aim of the language examinations, however, was clear. One of the key promoters of the language policy, MP Dzintars Ābiķis (who heads the Parliamentary Standing Committee for Education, Culture and Science), openly stated in May 1992 that the aim of language examinations was not simply to examine the level of knowledge, but "to apply pressure [...] and to achieve that only the people who know the state language will be allowed to take the leading positions."<sup>374</sup> Following this line of argumentation, and considering the general low level of the Latvian language proficiency among the Russophones in the early 1990s, it can be argued that the policy was directed at the squeezing out of non-Latvians from the labour market and securing the jobs for ethnic Latvians.

### 6.3 Language and Schools

One special category subjected to the heightened attention of the State Language Centre and the State Language Inspectorate (see below) has been the teachers of the Russian-language schools. They have been seen as the carriers of Soviet, and later Russian state ideology,<sup>375</sup> and it was determined that their knowledge of the Latvian language must correspond to the highest level (level three). The Ministry of Education and Science prolonged the deadline of the teachers' examination several times, until the final deadline was set for June 1, 1999. After that, many of those teachers whose knowledge of Latvian did not correspond to the highest level were dismissed. Hundreds of teachers were also claimed to have presented fake certificates, and decisions to dismiss them were taken.<sup>376</sup>

The political dimension of examining the teachers of the Russian-language schools requiring that their Latvian language proficiency correspond to the highest level is also rather obvious. As the director of the State Language Centre Dzintra Hirša expressed it, "[i]n Russian schools they taught different subjects, often history. [...] These people are teaching mostly Russian history and also

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<sup>369</sup> Piese and Zuicena 1999, Valsts valodas atestācija un Valodu likums [The State Language Attestation and the Law on Languages], in: *Latvijas Vēstnesis*, 5 May.

<sup>370</sup> Ibid.

<sup>371</sup> Jazik v konverte [Language in an Envelope], in: *SM Segodnja*, 19 February 1993.

<sup>372</sup> Gavrilov 1993, O jazyke, nauke i dostoinstve [On Language, Science and Dignity], in: *SM Segodnja*, 23 February 1993.

<sup>373</sup> Birzgalis, Māris, head of the State Language Inspectorate of the Republic of Latvia, Valsts valodas inspekcija un tās septiņi gadi [The State Language Inspectorate and Its Seven Years], in: *Latvijas Vēstnesis*, 5 May 1999.

<sup>374</sup> Quoted in: Jagodkina 1992, Valodas prasmes atestācija sākas šodien [Testing of the State Language Begins Today], in: *Diena*, 12 May.

<sup>375</sup> See, Hirša 1999, op.cit.

<sup>376</sup> Nagle 1999b, Negodīgos skolotājus brīdinās par atlaišanu no darba [Dishonest Teachers will be Warned of Dismissal], in: *Diena*, 15 June 1999.

Russian state ideology. This and also other factors presently make us choose a new educational model."<sup>377</sup>

The general lack of teachers in the schools of Latvia, irrespective of the language of instruction, may partly explain why the state has not chosen to abruptly eliminate all Russian-language schools. Another explanation has been offered by Dzintars Ābiķis. He has repeatedly explained that the transfer of education into Latvian entirely would create a situation where Latvian and Russian children would mix extensively – something that is considered undesirable.<sup>378</sup> As a result of the reform of education, however, Latvian is to become the dominant language of instruction in what is now referred to as "minority schools".

#### 6.4 The State Language Inspectorate

The State Language Inspectorate was established in accordance with the Decision of the Council of Ministers of the Republic of Latvia No. 282 of July 22, 1992. The institution is composed of 18 language inspectors and is also supported by some 300 volunteer language inspectors, some 30 of whom are working actively.<sup>379</sup> Some municipalities, such as the Riga City Council, have established their own Language Inspectorates, financing them from the municipal budget. The task of the Inspectorate is to monitor compliance with the provisions of the language legislation. The language inspectors may check whether the employees of an enterprise or organisation possess language certificates of the required level. Until November 2001 the inspectors also had the right, even in the cases when a certificate is presented, to verify if the employees' knowledge of Latvian indeed corresponded to the level indicated in the certificate by holding spontaneous examinations on the spot. The inspectors have the right to impose considerable fines for the violation of the language legislation.<sup>380</sup> Their tasks also include control over the language of record-keeping, in public events, in public information (e.g., street signs, billboards, posters, etc.).

The activities of language inspectors have been surrounded by numerous controversies. Their reputation has been that of holding particularly radical nationalist views and practicing degrading treatment of their examinees. Several court cases have been connected with their activities, including two cases where Russian-speaking electoral candidates were struck off the electoral lists on grounds the alleged insufficient state language proficiency and thus prevented from participating in the elections. In 2001, the plaintiff Ms. Ignatāne won her case in the UN Human Rights Commission. Later, Ms. Podkolzina won her case in the European Court of Human Rights. As a result, legislation was amended not to allow language inspectors to hold spontaneous examinations on the spot. Language requirements for electoral candidates were also formally dropped.

In 1998, the Saeima passed amendments to the Labour Code that, among other things, gave the language inspectors the power to demand dismissal of employees (including those of private companies) whose command of the state language was, in the opinion of the inspector, insufficient, regardless of whether the employees possessed valid language knowledge certificates.<sup>381</sup> Russian-language newspapers appealed to President Guntis Ulmanis not to endorse the amendments.<sup>382</sup> The HCNM also addressed this issue in a letter to President Ulmanis on February 10, 1998. The High Commissioner stated that the new provisions violated the freedom of expression and association, and also raised questions about economic liberty and discrimination in employment. Following this

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<sup>377</sup> Hirša 1999, op.cit.

<sup>378</sup> See, for example, parliamentary debate on 8 October 1998 (third reading of the Law on the State Language in the sixth Saeima).

<sup>379</sup> Birzgalis 1999, op.cit.

<sup>380</sup> According to the State Language Inspectorate, between 1992 and 1998, 1,314 persons were found to hold fake language certificates. Usually 50 Ls (around 80 USD) were collected from each of these persons as fines. (Ločmele and Egle 1999, *Diena*, 2 February 1999).

<sup>381</sup> Egle 1998, *Stingrākas prasības valsts valodas nezinātājiem* [Stricter Requirements for those who do not Know the Language], in: *Diena*, 6 February.

<sup>382</sup> Ločmele 1998, *Aicina prezidentu neizsludināt grozījumus Darba likumu kodeksā*, [President Asked not to Promulgate Amendments to the Labour Code], in: *Diena*, 10 February.

recommendation, the President did not sign the law, but sent it back to Parliament for reconsideration.<sup>383</sup>

### *6.5 The Adoption Process of the New State Language Law, 1994-1999*

In 1994, upon the request of several deputies from the nationalist factions, the employees of the State Language Centre, in co-operation with the Latvian Language Experts Commission, drafted a new State Language Law. The Law aimed at more extensive language regulation in the private sphere. As argued by one of the authors of the draft,

[o]f course, people are learning the language, because they must know it for holding a certain position or for practising a certain profession. But at this moment, when we have moved from a state-run economy to a market economy, those who do not know the language can find a wonderful refuge in enterprises. That is why the task of the state is right now to protect the state language in private enterprises.<sup>384</sup>

The new draft State Language Law was handed to the Ministry of Justice as early as October 1994, approved by the Cabinet of Ministers on November 21, 1995, and subsequently handed to the Saeima for consideration. On June 5, 1997, the draft, with some amendments, was adopted in the first reading by the Saeima. In September 1997, an official opinion of the OSCE and CoE experts on the draft was forwarded to the Latvian authorities. It was stated that the draft "proposes a regime of regulation which in large measure contradicts internationally protected fundamental human rights, in particular with regard to freedom of expression, freedom of association, freedom of religion, the right to privacy, freedom from discrimination, and the rights of persons belonging to minorities."<sup>385</sup>

On October 29-30, 1997, the High Commissioner visited Latvia and discussed the content of the draft with the head of the Saeima Committee on Education, Culture and Science, Dzintars Ābiķis.<sup>386</sup> Around that time, the Ambassadors of the EU member States to Latvia also expressed their concern over the draft to the responsible Committee. On 10 November, 1997, the HCNM addressed Latvian President Guntis Ulmanis in connection with the draft. The HCNM stated that "the relevant provisions of the draft Law should be harmonised with the relevant provisions of international instruments, in particular the Council of Europe's Framework Convention."<sup>387</sup> The draft State Language Law was also commented upon by the Secretary General of the Council of Europe, Daniel Tarschys, who sent a letter to the Speaker of the Saeima Alfreds Čepānis on February 17, 1998.

#### *6.5.1 The Second Reading of the Draft Law, March 1998*

The second reading of the draft was scheduled for March 12, 1998. However, it was only three days prior to that date, on March 9, 1998, that the Chairman of the Saeima Committee on Education, Culture and Science, Dzintars Ābiķis, sent the draft version prepared for the second reading to the High Commissioner for comments. The Latvian press reported that the High Commissioner attempted to convince the Saeima not to go ahead with the consideration of the draft in the second reading.<sup>388</sup> On March 10, 1998, the Secretary General of the Council of Europe, Daniel Tarschys, also sent a letter to the Latvian Saeima concerning the draft. He proposed that the Council of Europe experts would visit Latvia between March 23 and 26, 1998, in order to discuss the draft with the responsible Parliamentary Standing Committee. Furthering these recommendations, several foreign ambassadors accredited in Latvia, notably those of the United States and the United

<sup>383</sup> See Kemp (ed.) 2001, *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*, p. 159.

<sup>384</sup> Hirša 1999, op.cit.

<sup>385</sup> Tsilevich 1998d.

<sup>386</sup> Trubnikov 1997, *Biznes I Baltija*, 30 October.

<sup>387</sup> Kemp 2001, p. 159.

<sup>388</sup> Kozakov 1998e, in: *Chas*, 13 March, 1998.

Kingdom (EU presiding country at the time) asked the Saeima "not to bring forward the proposed amendments for second reading until the comments of international experts have been received and considered by all involved parties."<sup>389</sup> Co-ordination with the HCNM in these cases is rather evident.

This extensive foreign diplomatic interference was undertaken at the time of an escalating crisis in the Latvian-Russian relations that followed the events of March 3, 1998 described above. The tension was triggered when Latvian police dispersed a mostly Russian-speaking pensioners' picket against the high utility rates near the Riga City Council. It appears rather probable that the second reading by the Saeima of one of the most sensitive and heavily politicised laws – the State Language Law – in the midst of these events would have further aggravated the crisis, especially on the eve of the planned Latvian Waffen SS Legion's veterans' march through the streets of Riga. The result was that the Saeima followed the international advice and postponed the second reading of the draft State Language Law, setting a new date for April 2, 1998.

#### *6.5.2 The High Commissioner's Involvement, March-April 1998*

On March 17, 1998 the High Commissioner sent a letter with general comments on the draft Law to the Chairman of the Saeima Committee on Education, Culture and Science, Dzintars Ābiķis. The High Commissioner claimed that the draft contradicted a number of international human rights instruments to which Latvia is a party. He reiterated this in a letter that he sent a week later, on March 23, 1998, analysing in detail the compatibility of the draft with Latvia's international obligations and commitments. In this letter, he reiterated that it was the sovereign right of the Republic of Latvia to prescribe the use of language in relation to matters of legitimate public interest. "However", he noted, "there are limits on what may be required and/or prohibited in relation to the use of language insofar as individual human rights are concerned, including the rights of persons belonging to national minorities, which should also be considered in relation to the wider language policy of the State."<sup>390</sup> The HCNM found that 19 Articles of the draft were problematic from the point of view of their compatibility with Latvia's international obligations.

A week following his letter, the High Commissioner paid a visit to Latvia between March 31 and April 2, 1998. It appears that during this visit the Prime Minister and the government of Latvia were put under serious pressure by the High Commissioner. He effectively used the crisis situation in the Latvian-Russian relations for advocating his position on citizenship and language issues to the Latvian authorities, and secured the political support of other important international actors. During his visit, the High Commissioner met with, among others, President Guntis Ulmanis, Russian Ambassador Aleksandr Udaltsov, Chairman of the Saeima, Alfreds Čepānis, and Chairman of the Saeima Committee on Education, Culture and Science, Dzintars Ābiķis. As reported by the press, van der Stoep warned the Latvian officials of the prospects of Latvia's international isolation in the case that it ignored the recommendations of European organisations on citizenship and language issues.<sup>391</sup>

Following the High Commissioner's visit, the Latvian MFA immediately issued a statement on April 3, 1998, in which the following reference was made to the language policy:

In terms of language legislation, Latvia demonstrated maximum transparency by inviting the OSCE High Commissioner to send experts to work with the Parliament on finding an optimal approach to the draft language law before a third reading in the late summer. International expertise would also be applied to draft amendments to the labour code.<sup>392</sup>

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<sup>389</sup> British Embassy - Riga. Letter to the Chairman of the Saeima Committee on Education, Culture and Science Dzintars Ābiķis from the Ambassador Extraordinary and Plenipotentiary of the United Kingdom to the Republic of Latvia HM N.R. Jarrold, Riga, March 11, 1998.

<sup>390</sup> HCNM's letter to Ābiķis, 23 March 1998 (unpublished).

<sup>391</sup> Feldmane 1998, Stul vrazumljaet deputatov [Stoel is Educating the Deputies], in: Biznes I Baltija, 4 April.

<sup>392</sup> Latvian MFA Announcement of 3 April 1998.

Another visit by the High Commissioner to Latvia took place on April 15-17, 1998, following the provocative explosions in the Riga Synagogue on April 3, 1998, and near the Russian Embassy on April 5, 1998. The explosions stirred strong emotions in the Latvian society and contributed to the increased mutual mistrust between Latvia and Russia. In the meanwhile, the second reading of the State Language Law was once again postponed until April 23, 1998.

#### *6.5.3 The Second Reading of the Draft Law, April 1998 and the HCNM, August – September 1998*

In spite of the international involvement and the recommendations issued to the draft by the High Commissioner, the version of the Law adopted in the second reading was essentially the same as the one proposed by the responsible Committee on Education, Culture and Science. The key recommendation of the High Commissioner, that is, that the Law should not regulate the use of language in the private sphere, i.e. in private enterprises, companies and organisations and for self-employed persons, was ignored.

The spring and summer of 1998 were marked by a lively public discussion of the envisaged amendments to the Citizenship Law and the role of the High Commissioner and other international actors in this process (see section on the abolition of the "windows" system). The readings of the amendments took place on May 20, June 4, and June 22, 1998. Adopted by the Saeima on June 22, 1998, the amendments were not endorsed due to the efforts of Fatherland and Freedom/MNIL that succeeded in initiating a collection of signatures against the amendments with the objective of passing the issue to a national referendum. Despite the international efforts to influence the pace and the outcome of the adoption of the amendments by the Saeima, the nationalists' initiative took the upper hand, and the destiny of the amendments to the Citizenship Law was to be decided by the referendum that was to be held on the day of the parliamentary elections, on October 3, 1998. Strong emotions were stirred in society by these developments, and the questions of citizenship as well as other issues relating to the position of the Russophones in Latvia were further politicised on the eve of the parliamentary elections. International interference was increasingly perceived as unnecessary outside pressure.

In the midst of the nationalists' signature-collecting campaign against the citizenship amendments, the High Commissioner paid his 13<sup>th</sup> visit to Latvia, together with a team of experts, in order to discuss the provisions of the draft State Language Law and the draft Law on Education that was being deliberated in the Saeima.<sup>393</sup> Prior to the consultations with the experts, Dzintars Ābiķis told the press that his Parliamentary Committee for Education, Culture and Science was not prepared to follow the OSCE recommendations, as the special conditions in Latvia justified language regulation in the private sphere and the European norms of language legislation were not suitable for Latvia.<sup>394</sup> Following the consultations, it was reported that the OSCE experts accepted Dzintars Ābiķis's arguments and did not insist on their position not to regulate language use in the private sphere.<sup>395</sup>

The draft State Language Law was prepared for the third reading in late September. After having got acquainted with the draft, the High Commissioner wrote a letter to Dzintars Ābiķis dated September 23, 1998, in which he noted with satisfaction that a number of his recommendations had been taken into account. However, the High Commissioner still found inconsistencies with international norms in the draft and made comments to 12 Articles of the draft Law.<sup>396</sup>

#### *6.5.4 The Third Reading of the Draft Law, September-October 1998*

In an attempt to push the law through before the elections, the third and final reading of the draft was to be held at an extraordinary session of the Saeima on September 28, 1998. However, due to a

<sup>393</sup> Ocherednoe javlenie gospodina Stula [Another Appearance of Mr. Stoel], in: *Biznes I Baltija*, 20 August 1998.

<sup>394</sup> Pommere 1998, *Evropa nam ne ukaz* [Europe is No Law for us], in: *Biznes I Baltija*, 26 August.

<sup>395</sup> Kozakov 1998b, *Gosjazik: Evropa ustupila* [The State Language: Europe has Retreated], in: *Chas*, 27 August.

<sup>396</sup> HCNM's letter to Ābiķis, 23 September 1998 (unpublished).

lack of quorum, the reading was only held on October 8, 1998. By this time, the outcome of the referendum on citizenship had already become known.<sup>397</sup> Several nationalist deputies accused Dzintars Ābiķis and his Committee of having made impermissible concessions to the OSCE experts and succeeded in getting the Saeima's support for much more restrictive provisions than proposed by Ābiķis's Committee. The debate in the third reading resulted in a dead-end<sup>398</sup> and, having lost control over the situation, Dzintars Ābiķis interrupted the session, announcing that the draft Law would be sent back to the Committee for further consideration. To Ābiķis's great disappointment, the Law on the State Language was, thus, not adopted by the sixth Saeima, and its consideration had to be resumed by the new parliament – the seventh Saeima. Dzintars Ābiķis's Committee did, however, manage to push through the new Law on Education before the end of the work of the sixth Saeima. It was hastily adopted by the outgoing parliament on October 29, 1998. The new educational model for minorities that was first planned to be included in the State Language Law and that was strongly opposed by the Russophone minority<sup>399</sup> was moved into the Law on Education.

#### 6.5.5 *The Draft Law in the Seventh Saeima and the HCNM*

On November 27, 1998 the new government was finally approved. Vilis Krištopans (Latvia's Way) became Prime Minister. Fatherland and Freedom/MNIL once again joined the ruling coalition that also included Latvia's Way and the New Party. On December 12, 1998, the seventh Saeima adopted the Draft State Language Law in the first reading. The draft wording of the version adopted in the second reading by the previous parliament was taken as the basis for further deliberations.

The High Commissioner visited Latvia for the 14<sup>th</sup> time between January 10 and 13, 1999. The main objective of the visit was for the High Commissioner to become acquainted with the representatives of the new Latvian government. It was reported that during his visit, the High Commissioner once again discussed the provisions of the draft State Language Law with Dzintars Ābiķis and the members of the Saeima Committee on Education, Culture and Science, as well as with the Committee for Human Rights and Social Affairs. During these meetings, van der Stoel noted that the draft Law that was prepared for the third reading in the sixth Saeima, but that had not been passed, had been close to meeting some of his recommendations. In the situation where the draft as adopted in the second reading by the sixth Saeima was now taken as the basis for further deliberations, the High Commissioner asked Dzintars Ābiķis to allow the OSCE experts to participate in the sessions of the Committee on Education, Culture and Science. Ābiķis, however, rejected this suggestion, stating that only an adopted draft would be passed to the High Commissioner's office for comments.<sup>400</sup>

#### 6.5.6 *The Second Reading of the Draft Law in the Seventh Saeima, March 1999*

On the day that the State Language Law was scheduled for, on March 18, 1999, an article by van der Stoel, titled Local Language Laws vs. International Obligations, appeared in *The Baltic Times*. In his article, the High Commissioner touched upon the importance of providing effective state language training for minorities in Estonia and Latvia, and quoted a number of sociological surveys that showed the willingness of the Russian-speakers to master the state language. He also pointed to his efforts of raising funds for the language-teaching programmes in the two countries. While recognising that the position of the Estonian and Latvian languages was weakened during the Soviet years, the High Commissioner argued for the necessity to observe international norms when draft-

<sup>397</sup> Although the results of the Parliamentary elections had been announced, the previous Saeima's deputies continued working for a month after the elections in accordance with the Latvian Constitution.

<sup>398</sup> Parliamentary debates of 8 October 1998.

<sup>399</sup> For example, in April 1999, 7,176 signatures were collected in two weeks under a petition addressed to President Ulmanis. It was argued that particularly the provisions regarding education were unacceptable to the Russian linguistic minority. (Grinberga 1999, Valodas likums sašķēļ daugavpīliešus [Language Law Splits the People of Daugavpils], in: *Diena*, 24 April).

<sup>400</sup> Rutka 1999, in: *Rīgas Balss*, 12 January 1999.

ing language legislation, and specifically stressed that international obligations stood in the way of imposing language requirements on parliamentary and municipal candidates.<sup>401</sup>

The Saeima adopted the draft State Language Law without much debate in the second reading, based upon the suggested version of the Standing Committee on Education, Culture and Science. The draft was adopted with 47 votes for, 21 against and eight abstentions. After the draft had been voted upon, the faction For Human Rights in the United Latvia argued that:

The very concept of the law is incorrect [...] The draft State Language Law does not take into account the OSCE Commissioner's recommendations that advise not to interfere into the private sphere if this is not related to state security and consumer interests....We consider that the adoption of the State Language Law in its present form will not promote the integration of our society, but rather forced assimilation, and that it will have a negative impact on both the present and the future of Latvia.<sup>402</sup>

#### 6.5.7 The High Commissioner's Involvement, March-July 1999

The High Commissioner reacted to the adoption of the draft State Language Law by sending letters to the Latvian Minister of Foreign Affairs, Valdis Birkavs, on March 22, 1999, and to the Chairman of the Saeima Committee on Education, Culture and Science, Dzintars Ābiķis. In his letter to Ābiķis dated March 23, 1999, he concentrated on the contradictions of the Law with international law, stating that "the current text of the draft Law strongly implies a quite restrictive understanding of the private sphere, which means that the draft, if adopted, would have many inconsistencies with applicable international law."<sup>403</sup> In a letter to Dzintars Ābiķis dated April 16, 1999 referred to by the newspaper *Biznes I Baltija* as a "bomb in an envelope" (April 19, 1999), he once again emphasised that the current draft Law would, in several respects, "violate the freedoms of expression, association and assembly, the right to privacy (including correspondence), the norms of international labour law, and the freedom of choice in private enterprise."<sup>404</sup>

The HCNM again noted that the wording of the draft prepared by the Committee on Education, Culture and Science for the third reading in the sixth Saeima came close to achieving the acceptable balance between promoting and protecting the Latvian language on the one hand, and bringing the text of the law into compliance with international norms on the other. In an unprecedented move, the High Commissioner went as far as attaching a whole alternative draft of the Law on the State Language to his letter of April 16, 1999. This was done in order to assist Ābiķis's Committee in the drafting process "taking into account the current state of the legislative process." The High Commissioner made such changes to the various provisions of the draft as to bring the text into compliance with the applicable international standards. The text closely resembled the version forwarded by Ābiķis's Committee to the sixth Saeima for the final reading that, however, had failed.

The arguments presented by the HCNM in his April 16, 1999 letter were as powerful as ever. Besides, the High Commissioner for the first time also included an EU-related argument: "[I] believe there would be serious negative implications for Latvia in terms of attracting foreign investment, creating local conditions friendly towards business development, and, eventually, also in terms of accession to the European Union which has specific requirements relating to the effective functioning of the single market."<sup>405</sup>

Shortly after, in early May 1999, the Saeima Committee on European Affairs received an unofficial Opinion of the European Commission concerning the draft State Language Law. The Opinion was discussed at the closed session of the Committee on May 3, 1999. The Latvian press reported that the Opinion contained an analysis of the compliance of the draft State Language Law with Latvia's international obligations by which it bound itself by becoming an associated EU member. It was

<sup>401</sup> Van der Stoep 1999, 'Local Language Laws vs. International Obligations, The Baltic Times, 18 March.

<sup>402</sup> Parliamentary debates of 18 March 1999.

<sup>403</sup> HCNM's letter to Ābiķis, 23 March 23 1999 (unpublished).

<sup>404</sup> HCNM's letter to Ābiķis, 16 April 1999.

<sup>405</sup> Ibid.



described by the newspaper *Diena* as being "rather critical and pointing to the draft Law contradicting Latvia's international obligations."<sup>406</sup> It was later reported that the Opinion pointed to the bureaucratic barriers the State Language Law would create for private enterprises. Language regulation in the private sphere would limit the opportunities for the EU member states and EU citizens to work in Latvia, which is not in line with the Europe Agreement.<sup>407</sup>

In May, two visits of OSCE representatives to Latvia took place. On May 4 and 5, 1999, the OSCE experts from the HCNM's Office discussed the draft with Dzintars Ābiķis's Committee. A letter from the High Commissioner to Dzintars Ābiķis followed on May 14, 1999, in which he yet again argued for the necessity to limit state regulation of language usage in the private sphere – the point he had been making since 1997. This time he recommended that eight Articles of the draft be re-drafted.

On May 24 and 25, 1999, the High Commissioner came to Latvia himself in order to discuss the draft State Language Law with Dzintars Ābiķis. As Ābiķis reported to the press following those discussions, the High Commissioner had not said anything essentially new. It appears that for Ābiķis, van der Stoel's visits had become a routine that he had learned to deal with. Ābiķis saw such visits as more educative for the HCNM himself than for the Latvian legislators. Reporting to the journalists, Ābiķis said that he perceived the HCNM's visits as "very positive", as "Van der Stoel talks to the politicians, gets informed of the situation in the country and after that, as a rule, Latvia receives shorter and more constructive recommendations from him."<sup>408</sup>

Curiously, it was reported that on the eve of Max van der Stoel's visit, the EU Foreign Affairs Commissioner Hans van der Broek sent a letter to the Latvian Foreign Minister Valdis Birkavs criticising the draft State Language Law. According to the Press Centre of the Latvian Foreign Ministry, van der Broek stressed that several provisions of the draft State Language Law contradicted the Europe Agreement and expressed the hope that in the final reading these drawbacks would be removed.<sup>409</sup> Another important coincidence relates to the fact that van der Stoel's visit of May 24-25, 1999, almost coincided with the release of the Information Report of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe on the Honouring of Obligations and Commitments by Latvia that contained sharp criticism of the draft Language Law.<sup>410</sup> Thus, the international resonance to the draft language Law as well as international pressure to amend it was indeed high, in spite of Ābiķis's attempts to play down the significance of the HCNM's involvement.

The HCNM suggested that the Saeima postpone the consideration of the draft in the third reading until after the summer break. Dzintars Ābiķis's Committee shared this opinion. However, the Saeima deputies from For Fatherland and Freedom/MNIL, the Social Democrats and the People's Party favoured a speedy adoption of the strict State Language Law. An extraordinary session of the Saeima was summoned on June 16, 1999, upon the request of 36 deputies, at which it was decided to consider the law in the third reading on July 8, 1999.

Several attempts were made by the HCNM and by high-ranking EU representatives to convince the Latvian Saeima to reverse this decision and to postpone the reading. The Latvian Foreign Minister Valdis Birkavs was, reportedly, warned of the negative consequences the adoption of the State Language Law in the then suggested wording would have upon the Regular Report from the European Commission on Latvia's Progress Towards Accession due in the fall of 1999, which would be the basis for the December Helsinki European Council decision on Latvia's invitation to start EU

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<sup>406</sup> Ločmele 1999b, Eiropas Komisija norāda uz valodas likuma trūkumiem [The European Commission Points to the Faults of the Language Law], in: *Diena*, 4 May.

<sup>407</sup> Nellija Ločmele, Komisāri raizējas par valodas likuma normām [Commissioners Concerned over the Norms of the Language Law], in: *Diena*, May 25, 1999.

<sup>408</sup> Edgars Orlovs, Sūls atbraucis parunāties [Stoel Came to Talk], in: *Rīgas Balss*, May 25, 1999.

<sup>409</sup> Ločmele 1999c, in: *Diena*, 25 May 1999.

<sup>410</sup> The Report is available at:  
<http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FWorkingDocs%2FDoc99%2FEDOC8426.htm>.

accession negotiations.<sup>411</sup> This argument was enhanced by statements made by the Danish Foreign Minister, Niels Helveg Petersen,<sup>412</sup> and the Ambassador of Finland to Latvia, Hannu Hamalainen.<sup>413</sup> This meant an even greater pressure on the Latvian government, as critical statements were voiced by the historical supporters of the Baltic cause – the Nordic countries that had consistently afforded both their political and economic support to Latvia on its way of preparing for the EU accession negotiations. Such pressure pointed to the utmost importance attached by the EU members to the issue of Latvia's legislation violating international human rights norms. On July 2, 1999, both van der Stoep and Hans van der Broek sent letters to the leaders of the parties represented in the Latvian Saeima asking them not to adopt the State Language Law, but to return it to the responsible standing Committee on Education, Culture and Science for further consideration together with the EU, OSCE and CoE experts. All evidence points to the close coordination of diplomatic activities among the international actors coordinated, quite probably, by the HCNM.

#### 6.5.8 *The Third Reading of the State Language Law, July 8, 1999*

In spite of the requests and warnings of the international community, the Latvian Saeima went ahead with the third reading on July 8, 1999. The decision to do so was not unanimous, as the deputies from the For Human Rights in the United Latvia faction, for one, proposed that the law be returned to the responsible Committee, noting in particular "the comments of the European Union and the OSCE regarding the incompatibility of this draft Law with Latvia's international commitments."<sup>414</sup> In the context of a governmental crisis (the Prime Minister had resigned on July 6, 1999) and with several hundreds Russian-speakers protesting near the Saeima building, the State Language Law was adopted with 73 deputies voting for,<sup>415</sup> 16 against<sup>416</sup> and eight abstaining.<sup>417</sup> The date of the adoption of the State Language Law coincided with the inauguration of the newly-elected President, Vaira Vīķe-Freiberga.

#### 6.6 *Reactions to the Adoption of the Law*

As might have been expected, sharp criticism of the international community as well as an indignant reaction from the Russian Federation followed the adoption of the law. Latvian President Vīķe-Freiberga had one week to decide whether to promulgate the law or to return it to the Saeima for reconsideration. A number of international officials appealed to the President not to promulgate the law.

The reaction from the Russian Federation came within hours after the law had been adopted, noting that the law bears an openly discriminatory character towards the national minorities. A number of articles criticising the law also appeared in foreign newspapers, such as *The Financial Times*, the German *Berliner Morgenpost* and the *Handelsblatt*, the Dutch *Metro* and the Swedish *Dagens Industri*.<sup>418</sup> The Head of the OSCE Mission to Latvia, David Johnson, also responded critically, stating that "the adopted law is worse than the draft prepared for the final reading."<sup>419</sup> The question of the law's compatibility with the Latvian Constitution was raised by Nils Muižnieks (Director of the Latvian Centre for Human Rights and Ethnic Studies). The Latvian President was approached by 19 non-governmental organisations (among them several minority cultural societies) that signed a peti-

<sup>411</sup> Plāmše and Ločmele 1999, in: Diena, 30 June.

<sup>412</sup> Pommere 1999, Zapad preduprezhdaet [The West is Warning], in: Biznes I Baltija, 5 July.

<sup>413</sup> Lāse, Prokopova and Plāmše 1999, Diplomāti: Valodas likums var kļūt par šķērslī sarunām ar ES [Diplomats: the Language Law May Become an Obstacle for Negotiations with the EU], in: Diena, 3 July.

<sup>414</sup> Parliamentary debates of 8 July 1999.

<sup>415</sup> For Fatherland and Freedom/MNIL, Latvia's Way, the Social Democrats, the People's Party.

<sup>416</sup> For Human Rights in the United Latvia.

<sup>417</sup> The New Party.

<sup>418</sup> Kazakov 1999, in: Biznes I Baltija, 10 July.

<sup>419</sup> Ločmele 1999d, in: Diena, 9 July.

tion in connection with the law, asking the Head of State not to promulgate it.<sup>420</sup> Pickets were also held by Russophones near the Presidential palace while the President was contemplating her decision.<sup>421</sup>

#### 6.6.1 *The High Commissioner's Reaction and the President's Veto*

Many in Latvia anticipated the reaction of the High Commissioner. The then Ambassador of Finland (the EU presiding country at the time), Hannu Hamalainen, would not even comment on the law until the comments of the OSCE were received.<sup>422</sup> On July 12, 1999, it was finally reported that President Vīķe-Freiberga had received a letter from van der Stoep. She had also held a telephone conversation with him on July 11, 1999. The newspaper *Diena* reported that President Vīķe-Freiberga refrained from disclosing the content of van der Stoep's letter because of the letter's private nature. *Diena* reported, however, with reference to unofficial sources, that the letter was several pages long and specifically concerned Article 6 (dealing with the requirement for the employees of private organisations and enterprises as well as self-employed persons to know and use the state language when performing public functions), Article 11 (regulating the use of language in public events) and Article 21 (the use of language in public information). The High Commissioner had also noted that certain provisions of the law were not in compliance with international practice or were worded vaguely, which might hamper the law's implementation.<sup>423</sup>

Following the letter from the Chairman of the Parliamentary Assembly of the Council of Europe Sir Russel Johnston as well as her meetings with Finnish President Tarja Halonen and Günter Weiss, EU Ambassador to Latvia, who stated that the position of the EU corresponded to that of the OSCE,<sup>424</sup> President Vīķe-Freiberga returned the State Language Law to the Saeima on July 14, 1999, accompanied by a letter to the Speaker of the Saeima. In her letter, President Vīķe-Freiberga pointed out the provisions that contradicted Latvia's international obligations as well as the Latvian Constitution. In total, the President mentioned ten provisions contained in eight Articles of the law that, in her opinion, required reconsideration.

Following the President's decision, the HCNM issued a statement, in which he welcomed the veto, but also reiterated that he supported strengthening the role of the state language in Latvia through language training provided to non-Latvians. He claimed that he was convinced that the Law "can be elaborated by the parliament which will enhance the position of the Latvian language while at the same time being in conformity with international standards."<sup>425</sup>

#### 6.6.2 *The State Language Law in the Context of EU Accession*

Taking into consideration the link established by the international actors between the adoption of the State Language Law and Latvia's invitation to start accession negotiations in December 1999, the date of the repeated reading of the law was set for December 9, 1999, just prior to the Helsinki European Council meeting. It is not unreasonable to assume that the date was chosen considering

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<sup>420</sup> The undersigned organizations included the Latvian Human Rights Committee, the Union of the Ukrainians of Latvia, The Bielorrussian Society "Pravda", the Armenian Society of Latvia, the Latvian Association of the Anti-Hitler Coalition Fighters, Association of the Afghan Veterans Living in Latvia, the Russian Community of Latvia, the Baltic-Slavic Society, the Russian Society in Latvia, the Latvian Society of Russian Culture, the Latvian Association for the Support of Schools with the Russian Language of Instruction and others.

<sup>421</sup> *Zakon, kotorij ob'edinit vseh* [The Law that will Unite Everybody], in: *Chas*, 12 July 1999.

<sup>422</sup> Ločmele, Arāja and Širovs 1999, *Pētīs valodas likuma atbilstību cilvēktiesībām*, [Language Law's Compliance with Human Rights will be Studied], in: *Diena*, 10 July.

<sup>423</sup> Ločmele 1999a, *EDSO valodas likumu lūdz nodot atpakaļ Saeimā*, [OSCE Asks that the Language Law be Returned to the Saeima], in: *Diena*, 14 July.

<sup>424</sup> *Ibid.*

<sup>425</sup> HCNM Press Release, 15 July 1999.

the fact that the political decision to invite Latvia was not very likely to be reconsidered because of the State Language Law alone.<sup>426</sup>

Although the Law was adopted on December 9, 1999, and the Articles mentioned by the President in her letter to the Chairman of the Saeima were reconsidered, many provisions of the Law still remained unclear. It was left up to the Cabinet of Ministers to issue detailed regulations that would set up the procedures for the implementation of the Law. The regulations were to be adopted by September 1, 2000 (the date by which the Law was to enter into force).

During the EU Council Helsinki Summit, Latvia received an invitation to start accession negotiations. The negotiations were officially opened in Brussels on February 15, 2000. In the joint statement of the third meeting of the Association Council between the EU and Latvia, it was recognised that significant progress had been made in the area of integration of non-citizens into the Latvian society. It was also positively noted that the final text of the Law on State Language is essentially in compliance with Latvia's international obligations.<sup>427</sup>

The High Commissioner issued a welcoming statement in connection with the State Language Law in which he concluded that the law was "essentially in conformity with Latvians international obligations and commitments."<sup>428</sup> Aware of the fact that much would depend on the Cabinet of Minister's Language Regulations, the High Commissioner stated: "I trust that the Cabinet of Ministers will follow the letter and spirit of the Law in elaborating implementing regulations, as foreseen in certain provisions of the Law, and in supervising public administration of the Law."<sup>429</sup> The position of the High Commissioner was fully endorsed by the EU:

The European Union fully supports the statement on the Language Law by the High Commissioner on National Minorities, Mr. Max van der Stoep, in which he concludes that the law is now essentially in conformity with Latvia's international obligations and commitments. The Union trusts that the proper implementation of the law will be ensured.<sup>430</sup>

### 6.7 *The Cabinet of Minister's Language Regulations and International Involvement*

Following the adoption of the State Language Law, the Cabinet of Ministers embarked on the task of drafting the regulations that would provide for the implementation of a number of Articles of the State Language Law. Nine sets of regulations were to be drafted by September 1, 2000. The Ministry of Justice was responsible for the task, and a working group was created in order to draft the regulations.

On March 9 and 10, 2000, the High Commissioner visited Latvia in order to discuss the language legislation with state officials. The newspaper *Chas* referred to the visit as "humanitarian intervention", as it coincided with the visit of Lord Russel Johnston, Chairman of the Parliamentary Assembly of the Council of Europe, as well as with the conference The Diversity of the United Europe (the HCNM's senior adviser Walter Kemp was among the participants).<sup>431</sup> In an interview with the newspaper *Chas* the High Commissioner stated:

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<sup>426</sup> Already prior to the adoption of the controversial law in July 1999, some politicians were proposing that the final reading be postponed until after the decision to invite Latvia for accession negotiations had been taken in Helsinki. Thus, on June 16, 1999, an MP representing Latvia's Way argued during the Saeima plenary session: "We very well know that we are under certain international pressure. When is it better for us to adopt the State Language Law? After the decision has been made in Helsinki that we are starting negotiation. We will have more freedom in our activities and more possibilities to subject this law to our interests."

<sup>427</sup> Eiropas Savienības un Latvijas Asociācijas padomes trešās sanāksmes kopīgais paziņojums [Joint statement of the third meeting of the Association Council between the EU and Latvia], in: Latvijas Vēstnesis, 16 February 2000.

<sup>428</sup> HCNM's statement welcoming the adoption of the Language Law, 9 December 1999.

<sup>429</sup> Ibid.

<sup>430</sup> Presidency statement on behalf of the European Union on the Latvian State Law on Language, published in Brussels and Helsinki on 9 December 1999.

<sup>431</sup> Zhdanova 2000a, Gumanitarnaja interventsija [Humanitarian Intervention], in: Chas, 10 March.

The main subject of my meetings with the officials is that of how the Language law will be functioning, what rules will be regulating it. The Government has assured me that these regulations would not contradict the law itself and the international standards. However, this is a difficult question, that is why I suggested that a group of experts be sent to Latvia in order to help to draft these regulations. The delegation will consist of the experts from the Office of the High Commissioner on National Minorities of the OSCE and the Council of Europe. I am content with the agreement reached.<sup>432</sup>

On June 12 and 13, 2000, the group of experts held meetings with the Ministry of Justice Working Group responsible for the drafting of the Language Regulations. In July 2000, a part of the draft Language Regulations was presented to the public, stirring strong emotions among the Russophones. Particularly, the Regulations setting the required language proficiency degree for various posts were viewed as having destructive implications. Among other things, the Russian-language media market would suffer, as all journalists, editors and correctors of the Russian-language media would be required to prove their Latvian language proficiency at the highest level.<sup>433</sup> Following a number of protest actions,<sup>434</sup> a thorough discussion in the press of the "scandalous" Language Regulations followed. Two detailed analyses of the Regulations by the Office of the High Commissioner were submitted to the Ministry of Justice on August 4 and August 17, 2000 (once again, the HCNM addressed the institution responsible for the draft directly).<sup>435</sup> Another visit of the OSCE experts to Latvia also took place on August 10-11, 2000.<sup>436</sup> Evidence suggests that the High Commissioner played the crucial role in bringing about the situation where certain changes that partly corresponded to his recommendations were made to the original draft before the Regulations were finally approved by the Cabinet of Ministers on August 22, 2000.

On August 31, 2000, the High Commissioner issued a statement regarding the adoption of the Regulations which sounded almost like a letter of recommendations. While recognising that the Regulations were "essentially in conformity" both with the State Language Law and with Latvia's international obligations, and noting that virtually all of his recommendations had been accepted, the High Commissioner took special notice of the protocol of the Cabinet of Ministers of August 22, 2000, by which it committed itself to elaborate a list specifying the required language proficiencies in the private sector only to the extent necessary to fulfil a legitimate public interest. The High Commissioner also expressed the hope that the forthcoming amendments to the Administrative Code of Delicts would not impose a system of sanctions disproportionate to the established offences, and concluded that "certain specific matters will have to be reviewed upon Latvia's anticipated ratification of the Framework Convention for the Protection of National Minorities."<sup>437</sup>

The European Union followed with the Presidency Statement of September 8, 2000, in which it "fully subscribed to the statement on the regulations implementing the State Language Law made by the High Commissioner on National Minorities of the Organisation for Security and Cooperation in Europe, Mr Max Van Der Stoel" and called the new legislation "an important step in the process of integration in Latvia." The European Union called on the Latvian Government "to ensure that the institutions responsible for implementing the new legislation adopt a liberal approach."<sup>438</sup>

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<sup>432</sup> Zhdanova 2000b, *Evropa obehshaet prismatrvat' za latviiskimi chinovnikami* [Europe Promises to Keep an Eye on the Latvian Bureaucrats], in: Chas, 11 March.

<sup>433</sup> Stroi 2000a, in: Chas, 15 July.

<sup>434</sup> Such as, for example, a meeting organised by the Equal Rights movement on 13 July 2000 under the slogan "Let us Rise Against Linguistic Inquisition" (Chas, 13 July 2000).

<sup>435</sup> Chas, 11 August 2000.

<sup>436</sup> The experts met with the Prime Minister Adris Bērziņš, the Minister of Justice Ingrīda Labucka, the Foreign Minister Valdis Birkavs. (*Jazikovie pravila protivorechat Konstitutsii* [Language Regulations are in Contradiction with the Constitution], in: Chas, 11 August 2000)

<sup>437</sup> HCNM Statement Regarding the Adoption of Regulations Implementing the Latvian State Language Law, the Hague, 31 August 2000.

<sup>438</sup> Presidency statement on behalf of the European Union on Latvia and the adoption of the regulations implementing the State Language Law, published in Brussels and Paris on 8 September 2000.

## 6.8 Specific Recommendations Made by the High Commissioner on the State Language Law

The new State Language Law that was initially drafted in 1994 and finally adopted in December 1999 deals with the following issues: the sphere of regulation of the use of language; the status of the Latvian language; the protection of the Liv language; the status of all other languages (foreign languages); the degree of the required language proficiency and usage by employees; language in formal sittings and meetings; language in record-keeping and other documents; language of contracts relating to health and other public services; acceptance and consideration of documents by institutions; language in public events; language in the armed forces; language in legal proceedings/courts; language in education; language of research papers; language of public broadcasting; language of films and videos; language of place names; language of personal names; language on stamps, seals and letterheads; language in public information (billboards, posters, labels, technical certificates, etc.); unified terminology in the state language; literary norms of the state language; promotion of the state language; liability for violations of the State Language Law; monitoring compliance with the provisions of the State Language Law.

As shown above, the State Language Law underwent a total of seven readings in the Saeima (three in the sixth Saeima and four in the seventh Saeima). The High Commissioner closely followed the drafting process and repeatedly addressed the responsible state officials with recommendations and suggestions.<sup>439</sup> It should be emphasised that most of the High Commissioner's correspondence was addressed to the Chairman of the Saeima Committee on Education, Culture and Science, Dzintars Ābiķis – the parliamentary standing committee responsible for the drafting of the law. Copies of some of the letters the High Commissioner addressed to Dzintars Ābiķis were also sent to the Latvian Foreign Minister, Valdis Birkavs, and the Chairman of the Saeima, Alfreds Čepānis.<sup>440</sup>

Normally, the High Commissioner addresses his letters to the Foreign Minister of the state in question. However, in the case of the Latvian State Language Law the High Commissioner addressed the responsible standing committee directly. In most cases, the responsible committee made the High Commissioner's letters available to parliamentarians. On some occasions, the HCNM attached Latvian translations of his letters to Dzintars Ābiķis, which were provided by the OSCE Mission to Latvia. This made it easier for many parliamentarians to get acquainted with the content of the letters. In the case of the executive language Regulations, the HCNM addressed his recommendation to the Minister of Justice Ingrida Labucka, targeting the drafting authority directly.

It has been argued that the numerous suggestions the High Commissioner has made in the course of the drafting of the Law on the State Language should not be regarded as recommendations,<sup>441</sup> but that they represent "comments" or "proposals" of non-official nature. However, as copies of some of the letters were sent to the Foreign Minister, and as the High Commissioner's suggestions were, in fact, regarded as recommendations by the parliamentarians and the mass media, these recommendations should not be omitted from this study. Besides, it is precisely this analysis that allows us to draw conclusions as to the degree of the implementation of the HCNM's specific recommendations.

An analysis of these recommendations illustrates how closely the High Commissioner followed the process of drafting the regulations, and what specific types of recommendations he made to the draft language-related legislation. From the analysis that follows it becomes evident that the legislative acts currently in force in the field of language use are far from what the High Commissioner initially recommended. As not all of the above-mentioned issues that relate to the Law can be dis-

<sup>439</sup> The High Commissioner sent seven letters to the Chairman of the Saeima Committee on Education, Culture and Science Dzintars Ābiķis between 17 March 1998 and 14 May 1999. Besides, he sent three letters to the Latvian Foreign Minister Valdis Birkavs between 23 September 1998 and 13 April 1999, two letters to the Chairman of the Saeima Alfreds Čepānis on 24 September 1998, and on 2 July 1999; one letter to the Latvian President on 12 July 1999 and two letters to the Minister of Justice I. Labucka in August 2000.

<sup>440</sup> In his 23 September 1998 letter to Dzintars Ābiķis, for example, the High Commissioner wrote: "I take the liberty to send a copy of this letter to the Speaker of the Saeima, Mr. Čepānis, and Foreign Minister Mr. Birkavs."

<sup>441</sup> See, for example, Poleshchuk (2001).

cussed here, a selection of applicable issues will be discussed in order to offer an insight into the process.

#### *6.8.1 The General Scope of Language Regulation in the Private Sphere and the "Legitimate Public Interest" Clause*

The attempts on the part of the state to regulate the use of language in the private sphere was one of the principal concerns of the High Commissioner ever since 1997, when the very first new draft State Language Law was adopted by the Saeima in the first reading. While recognising Latvia's sovereign right to take measures that would promote and strengthen the position of the Latvian language, the High Commissioner repeatedly called on the Latvian government not to apply language regulation to private organisations, enterprises, companies and to self-employed persons, or to limit their application to the cases where there exists a legitimate public interest for the use of the official language alongside any other language.

Aiming at influencing the second reading of the draft State Language Law, the High Commissioner sent an analysis<sup>442</sup> to the Chairman of the Saeima Committee on Education, Culture and Science, Dzintars Ābiķis, who was responsible for the Draft. A large part of the analysis concerned Paragraph 1 of Article 1 and Paragraph 2 of Article 2 of the draft State Language Law, both of which noted that the Law would regulate language use, in addition to other spheres, also in "organisations and enterprises (companies)".<sup>443</sup> The High Commissioner's Office recommended that "organisations and enterprises (companies)" should not be regulated by the Law, and that such regulation violated, for one, the freedom of association and the freedom of expression provided for by the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>444</sup> The Office invoked, in particular, Article 19 in conjunction with Article 2, as well as Article 22 of the ICCPR and Articles 10, 11 and 14 of the ECHR. It was argued that, "[p]lacing an obligation on private organisations and enterprises to conduct their affairs with private persons in the State language (or any specified language) will interfere with the fundamental rights and freedoms of individuals as prescribed in several international human rights instruments, including treaties to which Latvia is a State party."<sup>445</sup> More generally, it was argued "that the State may not interfere with the choice of language as a vehicle of communication used by individuals."<sup>446</sup>

At the same time, in the opinion of the High Commissioner's Office, the Republic of Latvia was "free to prescribe the use of language in spheres where there exists a legitimate public interest on the limited grounds established by international law." Specifically, Paragraph 2 of Article 10 of the ECHR and Paragraph 3 of Article 19 of the ICCPR were referred to. It was, therefore, argued that the requirement stipulated in the draft State Language Law must be "necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."<sup>447</sup>

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<sup>442</sup> The analysis, entitled "Compatibility of the Draft State Language Law of the Republic of Latvia with its International Obligations and Commitments", was attached to van der Stoep's letter to Ābiķis, 23 March 1998.

<sup>443</sup> Latvijas Republikas Saeima. Izglītības, kultūras un zinātnes komisija. Latvijas Republikas Valsts valodas likums. Likumprojekts 2. lasījumam, Reģ. Nr. 777, dok. Nr. 2726. [Saeima of the Republic of Latvia. Committee on Education, Culture and Science. State Language Law of the Republic of Latvia. Draft for the 2<sup>nd</sup> Reading. Registration No. 777, Document No. 2726. Submitted to the Saeima Presidium by the Saeima Committee on Education, Culture and Science on 3 March, 1998. ]

<sup>444</sup> HCNM's Analysis of 23 March 1998.

<sup>445</sup> Ibid.

<sup>446</sup> Ibid.

<sup>447</sup> Ibid.

Invoking the case of *K. vs. FRG*, [judgement of 11 May 1984, Series A,<sup>448</sup> Vol. 105, para. 83], the experts of the High Commissioner's Office offered the interpretation given by the European Court of Human Rights of the provision "necessary in a democratic society", namely, as requiring that any interference must correspond to "a pressing social need", the level of which "is not as great as a measure which is 'indispensable', but exceeds that which is merely 'useful', 'reasonable', or 'desirable'".<sup>449</sup> Since the requirements of the draft Law on the State Language were not found by the experts to be necessary in a democratic society, they concluded that the law "would interfere with the right of an individual to freedom of expression...one of the essential foundations of a democratic society."<sup>450</sup> In spite of this argumentation, Article 1(1) and Article 2(2) were left unchanged and were adopted by the Saeima in the second reading on April 29, 1998.<sup>451</sup>

The above-mentioned recommendations of the High Commissioner's Office were ignored also at a later stage by the new parliament – the seventh Saeima (that resumed consideration of the draft Law). The High Commissioner addressed two letters to Dzintars Ābiķis, on March 23, 1999 and April 16, 1999, respectively. In his first letter, the HCNM again referred to "many inconsistencies with applicable international law"<sup>452</sup> with regard to the language regulation in the private sphere. In his second letter, he again argued against such regulation powerfully, noting that it would violate the freedoms of expression, association and assembly, the right to privacy (including correspondence), the norms of international labour law, and the freedom of choice in private enterprise. The High Commissioner's proposals were twofold. First, he recommended that the Law be supplemented with a special provision that would represent a statement of principle with regard to language regulation in the private sphere. His suggestion was to amend Paragraph 2 of Article 2 to read as follows: "The use of the state language in private organisations, enterprises (companies) and by self-employed persons shall only be regulated where there is a legitimate public interest and in a manner proportionate to the aim pursued."<sup>453</sup>

This amendment would, according to the HCNM, clarify the principle and implementation of the Law, as well as make the Law consistent with the ECHR. In addition, the High Commissioner suggested that a special Article should be included in the Law, stipulating that all individuals working in the private sphere would, except in cases where their activities relate to a legitimate public interest, have "the right freely to choose the language of business."<sup>454</sup> These arguments were reiterated by the High Commissioner also in his letter to Ābiķis sent on May 14, 1999.

As a result of strong international pressure surrounding the issue of state regulation of language use in the private sphere, the Saeima Committee on Education, Culture and Science introduced a legitimate public interest clause into the draft State Language Law. The clause was, however, defined rather broadly and was criticised by human rights experts. Paragraph 2 of Article 2 read: "The use of language in private organisations and enterprises (companies) and regarding self-employed persons shall be regulated to the extent that their activities relate to a legitimate public interest (public safety, health, morals, protection of health, protection of consumer rights and labour rights, workplace safety, supervision by public administration and provision of information and different kinds of reports)."<sup>455</sup> This wording was adopted also in the third (final) reading by the seventh Saeima on July 8, 1999.

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<sup>448</sup> European Court of Human Rights, Series A: Judgements and Decisions.

<sup>449</sup> Ibid.

<sup>450</sup> Ibid.

<sup>451</sup> It is important to recall, as noted above, that this version of the draft Law as adopted in the second reading by the Sixth Saeima was later taken up and adopted by the Seventh Saeima in first reading on 10 December 1998.

<sup>452</sup> HCNM's letter to Ābiķis, 23 March 1999 (unpublished).

<sup>453</sup> HCNM's letter to Ābiķis, 16 April 1999.

<sup>454</sup> Ibid.

<sup>455</sup> Latvijas Republikas Saeima. Izglītības, kultūras un zinātnes komisija. Izglītības, kultūras un zinātnes komisijas apkopotie priekšlikumi Valsts valodas likuma otrreizējai caurlūkošanai. Reģ. nr. 60. [Saeima of the Republic of Latvia. Committee on Education, Culture and Science. Proposals for the Repeated Consideration of the State Language Law Summarised by the Saeima Committee on Education, Culture and Science, Registration No. 60]. Submitted to the Saeima Presidium by the Saeima Committee on Education, Culture and Science, on 3 December 1999. (Hereafter: Wording adopted on July 8, 1999).



The broad definition of what represents "a legitimate public interest" was one of the grounds on which the adopted law received strong international criticism and on which President Vaira Vīķe-Freiberga later returned it to the Saeima for repeated consideration. In her letter to the Chairman of the Saeima Alfreds Čepānis of July 14, 1999 the President argued: "I have no objections to the essence of Article 2, paragraph 2. However, I suggest that it be made more precise what "information and different kinds of reports" means for the purposes of this law."<sup>456</sup>

As a result of the repeated reading of the law on December 9, 1999, the words "information and different kinds of reports" were finally removed from the list of "legitimate public interests". Although this may be viewed as a certain achievement of the High Commissioner, it is to be mentioned that the list of what may constitute a legitimate public interest remains rather broad and is not identical to the definition given in Article 10 (2) of the ECHR and Article 19 (3) of the ICCPR to which the High Commissioner was referring. Moreover, the State Language Law still contains a number of articles that provide for the possibility of state interference, to varying degrees, into the activities of private organisations and enterprises, which, in many cases, is supported by the Regulations of the Cabinet of Ministers meant to ensure the implementation of such provisions.

### *6.8.2 Language Proficiency Degrees*

Similarly to the text of draft Articles 1 (1) and 2 (2), the wording of Article 5 of the draft State Language Law was unacceptable to the High Commissioner. It stipulated that, in addition to employees of state and municipal institutions, also employees of all other "organisations and enterprises (companies) as well as self-employed persons must use the state language to the extent it is necessary for the performance of their professional and employment duties." The required level of language proficiency was to be set by the Cabinet of Ministers.

The HCNM's Office found (in its analysis of March 23, 1998) that the requirement that employees of the private sector and even the self-employed must have a specific degree of knowledge of the Latvian language and use it to the extent necessary to perform their professional responsibilities, contradicts the freedom of expression as provided for by Article 19 (2) of the ICCPR and Article 10 (1) of the ECHR. It was also noted that one of the consequences of the provisions of draft Article 5 could be that "without providing for adequate training, a large part of the population would be at present essentially excluded from certain positions and employment." It was also considered that "the implications of the regime envisaged in Article 5 are especially serious when considered in conjunction with the system of sanctions foreseen in the draft Law for cases of non-compliance with requirements of proficiency in the State language."

The text of Article 5 was left unchanged and adopted in the second reading on April 29, 1998 without taking account of the above HCNM's argumentation based on international law. The wording also survived the first and the second readings in the seventh Saeima. It may be suggested that the argumentation of the High Commissioner's Office was seen as being out-of-place, as the regime of requiring a certain level of the Latvian language knowledge and the sophisticated system of testing it for all employees (including those of the private sector) whose duties included contacts with the public or record-keeping and who did not acquire education in the Latvian-language schools, had been in place since 1992 in accordance with Article 4 of the 1992 Law on Languages, and so was the system of fines for the violations of the Law on Languages. It may have been viewed as surprising that the OSCE addressed this issue only in 1998.

The High Commissioner continued reiterating his position all throughout the drafting process and finally achieved that Dzintars Ābiķis's Committee slightly re-drafted the Article before the third reading on July 8, 1999. Article 6 now attempted to expand the definition of state enterprises (in-

<sup>456</sup> Latvijas Valsts Prezidenta vēstule Latvijas Republikas Saeimas priekšsēdētājam Jānim Straumem, 1999.gada 14. jūlijā. [Letter of the President of State to the Chairman of the Saeima Jānis Straume, 14 July 1999]. (Hereafter: President's Letter, 14 July 1999).

cluding the enterprises in which the state or a municipality holds the largest capital share) and applied the language requirements to their employees. All other employees of private entities and the self-employed were required to use Latvian if they performed certain public functions or if their activities related to a legitimate public interest. The broad definition of the legitimate public interest (also given in Article 2) was used (that included, among other things, the "provision of information and different kinds of reports"). The Cabinet of Ministers was to regulate the required proficiency level for all the groups mentioned above.

The July 8, 1999 wording was, however, still not in line with the HCNM's recommendations. Following the President's veto, the only amendment made to Article 6 was the exclusion of the words "provision of information and different kinds of reports" from the list of legitimate public interests (paragraph two of the Article). The rest of the provisions remained intact, and were adopted on December 9, 1999.

Following the adoption of the Language Law, the Cabinet of Ministers drafted the necessary regulations On the Proficiency Degree in the State Language Required for the Performance of Professional and Positional Duties and the Procedure of Language Proficiency Tests, which were to be adopted before September 1, 2000. These regulations made the language proficiency requirements stricter than those requirements that had existed before the adoption of the State Language Law. Before the Law had been adopted, three levels of state language proficiency had existed (basic, intermediate and advanced). Each of these three levels was now further subdivided into two sub-levels or "degrees" (A and B).<sup>457</sup> In the course of the drafting process, the High Commissioner criticised the suggested requirements for level 3B (the highest level) and their application to the proposed list of professions, arguing that they "exceeded any possible public interests regarding practically all professions and positions." He also expressed concerns as to the prospective objectivity of the process of testing and certifying language knowledge.<sup>458</sup>

In spite of the High Commissioner's criticism, a rather long list of professions and positions, including those in the private sector, for which various language proficiency degrees were required, was incorporated into Regulations No. 296, which was adopted on August 22, 2000. The HCNM reacted to the adoption by issuing a public statement on August 31, 2000, in which he pointed to the need to amend Regulations No. 296 "with a view to elaborating a list specifying the required language proficiencies in the private sector only to the extent necessary to fulfil a legitimate public interest. I trust that the prospective list will, in accordance with international standards, be precise, justified, proportionate to the legitimate aim sought, and limited."

Following this statement, Regulations No. 296 was indeed amended on November 21, 2000.<sup>459</sup> The list of professions and positions subject to language requirements in the public sector were changed to include the verbal explanations of the professions and positions, listed previously by only their number in the Professions Classifier.<sup>460</sup> However, a separate list of professions and positions in the private sector was elaborated in Appendix 2, as the High Commissioner had recommended. Appendix 2 requires, e.g., Level 1B language proficiency for security guards, Level 2A for nurses, telephone operators and taxi drivers, Level 2B for veterinary doctors and chief accountants, Level 3A for medical doctors and air traffic control operators. Level 3B is required for lawyers, notaries<sup>461</sup> and psychologists.<sup>462</sup> Thus, we may conclude that the HCNM's recommendation not to introduce

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<sup>457</sup> For definitions of the various language proficiency levels, see Regulations No. 296 of August 22, 2000 (currently in force).

<sup>458</sup> Stroi 2000b, Chas, 9 August.

<sup>459</sup> Amended by the Cabinet of Ministers Regulations No. 404, 21 November 2000.

<sup>460</sup> Reportedly, the requirement to include the verbal deciphering of the numbers in Appendix 1 also came from the High Commissioner.

<sup>461</sup> It is to be noted that only the citizens of Latvia may work as lawyers and notaries.

<sup>462</sup> The following provisions of Regulations No. 296 deserve attention: these regulations do not apply to persons who have obtained primary, secondary or higher education in Latvian; or to those with a defined vision and hearing disability. The amendments adopted to the Regulations No. 296 in January 2001 also stipulate that graduates who pass the centralised Latvian language exam in the general schools (9<sup>th</sup> grade) and those who pass it in high schools (12<sup>th</sup> grade) shall be issued language proficiency certificates. Another provision of the Regulations concerns the language

any language requirements to the employees of the private sector was not implemented. However, it was mostly due to his persistence that such requirements were in the end subject to certain limitations.

### 6.8.3 *The Language of Addressing Public and Private Authorities*

The High Commissioner considered that the provisions of draft Article 8 that obliged residents to submit documents to both public and private entities only in Latvian or accompanied by a notarised translation, were not in line with international law. The draft provision stipulated as follows (emphasis added):

#### **Article 8**

- (1) Institutions of state power and public administration, municipal institutions, organisations and enterprises (companies) shall accept and examine documents submitted in the state language as well as in foreign languages if they are issued on the territory of the Republic of Latvia before the entry into force of this Law.
- (2) Other documents submitted in foreign languages shall be accompanied by a verified or a notarised translation into the state language.

The Office considered the above requirements unjustified and argued, specifically, that "the State may not prescribe for organisations and private enterprises what sort of documents they should accept and examine [...] The provision as it stands allows anybody, including a private enterprise, to refuse any document in a language other than the State language if such a document does not include a notarially certified translation. There is no apparent public interest warranting the breadth of such restrictions. Even in the case that a legitimate public interest could be discerned the requirement of a notarised translation of each document would again impose a heavy burden of cost (and also no doubt loss of time), which would be disproportionate to the interest to be served."

This recommendation (made on March 23, 1998) was not taken into account by the Sixth Saeima. In the Seventh Saeima, the provision was expanded to provide exceptions for the statements of persons to the police, medical institutions and rescue services and for the cases if documents are received from foreign countries. In these cases a translation into the state language was not required. For all other cases, however, a notarised translation or a translation certified in accordance with the procedure that was to be established by the Cabinet of Ministers was to be provided. The Seventh Saeima endorsed these provisions in the second reading on March 18, 1999.

In his famous "alternative draft" (attached to the letter of April 16, 1999), the High Commissioner proposed that residents should be obliged to submit documents in the state language only to the institutions of state power and public administration and municipal institutions. Notably, the HCNM did not recommend exceptions even for the municipalities with high concentration of minority population. The High Commissioner only proposed a provision stipulating that the Cabinet of Ministers may prescribe the exceptional cases when the individual might not attach a translation into the state language when submitting documents in a foreign language.<sup>463</sup> At a later stage, in his May 14, 1999 letter, the High Commissioner once again recommended "to delete the first paragraph of draft Article 10 requiring private organisations, institutions and enterprises (companies) to accept and consider only documents in the State language."<sup>464</sup>

The text of what was now Article 10 adopted by the seventh Saeima in the third reading on July 8, 1999 partly incorporated the latter suggestion. It was stated that "Any institution, organisation and enterprise (company) shall ensure acceptance and consideration of documents drawn up in the state

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proficiency certificates issued between 1992 and 2000: these certificates remain valid and the test does not have to be retaken. This may be regarded as a certain success of international diplomacy, as the draft regulations did not consider the certificates issued before 2000 as valid and provided for the necessity to re-take the language tests. Around 440,000 persons were examined as of the end of 1998.

<sup>463</sup> HCNM's letter to Ābiķis, 16 April 1999.

<sup>464</sup> HCNM's letter to Ābiķis, 14 May 1999 (unpublished).

language" (but not *only* in the state language). However, as far as state and municipal entities are concerned, the only exceptions are made in the emergency cases described above. Once again, no exceptions for municipalities with compact minority population were made. As President Vīķe-Freiberga made no comments to Article 10 when vetoing the State Language Law, the provisions were not amended after the repeated consideration of the law in December.

It is noteworthy that the final text of Article 10 does not include a provision suggested by the High Commissioner that the Cabinet of Ministers prescribe cases when a translation need not be attached. Regulations No. 291 adopted on August 22, 2000, in accordance with Article 10 (3) of the State Language Law, "On the Procedure of Certifying Document Translations into the State Language", provide for the kind of translation or, more precisely, the kind of its certification necessary in cases when a notarised translation is not required.

Regulations No. 291 refer to state and municipal institutions, courts and the institutions belonging to the judicial system, as well as state and municipal enterprises (companies). These institutions shall only consider a document in a foreign language supplied by a translation of the document in the state language (Article 4). It is important that only the original of the document or its copy, extract or duplicate certified by a public notary may be submitted. Thus, if a translation is not required to be certified by a public notary, a copy of the document must be.<sup>465</sup>

The High Commissioner's involvement has, indeed, played a role in the elaboration of the provisions currently regulating the acceptance and review of documents by institutions. Importantly, private enterprises may accept documents in a foreign language without a translation attached (this was not the case in the draft considered by the sixth Saeima). However, the heavy burden of cost is still imposed upon the individuals, as translation services are costly. These conditions still suggest that the requirements remain rather disproportionate to the public interest served. It is evident that Article 10 would have to be amended should Latvia accede to the Framework Convention on the Protection of National Minorities, as it would have to provide exceptions as to the language of addressing public authorities in municipalities with high concentrations of minority population.

#### *6.8.4 The Use of Language in Personal Names*

The provisions of the State Language Law dealing with the spelling of personal names have not experienced significant modifications throughout the drafting process. The High Commissioner did not make specific recommendations to these provisions, as the Cabinet of Ministers was later to draft the detailed regulations. The HCNM indeed made recommendations to the draft Regulations.

Currently, Article 19 of the State Language Law provides that, "[p]ersonal names shall be reproduced in accordance with the Latvian language traditions and shall be transliterated according to the accepted norms of the literary language" and stipulates that, "[i]n a person's passport or birth certificate, the person's name and surname reproduced in accordance with Latvian language norms may be supplemented by the historical form of the person's surname or the original form of the person's name in another language transliterated in the Latin alphabet if the person or the parents of a minor so desire and can provide verifying documents."<sup>466</sup>

In accordance with Article 19 (3) of the State Language Law, the Cabinet of Ministers drafted its Regulations "On the Spelling and Identification of Names and Family Names" that, among other things, set out the specific rules for the transliteration of foreign names and family names. When commenting on the draft regulations, the High Commissioner stated that, "In a democratic society there is no apparent necessity – of administrative or any other nature – to "Latvianise" any name or surname." The High Commissioner referred to the Framework Convention for the Protection of National Minorities that has not been ratified, but that has been signed by Latvia, which means that

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<sup>465</sup> Regulations 291.

<sup>466</sup> Law of the Republic of Latvia on the State Language, adopted on 9 December 1999.

Latvia is obliged not to act against the aims and objectives of the Convention, not to take steps that could lead to the violation of the provisions of the Convention.<sup>467</sup>

However, the High Commissioner's opinion was not taken into account. Some of the provisions contained in the final text of the Regulations No. 295 adopted on August 22, 2000, clearly violate Article 11 of the Framework Convention for the Protection of National Minorities that holds, that "every person belonging to a national minority has the right to use his or her surname (patronymic) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system."<sup>468</sup>

Thus, the Regulations now set the following rules for spelling and using names and family names in the Latvian language:

- 3.1. The personal names written in the Latvian language in basic documents shall be the person's name (names) and family name (double family name);
- 3.2. The name and the family name shall be spelled in accordance with the spelling norms of the Latvian language and using the letters of the Latvian alphabet;
- 3.3. Every name and family name shall have an ending corresponding to the Latvian language grammatical system in masculine or feminine gender according to the person's gender (except common gender forms of family names with the feminine endings for person's of both genders);
- 3.4. Indeclinable in the Latvian language are the names and family names of foreign origin ending with -ā, -ē, -ī, -ī -o, -u, -ū.

The specific provision dealing with foreign names stipulates that, "Foreign names and family names shall be spelled in the Latvian language (expressed with Latvian language sounds and letters) as close as possible to their pronunciation in the original language and according to the rules for spelling foreign proper nouns." This provision of the Regulations has led to considerable distortions in the spelling of personal names and family names in personal identification documents, and has not at all contributed to the goal of the Regulations "to protect a person against unfounded transformation of his/her name and family name", set forth in Article 2. The victims of such practices have filed complaints with the State Language Centre<sup>469</sup> and, having found no support, have turned to the judicial system. Several cases have been submitted to the European Court of Human Rights, but no judgements have been issued as yet.

The Regulations contain provisions (Article 8) that allow, upon a person's request, for the "historic or original form" of a name or family name to be included in identification documents (however, in passports this can only be done on a separate page). Such additional entries, however, must be in the Latin alphabet. The names originally written in other alphabets must be transliterated, "replaced letter by letter from other alphabets' spelling form in Latin alphabet writing." Besides, the Regulations only mention names and family names, and contain no provisions that would allow for the use of the patronymic that forms an essential part of Russian names. The practice of using Russian names without patronymics in identification documents has been in place, however, since 1992 when the first Latvian passports began to be issued.

In his statement of August 31, 2000, issued regarding the adoption of the Language Regulations, the High Commissioner concluded that "with reference to Latvia's commitments to respect the rights of persons belonging to national minorities, it is to be noted that certain specific matters will have to be reviewed upon Latvia's anticipated ratification of the Framework Convention for the Protection of National Minorities." The provisions dealing with personal names would, without a doubt, be subject to amendments when Latvia has ratified the Framework Convention. Such amendments, however, may be introduced also prior to its ratification if the European Court of

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<sup>467</sup> Chas, 9 August 2000.

<sup>468</sup> Framework Convention for the Protection of National Minorities, ETS No. 157.

<sup>469</sup> Article 14 of Regulations No. 295 provides that, "If the spelling of a person's name or family name offends vital personal interests, the person may turn to the State Language Centre with a request to reproduce the personal name in the state language in a form less offending to this person's interests."

Human Rights decides against Latvia in the cases involving personal names currently pending before it.

### 6.9 Use of Language in Education

The issue of language regulation in educational institutions, especially in secondary schools, aroused particularly heightened tensions. Initially, the draft Law on the State Language (Article 13) attempted to oblige all educational institutions (primary, secondary and higher) to use Latvian as the language of instruction. The only reference to educational institutions "where another language of instruction is prescribed by other laws"<sup>470</sup> was made to require that such institutions teach at least half of the subjects in Latvian.<sup>471</sup> The Russophone minority protested strongly against the proposed provisions as the wording virtually meant that there would be no Russian-language education in Latvia. The High Commissioner objected to the initial draft by recommending that an exception be made for private educational institutions. He based his argumentation on the inherent contradiction of the draft provision with the International Covenant on Economic, Social and Cultural Rights and noted that "[t]he prescription of a specific language as the mode of instruction can never be a requirement of the State in relation to private educational institutions as foreseen in Article 13(4) since Article 2(2)."<sup>472</sup>

In the process of numerous debates and consultations with the OSCE experts, the provisions meant to regulate the use of language in education were re-drafted by Dzintars Ābiķis's Committee several times. Before the third reading of the law in the sixth Saeima (that was to be final), the Committee proposed a wording whereby the use of another language in private educational institutions was possible. However, the position of state-financed Russian-language education was left very unclear. In 1998, over 30 per cent of all students in Latvia were acquiring education in state-financed Russian-language schools.<sup>473</sup> The draft provision was to transform such schools into schools "in which minority educational programmes are implemented." It also left it up to the Ministry of Education and Science to design such programmes and to decide which and how many subjects must be taught in Latvian in such schools. This naturally caused strong protests among the representatives of the Russian-speaking minority, as the proposal was interpreted as aiming at a gradual elimination of Russian-language schools network that had been in place in Latvia for many years.

Commenting on the draft in his letter to Dzintars Ābiķis of September 23, 1998, the HCNM noted that Latvia, as a member State of the OSCE, was required "to ensure that persons belonging to national minorities have adequate opportunities for instruction of their mother tongue or their mother language." He emphasised this point by drawing on The Hague Recommendations Relating to the Educational Rights of National Minorities that state, *inter alia*, that "pupils belonging to national minorities should be enabled to be taught mainly in the minority language in primary schools."<sup>474</sup> Furthermore, the HCNM also pointed out that it was the duty of the state to ensure that all schools had a sufficient number of qualified teachers of Latvian.

In the circumstances of political struggle preceding the parliamentary elections and the referendum on citizenship, both scheduled for October 3, 1998, all issues related to language and, particularly, to the use of language in education acquired special political significance. The tightening of the language policy was seen by some politicians as a compensation (if not revenge) for the possible abolition of the "windows" system of naturalisation in the case of the successful outcome of the referendum. The adoption of a possibly stricter new Law on the State Language was, therefore, very important to those outgoing deputies of the sixth Saeima who viewed the matter in this way. This became especially obvious on October 8, 1998, when the third reading of the law was contin-

<sup>470</sup> E.g., the Stockholm School of Economics where the language of instruction is English.

<sup>471</sup> The March 1998 draft.

<sup>472</sup> HCNM's letter to Ābiķis, 23 March 1998.

<sup>473</sup> See Tsilevich and Antane 1999 for the review of the use of languages in the Latvian educational system.

<sup>474</sup> HCNM's letter to Ābiķis, 23 September 1998.

ued and when the preliminary results of the elections and the outcome of the referendum had already become known. As we know, that reading failed to a great disappointment of Dzintars Ābiķis's Committee, and the Law on the State Language was not adopted on that occasion. In its determination to speedily initiate the linguistic reform of education, the Committee, however, transported the provisions on the use of language in education into the new draft Law on Education. The Law on Education, that received far less international attention, was finally adopted by the outgoing Sixth Saeima on October 29, 1998, in a form virtually identical to the one that had been proposed for the third reading of the Law on the State Language.

As reported by the press, the High Commissioner did not find inconsistencies in the Law on Education with international legal instruments to which Latvia is a party. During a press conference on January 13, 1999, held upon completion of his visit to Latvia, the HCNM stressed that when implementing the Law on Education, the Latvian authorities should take into account the Hague Recommendations Relating to the Educational Rights of National Minorities. He did, however, note that, as a theoretical possibility, "an irresponsible government might take measures that would contradict international human rights norms."<sup>475</sup> The High Commissioner trusted that the Minister of Education would ensure a fair implementation of the law.

The Ministry of Education subsequently elaborated four experimental transitional "bilingual education models" that were implemented in the Russian-language schools (and other minority schools) from September 1, 1999 onwards. All of these models aimed at a gradual increase of the number of subjects taught in Latvian in Russian-language schools from grade one to grade nine (general school), so that further education (secondary school, grades 10-12) would be continued in Latvian only. The four models differed only in the pace of transition.<sup>476</sup> What was viewed by the Russian-speakers as the most problematic issue was the envisaged elimination of state-funded education in the Russian language in grades 10-12 (which is a bridge to the universities) as of September 1, 2004.<sup>477</sup>

The Law on Education in itself was not found by the High Commissioner to contradict any international legal obligations by which Latvia has bound itself. However, the anticipated elimination of Russian-language secondary schools caused the most massive Russophone protests of the post-independence period. In 2001, the most conspicuous activities were organised by the NGO LASHOR (Association in Support of Russian-Language Schools in Latvia)<sup>478</sup> and by the youth movement Solidarity whose leaders were immediately subjected to the close attention of the Latvian Security Police and questioned.<sup>479</sup>

The EU once again supported the view of the HCNM in this situation. Mr. Günter Weiss, Head of the Delegation of the European Commission to Latvia, stated that "the law on bilingual education does not run counter to the European and international provisions which Latvia is obliged to comply with as a future EU member state."<sup>480</sup> Indeed, the EU provides substantial financial contributions to the National Programme for Latvian Language Training that prepares teachers for the implementation of the bilingual reform. The EU's reaction confirmed the fears of many Russophones that international organisations have gone along with state policy being unable to present legal arguments (and perhaps unwilling to present political ones) that would question it. Thus far, the international community has seemed to view state action as justified when arguments of the educational reform being carried out in the name of integration were presented. This reserved position of the international community is similar to the one initially taken with regard to the Latvian citizenship policy where no apparent violations of positive international law were found.

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<sup>475</sup> Quoted in: Nagle 1999, *Izglītības likums nepārkāpjot cilvēktiesību normas* [The Law on Education does not Contradict Human Rights Norms], in: *Diena*, 14 January.

<sup>476</sup> *Baltijas Datu Nams* 1999, p. 47.

<sup>477</sup> Transitional Provisions of the 1998 Law on Education.

<sup>478</sup> Coverage of LASHOR in *Minority Issues in Latvia*, No. 38.

<sup>479</sup> Dimitrov 2001b, *op.cit.*

<sup>480</sup> Dimitrov 2001a.

The High Commissioner's stance can, perhaps, be explained by referring to his mandate. The HCNM is mandated to deal with minority rights issues in the security context and to the extent that they may produce open conflicts. Therefore, he may not have viewed educational issues in Latvia as carrying significant conflict potential. During his term of office, there had been no effective opposition in Latvia to the elimination of state-supported university education in the Russian language decided upon as early as in 1992. Compared to the strong reaction to similar state action in some other countries (e.g., in the case of the Albanian-language University in Macedonia), the reaction of the Russophone minority in Latvia may be viewed as very mild. Thus, it may have been assumed that a similar step at the level of secondary schools would not meet greater resistance in Latvia.

Another explanation of the High Commissioner's position may be based on his previous experience in Latvia where his arguments based on non-binding legal instruments or international recommendations of non-binding nature were not taken into account by the Latvian decision-makers. Even if Latvia were a party to the Framework Convention for the Protection of National Minorities, one would find that its provisions impose no legal obligation upon the state to finance secondary education in a minority language (let alone in a foreign language, which is the status of Russian in Latvia today). Similarly, if the High Commissioner were to present arguments based on the practice of other states in the area of educational arrangements for minorities, he would have probably engaged in a long and controversial debate with the Latvian authorities, as state practices differ and examples of both quite extensive and very restrictive educational arrangements for minorities may be found. As admitted by the HCNM himself, to find compromises between the competing views of majority and minority "is not an easy task, especially because international norms and principles do not provide - and cannot provide - a clear answer to the question of what is fair and reasonable in a specific situation."<sup>481</sup>

It is also to be remembered that the High Commissioner has dedicated himself to helping parties solve their own problems themselves. With what was achieved in the framework of citizenship, the position of the High Commissioner (as well as other key international actors) with regard to educational issues may be explained by their belief that, now that naturalisation has become available, the minority will be able to advocate its interests in the field of education without extensive international interference. In fact, educational issues may even provide an additional incentive for the non-citizens to go through naturalisation and acquire political rights with the hope of bringing about a change in, among other things, state educational policy. Indeed, the years 2002 and 2003 have shown that domestic opposition is capable of bringing about legislative changes without the help of international actors. The mass actions organised against the "Reform 2004" compelled the government to address the issue. The transitional provisions of the Law on Education were amended to provide that at least 60 per cent and five subjects be taught in Latvian in grades 10-12 of "minority schools", instead of the previous 100 per cent requirement. Although still viewed as unsatisfactory by the minority, this move is a clear result of domestic lobbying and protests – a sign of a maturing democratic system in Latvia. On the other hand, the apparent international silence on the issue has undermined the Russophones' trust in international organisations to such an extent as to cause many to cast their votes against Latvia's joining of the EU.

#### *6.10 Other Recommendations Made by the HCNM to the Draft Law on the State Language*

The High Commissioner also addressed the following issues regulated by the Law on the State Language:

- the Use of Language in Record-Keeping and Other Documents;
- the Use of Language on Stamps, Seals and Letterheads;
- the Use of Language in the Names of Organisations and in Place Names;
- the Use of Language in Formal Sitzings and Meetings;

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<sup>481</sup> HCNM. Report of Max van der Stoep, the OSCE High Commissioner on National Minorities, Warsaw, 2 October 1995.



- the Use of Language in Films and Video films;
- the Use of Language in Public Information
- the Use of Language in Public Events.

A brief summary of the situation in each of these issue areas is given below.

#### *6.10.1 Record-Keeping (Article 8)*

It was initially proposed to oblige both public and private entities to use only Latvian in record-keeping and "in all documents". The High Commissioner's Office argued on March 23, 1998 that, generally, the State "may not impose any restrictions on the choice of language in the administration of private organisations or enterprises", but it may only "prescribe the additional use of the official language in those sectors of economic activity which affect the enjoyment of the rights of others or require exchange and communication with public bodies." Upon lengthy deliberations, only state and municipal entities and companies in which the state/municipality holds the largest capital share, were required to use only Latvian in record-keeping. Private entities and self-employed persons are subject to this requirement only if their activities relate to a "legitimate public interest" and if they perform public functions as required by law. Only Latvian is to be used in annual, statistical and other documents if they are to be submitted to state institutions. Thus, the HCNM's recommendation was only partially implemented.

#### *6.10.2 Stamps, Seals and Letterheads (Article 20)*

Similarly, the High Commissioner recommended not to require the sole use of Latvian on the stamps, seals and letterheads of private entities. However, both the Sixth and the Seventh Saeimas ignored this recommendation. Article 20 was re-drafted only following the President's veto. Private organisations are now obliged to use only Latvian if they perform certain public functions that involve the use of stamps, seals or letterheads. The prohibition to use another language alongside Latvian in such cases may still be viewed as disproportionate to the pursued aim of protecting of the Latvian language.

#### *6.10.3 Names of Institutions, Enterprises and Organisations (Article 18)*

The High Commissioner also argued that private entities should not be required to create their names in Latvian only. This, however, was not made explicit in the final text of the Law on the State Language, but regulated by the Cabinet of Ministers Regulations No. 294 of August 22, 2000, "On Creation, Spelling and Usage of Place Names, Names of Institutions, Public Organisations, Enterprises (Companies) and Titles of Events". In his letter to the Minister of Justice Ingrida Labucka of August 4, 1999 (sent prior to the adoption of the Regulations), the HCNM stated: "There is no such legitimate public interest that could justify the requirement for private enterprises to create names in any specific language."<sup>482</sup> Although it follows from the final text of the Regulations that private organisations and enterprises as well as NGOs may, in principle, create their names in another language, it is stipulated that only the letters of the Latvian or Latin alphabet shall be used in their names. It is doubtful that the High Commissioner had this arrangement in mind when making his recommendation that only the additional use of the state language may be prescribed by the state in this area, and only based on a legitimate public interest.

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<sup>482</sup> Quoted in Chas, 9 August 2000.

#### *6.10.4 Place Names (Article 18)*

Notably, the High Commissioner has not made any recommendations or comments to the requirement that place names be created solely in the Latvian language. Currently, neither the Law, nor the Regulations provide for the possibility to use another language alongside the Latvian language in place names (except for the Liv shore area where the use of the Liv language alongside Latvian is permitted). In areas compactly populated by minorities (such as, for example, Latgale that has a significant percentage of the Russian-speaking population), no provisions are made for the possibility to use the Russian language alongside the Latvian language in place names. It is probable that the Law on the State Language would have to be amended with regard to this issue when Latvia ratified the Framework Convention on the Protection of National Minorities.

#### *6. 10. 5 Formal Meetings (Article 7)*

In a similar manner as in the above two cases, the HCNM recommended that private entities should not be required to use only the Latvian language in their formal meetings, as was envisaged by the early drafts of the law. After lengthy deliberations, this obligation was imposed only on state and municipal institutions and enterprises as well as on companies in which the state/municipality holds the largest capital share. Thus, in this respect, the HCNM's recommendation was taken into account. However, the final text of the law requires that translation into Latvian should be provided in all other cases if so requested by at least one participant of the meeting. The High Commissioner had insisted in his April 16, 1999 letter to Dzintars Ābiķis, that such a provision should not be included. His view was, however, not respected.

#### *6.10.6 Broadcasting and Films (Article 17)*

The main issue with regard to the use of language in broadcasting, films and videofilms raised by the High Commissioner was the obligation contained in the draft to dub films meant for pre-school age children in the Latvian language or to provide them with a voice-over in Latvian. In his letter to Dzintars Ābiķis of May 14, 1999, the High Commissioner recommended to revise Article 17(2) "to make clear that videos and films intended for pre-school children will be permitted to be available in the mother-tongue, i.e. not required to be dubbed into the State language." This recommendation was ignored throughout the drafting process and the provision was adopted on 8 July 1999. Upon vetoing the Law, President Vīke-Freiberga called on the Saeima to delete the provision, as it contradicted Articles 100 and 116 of the Latvian Constitution. This was fulfilled. However, a yet more restrictive provision (applying to films for children in general, and not only to those for the children of pre-school age) of the Law on Radio and Television of August 24, 1995 remained in force (Article 19, Paragraph 3). Thus, in fact, the HCNM recommendation was not implemented.

#### *6.10.7 Public Information (Article 21)*

With regard to the provisions of the draft Law on the State Language on public information, Article 21, as adopted on March 18, 1999, read: "Each sign, billboard, poster, placard, announcement or any other notice meant to inform the public and in places accessible to the public shall be in the state language."<sup>483</sup> The High Commissioner found this provision unacceptable, and kept addressing it in the course of the drafting process of the Law on the State Language. In his alternative draft of April 16, 1999 he proposed that the provision should require open signs, billboards, posters, placards, etc. that were placed in places accessible to the public, to be in the state language only in addition to any other language. The Saeima, however, did not support this proposal. In her letter requesting a repeated consideration of the Law, the President mentioned the finally adopted strict

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<sup>483</sup> Wording as adopted on 18 March 1999.

provision as contradicting Articles 100 and 116 of the Latvian Constitution.<sup>484</sup> Following that, Article 21 was significantly re-drafted and adopted on December 9, 1999 in a rather confusing wording, with reference to the yet-to-be-drafted Cabinet of Ministers' Regulations. The provision now requires only state and municipal institutions and enterprises to provide public information in Latvian only. Private entities are subject to this obligation only if the public information they provide relates to a "legitimate public interest" or if they perform certain public functions that involve the provision of information.

The Cabinet of Ministers Regulations on the Use of Language in Information were subsequently drafted. The draft contained the list of cases where the use of Latvian only was compulsory for private entities and the list of cases when the use of a foreign language alongside the Latvian language was permissible. The opinion of the High Commissioner on the draft was expressed in his letter to the Minister of Justice Ingrida Labucka of August 4, 2000. The HCNM argued that the draft regulations were difficult to understand and could result in actions contradicting the law.<sup>485</sup> He also made a special comment to the provision that "Written information intended for the public shall be in the correct Latvian language." He argued that, "[a]lthough the use of the correct Latvian language is, without a doubt, to be welcomed, the introduction of this requirement leads to the violations of the law on purely grammatical grounds and excessively broadens the area of state interference."<sup>486</sup>

A part of the Regulations was re-drafted following the High Commissioner's interference. Regulations No. 292 On the Use of Languages in Information, adopted on August 22, 2000 now allows for the additional use of a foreign language in public information in the cases when the information relates to international tourism, international events, security considerations, extraordinary situations, epidemics and dangerous infectious diseases. A foreign language may also be used in brochures, bulletins, catalogues and other informative materials. However, most private institutions, organisations, enterprises (companies), as well as self-employed persons must provide the part of their public information that relates to legitimate public interests in the state language or in the state language alongside a foreign language.

Although the above-mentioned alterations took place, the High Commissioner's point made in his letter of August 4, 2000, regarding the requirement to use the correct Latvian language in public information was ignored. Regulations No. 292 still stipulate that public information was to be given "according to the spelling norms of the Latvian language." This provision may lead to legal liability on grounds of misspelling or grammatical errors, especially taking into account the provision of the Code of Administrative Misdemeanours adopted on June 14, 2001 that defines one of the offences subject to a fine of up to 250 LVL based on "the obvious disrespect towards the state language."<sup>487</sup>

#### *6.10.8 Public Events (Article 11)*

The requirement that public events were to be held in the state language alone was contained in Article 9 (now Article 11) of the March 1998 draft Law. Concerning the provision that only Latvian was obligatory in all "official public events", the High Commissioner's Office recommended (on

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<sup>484</sup> The President's letter of 14 July 1999. Art. 100 of the Latvian Constitution stipulates: "Everyone has the right to freedom of expression which includes the right to freely receive, keep and distribute information and to express their views. Censorship is prohibited." Art. 116, in its turn, lists the grounds upon which restrictions to the enjoyment of certain rights, including the freedom of expression, may be introduced by law "in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals."

<sup>485</sup> Chas, 9 August 2000.

<sup>486</sup> Ibid.

<sup>487</sup> A legal precedent based on this provision already exists. The State Language Centre fined the Youth Club "Latvia" for the sum of 100 LVL for the numerous mistakes in an advertisement that invited the young people to take part in the "anti-crime" programme. The representative of the Club, Mr. Victor Elkin, filed a complaint with the Riga District Court. Mr. Elkin expressed his determination to take the case as far as the European Court of Human Rights in case his complaint is dismissed, stressing that the text of the announcement was translated from Russian into Latvian by a native speaker of Latvian. (Stroi 2001b, Shtrafi za jazik skoro vernutsa [Language Fines will be Back Soon], in: Chas, 18 May.

March 23, 1998) that the term "official" should be restricted to state authorities and other governmental institutions, arguing that the obligation to use the State language in general in public events without demonstrating a public interest to be served, would interfere with the free use of language as a vehicle of communication, guaranteed by the freedom of expression. The requirement would also place an undue burden on the organisers to arrange/pay for the interpretation.<sup>488</sup>

A number of powerful arguments aimed at re-drafting the provisions were presented between March 1998 and July 1999. The High Commissioner returned to the issue on several occasions. Nevertheless, even the slight changes proposed by Dzintars Ābikis's Committee before the final reading were not supported by the majority of the parliamentarians on July 8, 1999.<sup>489</sup> The prom-inority MPs' warnings that the provision violated the freedom of association and that it was in contradiction with Article 17 of the Framework Convention for the Protection of National Minorities, had no effect.

Following the President's veto, Article 11 was re-drafted. Companies in which the state holds the largest share of the capital were added to the list of state and municipal institutions whose events were to be held in the state language. It was stipulated that the State Language Centre may exempt the above organisers from ensuring interpretation in the case if foreigners participate in the event. However, the Cabinet of Ministers was to determine cases when (any) organisers of events may be obliged to ensure translation into the state language. The final text was adopted on December 9, 1999.

As required by the provisions of Article 11, the Cabinet of Ministers later drafted its Regulations "On Ensuring Interpretation at Events" that would determine the cases when state and municipal institutions, organisations, and enterprises would be exempt from the requirement to provide translation into the state language and the cases when private entities and persons would be obliged to provide translation into the state language at events organised by them. These draft Regulations caused unprecedented controversy.

Initially, the draft provided for a whole set of cases when a private institution, organisation, enterprise, a natural person or an international institution would be obliged to provide translation at events. Draft Article 3 of the Regulations required that translation be ensured at international events to which representatives of the Latvian state or municipalities are invited as participants. It also required ensuring translation at cultural events including events organised by national cultural societies the target audience of which exceeds the framework of the respective national or ethnic group. Such cultural events included: theatre, opera and musical performances; festivals, concerts, contests, circus performances, events connected with exhibitions or museum expositions; ballet or pantomime performances, and sports events.<sup>490</sup>

However, the High Commissioner strongly protested against these draft provisions. As reported by *Chas*, he presented the following argumentation in his letter to the Minister of Justice Ingrīda Labucka: Article 11 of the State Language Law now guarantees the freedom of expression regarding the choice of language at public events organised by the private sector. The requirement to translate all international events in which at least one representative of the Latvian state participates into the state language contradicts this principle, let alone the application of this requirement to opera, circus, ballet performances and sports events. The use of the state language is obligatory only for state and municipal institutions and enterprises as well as for the enterprises in which the state holds the largest share of the capital.<sup>491</sup>

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<sup>488</sup> HCNM's Analysis of 23 March 1998.

<sup>489</sup> Parliamentary debates of 8 July 1999.

<sup>490</sup> Text of the draft Regulations as was available on August 11, 2000 from the website of the Ministry of Justice, [www.jm.gov.lv](http://www.jm.gov.lv) (on file with the author).

<sup>491</sup> Stroi 2000b, op.cit.

Prior to its final adoption, the text of Regulations No. 288 was indeed re-drafted, and the long list of cultural events described above was removed. This change occurred, without a doubt, owing to the interference by the High Commissioner and the August 2000 visit of the OSCE experts to Latvia.

### *6.11 Language Training*

The strict requirements for the use of Latvian and the system of testing its knowledge are intrinsically linked to the problem of Latvian language training. The issue was, given high priority by the High Commissioner and touched upon in virtually all his recommendations. It appears that the High Commissioner wished to see a commitment on the part of the government to help the Russian-speakers improve their knowledge of Latvian before demanding to demonstrate such knowledge at a high level. The government was conscious of the low general level of Latvian language proficiency among the Russian-speakers in Latvia, which raised questions as to the purpose of setting the testing procedures many of them could not go through successfully. At the same time, the High Commissioner believed that an effort on the part of the Russian-speakers to master Latvian would demonstrate their willingness to integrate into the new circumstances, and that the government should appreciate such an effort.

In his April 1993 letter, the High Commissioner recommended that "the Latvian authorities should enhance their efforts at helping non-Latvians to acquire a reasonable level of knowledge of the Latvian language. More use should be made of the mass media, in particular television."<sup>492</sup> On the other hand, he also noted that he was aware that the non-Latvian population would have to make "a determined effort" to learn Latvian, thus proving their willingness to integrate. This did not, however, mean that they would have to sacrifice their own cultural or linguistic identity.

The Latvian government appeared to share the High Commissioner's concern for language training and, when the National Programme for the Latvian Language Training (NPLLT) was launched in cooperation with the UNDP in October 1995, the Foreign Minister provided detailed information on the developments to the High Commissioner. Based on data that showed that only about 25 per cent of non-Latvians living in Latvia could master Latvian in addition to another language, the NPLLT would initiate "Latvian as a Second Language" for all minority students and adults. The Foreign Minister informed the HCNM that a working group had been established by the Government to implement the project, which was initially to be "financed by the UNDP with very significant co-sharing by major bilateral donors (approximately 4 million USD)."<sup>493</sup>

The Foreign Minister later followed up on informing the High Commissioner on the situation with the NPLLT and expressed his appreciation for his support, noting that knowledge of the Latvian language would facilitate also the process of naturalisation.<sup>494</sup> It may be suggested that the government's enthusiasm about the High Commissioner's concern with the issue of language training can be explained by the significant international funds available for this purpose and, to an extent, also by its willingness to carry out the language reform at schools. It seems that the High Commissioner was principally concerned with the naturalisation language test and with ensuring high quality Latvian language training in Russian-language schools, and did not envisage a full transition into instruction in Latvian. This follows from his May 1997 letter:

For very many of those interested in applying for citizenship the language test must therefore constitute a formidable barrier. This underlines the crucial importance of the National Programme for Latvian language training. The need to ensure high quality teaching of the Latvian language in schools with instruction in the Russian language is evident. The same applies to language training programmes for adults. I express the hope that international assistance in achieving the aims of the National Programme for Latvian language training will be continued and, when necessary, expanded.<sup>495</sup>

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<sup>492</sup> HCNM's letter to Anderjevs, 6 April 1993.

<sup>493</sup> Birkavs's letter to HCNM, 22 April 1996.

<sup>494</sup> Birkavs's letter to HCNM, 24 December 1996.

<sup>495</sup> HCNM's letter to Birkavs, 23 May 1997.

The correspondence between the HCNM and the Latvian Foreign Minister continued throughout 1997 in a highly positive key. In a letter to the High Commissioner dated September 11, Valdis Birkavs noted that the core body of teachers for Latvian language education had now received the necessary training, and that new textbooks and other learning materials had been published.<sup>496</sup>

The NPLLT, particularly during the early years of its existence, came under sharp criticism of the Russian language press: it was viewed as just another face-saving initiative of the government directed at attracting significant foreign funding for the projects that support what is often viewed as assimilative state language policy. The fact that the UNDP was staffed with a number of ethnic Latvians from the diaspora was viewed with suspicion in this connection, as was the number of high-cost foreign experts involved in the project. The adequacy of the amounts of foreign funding and their allocation were also doubted: the fact that the Latvian government would not have to participate during the first years in the funding of the Programme added to the scepticism: "Even if the project does not teach the language to anyone, Latvia will remain with its beautiful logo," concluded one observer in 1996.<sup>497</sup> The Programme was also looked at with suspicion because one of its main activities has been the training of the teachers of Russian-language schools to teach their subjects in Latvian to Russian-speaking schoolchildren. This is part of the bilingual education reform opposed by many Russophones.

Over the years, the attitude of the minority towards the NPLLT seems to have softened somewhat, and the demand for its services has reportedly grown, although criticism connected with the bilingual education reform is still pronounced among the minority. The High Commissioner, however, has never criticised the Programme. Quite on the contrary, he has always stressed its importance. Between 1996 and 2001, free language training by the NPLLT was given to 15,413 schools teachers, 5,694 teachers of pre-schools educational institutions and over 10,000 other employees and persons.<sup>498</sup> The participants of the courses have been carefully selected taking into account a set of specific criteria. The number of the participants who have benefited from the language courses with the NPLLT is still rather low in relation to the total number of Russian-speakers in Latvia; however, key groups were included.

The commitment of the Latvian government to language training awaited by the international organizations, particularly the EU that recommended to earmark state funding for it in its 1999 and 2000 Progress Reports, was finally demonstrated when state funding was for the first time allocated for the NPLLT in 2001: 428,000 LVL (approx. 713,300 USD). The EU welcomed this development in its 2001 Progress Report noting that "it will be important that this support be maintained and increased in the coming years."<sup>499</sup> This development was an "unwritten condition" for and is associated with the closure of the OSCE Mission to Latvia in 2001. The EU PHARE programme has also allocated 500,000 EUR that it is planning to donate annually to the programme up to the year 2004.<sup>500</sup>

Although the High Commissioner cannot be viewed as the direct causal factor behind the establishment of the NPLLT, his support of the Programme has been important and once again demonstrated the close cooperation and coordination of activities and positions among international organisations present in Latvia.<sup>501</sup> Besides, some of the HCNM's recommendations, such as the ones to make use of mass media and television for language training, have been addressed through the NPLLT. His concern about naturalisation candidates is also being addressed at present through the

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<sup>496</sup> Birkavs's letter to HCNM, 11 September 1997.

<sup>497</sup> Levkin 1996. *Bazis I dve nadstroiki lojalnosti* [The Basis and Two Levels of Loyalty], in: *Biznes I Baltija*, June.

<sup>498</sup> Information on the web page of the Naturalisation Board under "Biežāk uzdotie jautājumi" [Frequently Asked Questions], at: [http://www.np.gov.lv/index.php?lv=faq\\_lv](http://www.np.gov.lv/index.php?lv=faq_lv).

<sup>499</sup> European Commission, Regular Report from the Commission on Latvia's Progress towards Accession, Brussels, 13 November 2001, p. 25.

<sup>500</sup> National Programme for Latvian Language Training 2003, What is the NPLLT?

<sup>501</sup> Since 1996, the NPLLT has been funded by the European Union, the governments of Canada, Denmark, Finland, the Netherlands, Norway, Sweden, the United Kingdom, the United States as well as the UNDP, the funding amounting to 7.5 million USD.

free language courses offered by the Naturalisation Board, as the NPLLT did not specifically target naturalisation candidates.

#### *6.12 Assessment*

To summarise, the High Commissioner closely followed and was deeply involved in the process of drafting both the Law on the State Language and the Cabinet of Ministers' Language Regulations. The new draft legislation was aimed at restricting the previous regulations that had been in place since 1992 by, first and foremost, increasing state interference into the private sphere to an even greater extent than previously practiced. The above examples illustrate how the regulative provisions were viewed as troubling by the High Commissioner. His reaction and efforts were directed, mostly, at minimising state interference in the use of language in the private sphere.

The High Commissioner's involvement and effectiveness concerning the State Language Law can be analysed two-fold. On the one hand, the Latvian language policy was significantly internationalised thanks to the work of the High Commissioner, who brought it to the long-term scrutiny of many influential international actors (most importantly, the EU). On the other hand, due to the politicisation of the language issue, which turned into an election issue, the stances of the actors involved radicalised, thus limiting the effectiveness of the High Commissioner.

The High Commissioner and his Office engaged in a very detailed analysis of the draft and issued recommendations dealing with very specific issues, which resulted in lengthy give-and-take negotiations with the responsible Latvian authorities. Such detailed involvement allowed issuing very clear recommendations to each of the draft provisions. However, these recommendations to specific issues had to be based in general provisions of relevant international instruments, which was not always an easy task. In the process of negotiations, the numerous modifications of the text of the provisions made this task even more difficult as it created substantial confusion and allowed for considerable time-dragging.

Throughout the drafting process, under the unceasing attention of the international community, numerous provisions that left the drafting of the specific rules needed for implementing certain articles of the State Language Law to the Cabinet of Ministers were introduced into the draft. Although the draft was criticised by the High Commissioner on this ground for lacking legal foreseeability, this approach proved quite effective for countering international recommendations. Whenever it was not desirable to follow the High Commissioner's suggestions, references to the yet-to-be-drafted regulations of the Cabinet of Ministers were made, thus leaving the door open for the introduction of provisions eliminated from the Law itself (because of international criticism) into the government's regulations at a later stage. In its final version the law contains 12 references to such regulations.

As an overall analysis at this point, the above examples of the implementation of the specific recommendations made by the High Commissioner to the text of the Law on the State Language and the Language Regulations illustrate that, in most cases, there has been considerable resistance to what the HCNM recommended. The final text of the law is rarely in line with the recommendations the High Commissioner originally issued and, as a particular example, a degree of regulation of language use in the private sphere has been preserved. When it became clear to the High Commissioner that the Latvian authorities were not ready to abandon altogether the idea of state interference into the private sphere, he insisted upon the inclusion of a general Legitimate Public Interest Clause in the text of the law. This was achieved only after the Latvian President Vīķe-Freiberga vetoed the law that the Parliament had approved and sent it back for reconsideration under considerable international pressure. This supports a more general argument that the political arguments linked to EU accession negotiations proved more effective than the references to international human rights norms made by the High Commissioner. The changes that were introduced into the final

texts of the Law and the Regulations, may be attributed to the tactical foreign policy considerations of the Latvian policy-makers.



## Chapter 7. Integration, the Minority Ombudsman and the Ethnicity Entry

This short chapter will deal with three issues – integration policy (sections 7.1 and 7.2), the establishment of the Ombudsman's Office for minorities in Latvia (sections 7.3 and 7.4) and the very important issue of the ethnicity entry in Latvian identification documents (section 7.5). The government's commitment to prioritising integration issues on the domestic political agenda that it made in March 1998 during the HCNM's visit to Latvia deserves a special analysis, as it represents the beginning of the process of the implementation of one of the key recommendations of general nature that the High Commissioner had been making since 1993. Although the word "integration" has formally been made a political priority by the government, the content of the integration policy is not free from contradictions and the meaning of integration is being interpreted differently by different actors. As to the minority ombudsman, the the HCNM's vision of such an institution has not become a reality until today. Contrastingly, we can speak of positive developments related to the ethnicity entry in the official Latvian identification documents. The process leading up to its forthcoming abolition from the passports and identification cards is dealt with in this chapter.

### 7.1 *The Integration Programme*

Since the early days of his involvement, Max van der Stoep had been calling on the Latvian government to introduce a consistent policy of integration of society. This general recommendation would embrace the different elements the High Commissioner touched upon in his more specific recommendations concerning various aspects of the government's treatment of non-citizens and Russian-speakers in general (such as naturalisation, information, language training, etc.):

In general, it is recommended that the Government consistently implement a visible policy of dialogue and integration towards the non-Latvian population, which should incorporate the above-mentioned recommendations. In the High Commissioner's opinion, early government action in this regard is indispensable.<sup>502</sup>

The High Commissioner kept returning to the issue of general integration in his subsequent recommendations. Thus, in his letter of March 14, 1996, he referred to the fact that more than stateless persons made up over 28 per cent of Latvian population, which was much higher than in most other states of the world. He considered that it was "especially important to promote their integration and to avoid a situation in which a high percentage of aliens will not be motivated to try to integrate."<sup>503</sup>

However, while the initial recommendation to introduce a consistent integration policy was made by the HCNM as early as in 1993, the first steps to the effect were not taken by the government until March 1998. On March 31, 1998, the ministerial Integration Council, composed by four ministers (those of Justice, Education, Culture and Foreign Affairs), was established and instructed to draft a National Programme for the Integration of Society. The initiative almost coincided with the April 1, 1998, decision of the government to open discussions on amendments to the Citizenship Law.<sup>504</sup>

It is evident that the initiative to establish the Integration Council should be attributed to the diplomatic efforts of the HCNM, similarly to the government's initial decision to discuss the amendments to the Citizenship Law. Prime Minister Guntars Krasts represented the nationalist Fatherland and Freedom Party that then formed part of the ruling coalition. The Party refused to engage in

<sup>502</sup> HCNM's Letter to Andreevs, 6 April 1993.

<sup>503</sup> HCNM's Letter to the Latvian Foreign Minister Valdis Birkavs, 14 March 1996.

<sup>504</sup> In its 3 April 1998 announcement, the Latvian MFA stated: "Latvia welcomes the invaluable assistance provided by international organisations. ... Latvia wishes to continue its close cooperation with international partners in resolving sensitive complex issues and invites further assistance to Latvia's efforts in promoting the integration of non-citizens through Latvian language training and other measures." The Announcement points to the connection between the involvement of international actors and the actions of the Latvian government.

discussions of integration issues on its own initiative. Such discussions were only possible for tactical considerations as a response to the implicit message of the international community that the government's inaction in this area might undermine Latvia's chances for membership in the EU.

The first draft Framework National Programme on Society Integration was prepared by the group of experts established by the Integration Council by September 1998. The declared justification for the need for the integration of society was the fact that "[f]rom the Soviet era Latvia has inherited more than half a million immigrants; [...] many of them have not yet become integrated into the Latvian cultural and linguistic environment, and thus do not feel connected to the Latvian state"<sup>505</sup> – a statement that immediately caused a great damage to the minority's acceptance of the Programme. Between March and May 1999, a series of public events was organised in order to collect the opinions of NGOs, school representatives and all other interested persons on the content of the draft.<sup>506</sup> The Programme was heavily criticised by the minority for its support of assimilative state policy in the field of education. It was viewed as a pure window-dressing initiative of the government drafted against the background of the new Law on Education already adopted and the new restrictive Law on the State Language about to be passed. The minority, thus, opposed the Programme and remained dissatisfied after its re-drafting at a later stage.

The Framework Programme was given the final approval by the Cabinet of Ministers on December 7, 1999 (two days before the revised Law on the State Language was adopted following the President's veto). Both developments took place immediately prior to the Helsinki European Council of December 1999 where Latvia was invited to start EU accession negotiations. The link between the adoption of the (amended) Language Law and the invitation for EU accession negotiations is rather evident. In the case of the approval of the Framework document, the link with international developments is less obvious. However, one could argue that the timing of the approval of the Programme was a strategic step taken in order to formally demonstrate the readiness of Latvia to address the problem.

## *7.2 Subsequent Integration-related Developments*

The year 2000 saw new developments in the field of integration. The condensed version of the National Programme was adopted by the government on May 16, 2000. Subsequently, the Society Integration Department of the Ministry of Justice, which was to be responsible for the implementation of the Integration Programme, was established. In February 2001, the Government adopted the expanded version of the National Integration Programme which contained the priority projects for the next two years and which was supported by calculations of financial requirements. On July 5, 2001, the Law on the Society Integration Fund (SIF) – the organisation that would be entrusted with attracting financial resources from the state budget and from international donors for the implementation of the Programme – was adopted. The Foundation was approved by the Cabinet of Ministers in October 2001, shortly prior to the closure of the OSCE Mission to Latvia. All of these developments came under harsh attacks of the Russian sleepers who looked at the government's initiative with distrust and disbelief. The trust of the minority was only recently boosted when the post of the Special Tasks Minister for Integration Affairs was established at the end of 2002 and occupied by the former Director of the Latvian Centre for Human Rights and Ethnic Studies, Dr. Nils Muižnieks. A visit from the new High Commissioner, Rolf Ekeus, followed shortly.

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<sup>505</sup> Framework document "Integration of Society in Latvia" as worded in the version available at the web site of the Latvian Foreign Ministry in June 1999. The phrase has been preserved in the document until today, see: [http://www.np.gov.lv/index.php?en=info\\_en&saite=publik.htm](http://www.np.gov.lv/index.php?en=info_en&saite=publik.htm).

<sup>506</sup> The Chronology of developments surrounding the process of elaboration of the Integration Programme are available in the Latvian MFA's press release "Preparation of the National Programme 'Integration of Society in Latvia'" (11 June 2001), <http://www.am.gov.lv/en/?id=801>, as well in the Forward of the final version of the National Programme itself (p. 4-6).

### 7.3 *The Idea of a National Commissioner On Ethnic And Language Questions*

From the beginning of his involvement, the High Commissioner has paid special attention to the establishment of an independent institution that would deal specifically with complaints related to ethnic and linguistic issues. In his first letter, he recommended that an office of National Commissioner on Ethnic and Language Questions should be established:

The National Commissioner should be competent to take up any relevant complaint which he/she considers to require further attention with any government agency. He/she would have to actively find out about uncertainties and dissatisfaction involving minorities, act speedily in order to clarify grey areas, answer to questions within a specified period of time (e.g. two months) and finally act as a channel for information and as a go-between to the Government and the minorities in Latvia. The National Commissioner should have the general confidence of all parties concerned. If it should prove impossible to find one person who would meet this criterion, then a commission of three could be established to do the same thing (one Commissioner with two deputies, a triumvirate, like many ombudsman offices are structured).<sup>507</sup>

In his letter of reply, the Latvian Foreign Minister did not express support for the suggestion to establish the special commissioner for ethnic and language issues, arguing that the existing human rights protection mechanisms were sufficient.<sup>508</sup>

It was around the time of the High Commissioner's first involvement (1993) that the newly-elected Latvian President Guntis Ulmanis declared his intention to establish a Consultative Council on Minority Issues (based on the model of the Estonian President's Round Table for Minority Issues), which was to be attached to the President's Office. The Council, however, did not summon for its first session until July 1996. At the time, it comprised of six members nominated by the Association of the National Cultural Societies and of more than ten invited experts. The Council's first meeting was immediately taken note of by the High Commissioner. In his letter of October 28, 1996, to the Latvian Foreign Minister, the HCNM welcomed the initiative as "an important forum to discuss the moral and human aspects of the legislative process."<sup>509</sup>

While the High Commissioner's proposed National Commissioner on Ethnic and Language Questions was to become an institution primarily protecting the rights of minorities, the President's Consultative Council represented a discussion forum. Although such a Council was not exactly the model that the HCNM had in mind initially, it was welcomed by him once established. There is no evidence that there was any connection between the High Commissioner's recommendation to create the National Commissioner and the President's initiative. In practice, the Council proved impractical. It was criticised by its very members who "disagreed with their role of 'puppets' used for drawing up attractive reports on the active participation of minorities in the elaboration of political decisions",<sup>510</sup> and became largely dysfunctional.<sup>511</sup>

### 7.4 *The Latvian National Human Rights Office*

Another relevant institution that was established in Latvia at the time was the Latvian National Human Rights Office (LNHRO), established in 1995, and building mostly on the initiative and financial support of the UNDP Latvia. The Office has had a broad mandate that has allowed it to go beyond the "classical" ombudsman's functions (for example, to handle human rights violations in the private sphere). However, it does not deal with minority or language issues specifically, nor does it have a section that would address minority issues in the way the High Commissioner had

<sup>507</sup> HCNM's letter to Andrejevs, 6 April, 1993.

<sup>508</sup> Andrejevs's letter to the HCNM, 18 April 18 1993.

<sup>509</sup> HCNM's letter to Birkavs, 28 October 1996.

<sup>510</sup> Tsilevich 1998a, SM, 2 May 1997, in: Tsilevich 1998, p. 372.

<sup>511</sup> In 1997, the Council was abandoned by one of the most influential Russian-speaking politicians of that period, MP Vladlen Dosortsev who resigned in protest and whose resignation was referred to as "sensational" (Tsilevich 1998, p. 370).

envisaged. The LNHRO considers complaints on an individual basis and provides legal assistance free of charge. Throughout the years of its existence, the LNHRO has dealt with complaints regarding housing issues, addressed cases where court decisions were ignored by the Latvian Citizenship and Migration Department, engaged in initiatives aimed at improving the position of the disabled and that of AIDS patients as well as addressed the problem of prisoners suffering from tuberculosis. Despite its broad functions, the Office has been criticised of not being able to "fully utilise the powers granted to it."<sup>512</sup> The Office has also been criticised for its entirely ethnic Latvian staff as well as for remaining silent on minority rights issues in its 1998 and 1999 Annual Reports.

Also the LNHRO's independence has been put to question by its position on various significant political issues. In 1996, for example, out of over 50 differences in the rights of citizens and non-citizens found in the Latvian legislation and presented to the public by the Latvian Human Rights Committee, the LNHRO recognised only ten as contradicting international human rights norms.

In November 2000, the Chancery of the President of Latvia created a working group tasked with elaborating the Concept of Establishing an Ombudsman Institution in Latvia. This was later submitted to the OSCE, UNDP and other international organisations for evaluation. After consultations with the government, the OSCE mission to Latvia and the UNDP Latvia invited a team of recognised human rights experts to provide the Government and the Saeima with recommendations on appropriate institutional and legislative measures. As noted in the report of the Expert Review Mission on Latvian National Human Rights Office and Ombudsman Functions in Latvia, the Presidential working group's Concept "concentrates on the perceived need in Latvia for an independent oversight body for public accountability and good governance issues (otherwise known as maladministration)"<sup>513</sup> in addition to the human rights oversight provided by the LNHRO. The Experts regarded the former concern as the primary motivation behind the Paper's proposal for a broader-based complaints institution for Latvia. From this one can conclude that minority or language issues did not form the underlying motivation of the President's Office in elaborating the plans for the establishment of the Ombudsman institution.

The Expert Mission examined the mandate of the LNHRO and proposed three options. First, another institution could be created in addition to the LNHRO that would deal with maladministration issues. Second, the LNHRO's legislative mandate could be broadened beyond human rights issues to include the full range of maladministration concerns. Or third, the LNHRO could be transformed into an overarching umbrella organisation, including not only a classical ombudsman but also a number of sectoral ombudsmen.<sup>514</sup> The third option was adopted, as the revised Concept presented in June 2001 envisaged five sectoral ombudsmen under the umbrella organisation created on the basis of the LNHRO. These five ombudsmen included: 1) an ombudsman for general human rights; 2) an ombudsman for children's rights; 3) an ombudsman for local government; 4) an ombudsman for the judiciary, interior affairs and the military; and 5) an ombudsman for procedural law.<sup>515</sup> Once again, no ombudsman dealing with minority issues or language issues was envisaged.

Thus, a decade since the HCNM made his recommendation to the government of Latvia to create a National Commissioner for Ethnic and Language Questions, no institution of the kind he had envisaged has been established in Latvia. The LNHRO has not won the trust of the minority, and the majority of discrimination-related complaints are handled mainly by NGOs.<sup>516</sup>

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<sup>512</sup> Open Society Institute 2001, p. 302.

<sup>513</sup> Expert Review Mission on Latvian National Human Rights Office and Ombudsman Functions in Latvia 2001, p. 13.

<sup>514</sup> Ibid., p. 16.

<sup>515</sup> MFA's Press Release, 2 June 2001.

<sup>516</sup> Such as the Latvian Centre for Human Rights and Ethnic Studies and the Latvian Human Rights Committee (<http://www.lhrc.lv/>).

### 7.5 The Ethnicity Entry in Passports

The High Commissioner addressed the issue of including the ethnicity entry into the Latvian citizens' passports rather late. He first mentioned the issue on November 21, 1996, when he sent a letter to the Latvian Foreign Minister devoted exclusively to this subject. However, the issuing of the Latvian citizen's passports had started already in 1992 (and the ethnicity entry was obligatory from the very start). Only four years later did the High Commissioner finally draw the attention of the Latvian authorities to the fact that the mandatory statement of ethnicity in the passport was not in line with international practice:

As I understand, Latvian citizens' passports have a box where there is a compulsory requirement for passport holders to provide details about their nationality. It seems to me that the compulsory inclusion of such details does not accord fully with international practice in other countries. Furthermore, in the Latvian context, it may give the impression to some that there are different categories of passport, partly dependent on nationality identification.

May I suggest that the inclusion of these details should, in future, be a voluntary decision on the part of passport holders. Such a change in procedure would not involve any unnecessary costs as there would be no need to alter the technical layout of existing passport books. Simply, the box on the appropriate page in the passport could be left blank if the passport holder does not wish to give this particular information.<sup>517</sup>

It is noteworthy that the High Commissioner referred only to the Latvian citizens' passports, without mentioning the temporary "brown passports",<sup>518</sup> which had been issued between August 1996 and March 1997. The ethnicity entry in these identification documents was mandatory under the heading "special marks".

Several actors responded to the HCNM's recommendation in January 1997. Deputy Head of the Citizenship and Immigration Department Andris Jānis Lejiņš stated that Latvia would not abandon the ethnicity entry, and that it was planned to introduce the entry also into the non-citizens' passports (the issuing of which was being prepared at that time). Lejiņš explained the necessity of having the obligatory ethnicity entry by the fact that the passport is the main identification document in Latvia (as opposed to most of the world where passports are mainly used only as travel documents). In the opinion of Lejiņš, due to the fact that over 800,000 persons in Latvia do not hold birth certificates with information on the ethnicity of their parents, it is necessary to state ethnicity in the passport for internal use. In addition, he also pointed out that three existing laws (the Citizenship Law, the Repatriation Law and the Law on the Change of Name, Surname and Ethnicity) determine the necessity of stating one's ethnicity in the passport.<sup>519</sup>

Another response to the recommendation came from the Latvian National Human Rights Office experts, which recognised that the ethnicity entry in passports could represent a basis for human rights violations, for example, when one is denied employment on grounds of ethnicity. However, the existence of the entry in the passport was not in itself seen to be a violation of human rights.<sup>520</sup>

The reaction of the Foreign Ministry that followed in February 1997 could be termed a typical official reaction to the HCNM's recommendations. While, in principle, recognising the validity of the

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<sup>517</sup> HCNM's letter to Birkavs, 21 November 1996.

<sup>518</sup> Identification documents for non-citizens that were published in 1992 but the issuance of which began in August 1995. The documents were not issued immediately because they defined the legal status of the holder as "stateless person". The Latvian government does not recognize the non-citizens as stateless persons, as their legal status is regulated by the Law on the Status of Former Citizens of the USSR Who are not Citizens of Latvia or any other State, adopted on 12 April 1995. The brown documents were finally issued with the special stamp explaining that the holder is a citizen of the former USSR does not hold the citizenship of Latvia and is not a stateless person under international law and the laws of Latvia. The issuance was initiated due to the lack of the former USSR foreign passport books which were issued to non-citizens in Latvia for traveling abroad up to 1995. The brown documents were valid for two years from the date of issue.

<sup>519</sup> Taufības norāde pasēs saglabājas [Ethnicity Entry in Passports Remains], in: Diena, 28 January 1997.

<sup>520</sup> Ibid.

HCNM's arguments, the Minister pointed to the difficulties involved in implementing the recommendation, stressing that the process would not be speedy in any case.<sup>521</sup>

The media reported that the High Commissioner repeatedly addressed the issue of the ethnicity entry in passports during his April 1997 visit to Latvia. The issue was discussed with the Head of the Parliamentary Standing Committee on Human Rights Antons Seiksts, who stated that "the Latvian society is not yet ready for such changes."<sup>522</sup> Undoubtedly, the other recommendations of the High Commissioner discussed at that point - namely, the abolition of the naturalisation "windows" and the granting of citizenship to stateless children - were far more important to push through than the one concerning the ethnicity entry. These recommendations, thus, completely overshadowed the issue of the ethnicity entry at that stage. Considering the fearful attitude of the Latvian authorities to the possibility that the High Commissioner would issue more recommendations expressed in the summer of 1998, as well as the complicated process of the adoption of the new Law on the State Language in which the High Commissioner was actively involved throughout 1999, it becomes understandable why the issue of the ethnicity entry was not given much attention during that period.

In the meantime, "purple passports"<sup>523</sup> began to be issued by the Citizenship and Migration Affairs Board to non-citizens. All non-citizens were to change their Soviet passports or the "brown" passports for the purple aliens' passports by the year 2000. These new passports also contain a mandatory ethnicity entry. The High Commissioner did not, however, issue any recommendations regarding these passports.

The issue of the ethnicity entry was brought back onto the political agenda prior to the closure of the OSCE Mission to Latvia and in the context of Latvia's anticipated entry into the EU. The new draft Law on Identification Documents was elaborated throughout 2001 and its final version adopted by the Saeima on May 23, 2002. The provisions of the Law are in line with the High Commissioner's 1996 recommendation: the ethnicity entry has been made optional. This refers to both the citizens' and the non-citizens' passports as well as to the newly introduced identification cards (Article 5 (4) of the new Law). The Law entered into force on July 1, 2002.<sup>524</sup> The passports will be changed gradually depending on their expiration conditions.

This development that took place over ten years after the reestablishment of Latvia's independence and five years after the High Commissioner's recommendation on this issue is undoubtedly of great importance to the Latvian society as a whole. When making his recommendation, the High Commissioner was certainly concerned with the danger involved in obliging the individual to declare his/her official ethnicity (and only one) in the passport. Such practice provides grounds for discrimination on the basis of ethnic background which is forbidden by the UN Convention on the Prevention of All Forms of Racial Discrimination to which Latvia is a party. For a long time, Latvia remained the only country that had preserved the Soviet-era practice of including the person's official ethnicity into the passport. In Lithuanian passports, for instance, the ethnicity entry had been optional since independence. In Estonian passports, there is no such entry at all. On the other hand, Latvia continues to ascribe ethnicity to a person at birth depending on the ethnicity of the parents. Several legislative acts that require an obligatory mentioning of ethnicity still remain in force. The Ministry for Integration Affairs established in 2002 intends to analyse all such cases and strive for the elimination of the obligatory ethnicity entry from all legal instruments.

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<sup>521</sup> Birkav's letter to HCNM, 27 February 1997.

<sup>522</sup> Zubkov 1997, *Stul po-prezhnemu kategorichen* [Stoel Still Uncompromising], in: *Biznes i Baltija*, 8 April.

<sup>523</sup> The non-citizens' passports (the English term used on the passport is "alien's passport"). The first purple passports were issued in March, 1997. The non-citizens were to exchange their former USSR passports or their brown identification documents for the purple passports by 31 December 1999. As of that date, the former USSR passports became invalid. The purple passport is currently the only legal identification document for the non-citizens of Latvia.

<sup>524</sup> *Latvijas Republikas Personu apliecināšanas dokumentu likums*. [Republic of Latvia Law on Personal Identification Documents], adopted on 23 May 2002, at: [http://www.pmlp.gov.lv/?\\_p=26&menu\\_\\_id=20](http://www.pmlp.gov.lv/?_p=26&menu__id=20).

## Chapter 8. Conclusion - Challenging Ethnic Democracy: An Evaluation of the Effectiveness of the HCNM in Latvia, 1993-2001

The above empirical analysis of the HCNM's recommendations to Latvia in the period between 1993 and 2001 and the political, legal and institutional response given by Latvia to these recommendations calls for a general assessment of the High Commissioner's role in bringing about the changes in Latvian ethnopolitics over this period. Whether owing to the High Commissioner or to other factors, it is evident that such changes have indeed taken place over the last decade. While in 1991-1994, issues of de-occupation and "voluntary repatriation" of the Russian-speaking non-citizens dominated the Latvian political discourse, by 2001 they had gradually been replaced by the issues of naturalisation and integration, even if only for reasons of creating a favourable international image. While in the early post-independence years, conditions were being created for the possibly greater exclusion of the minority, by 2001, institutions meant to allow for a slow inclusion of the non-Latvians into the Latvian polity were in place (including the Naturalisation Board, the Integration Foundation, the National Programme for the Latvian Language Training, the Ministry for Integration Affairs).

In general, it seems that both the Latvian majority and the Russian-speaking minority have gradually come to realise the need for each other in securing their respective interests. The majority came to terms with the presence of the minority and saw the necessity of accommodating it, even if only out of foreign policy considerations. The minority, on the other hand, has gradually learned to make use of the limited possibilities the Latvian state placed at its disposal for making its claims to a share of Latvia's resources (for example, through naturalisation) as well as for questioning its position (by resorting to the judiciary). From a passively indignant attitude, the minority has recently been turning to more active and participatory forms of articulating its aspirations. Today, it is still premature to speak of "meaningful inter-ethnic cooperation" in Latvia, as István Horváth does when describing the Romanian case,<sup>525</sup> but there are signs that give grounds for optimism as to the future of the inter-ethnic co-existence in Latvia (for instance, the coalition that includes the faction "For Human Rights in the United Latvia" in the Riga City Council) – signs that were not in place at the time when the High Commissioner first intervened in 1993.

It should once again be emphasised here that the High Commissioner became involved in Latvia when the key decisions securing the ethnic Latvians' control over the positions of power and their access to the limited resources of the state, such as jobs, education and property, had been taken. By the time of the High Commissioner's initial involvement, the scope of those who were enabled to vote in the June 1993 elections had been defined, the passports had been issued to the majority of the citizens and language examinations of the Russian-speakers were being carried out in full scale. What a number of authors described as "ethnic democracy"<sup>526</sup> had been established in Latvia before the High Commissioner interfered, and the arrangement had been more or less accepted internationally – a factor that seriously undermined the High Commissioner's chances of effective mediation.

When the HCNM did get involved, he was compelled to act within the framework of the established order, with very limited possibilities of reversing it (although he tried nevertheless). As far as the Latvian political context was concerned, the HCNM had a rather restricted room for manoeuvre from the very start. His task was unenviable: to persuade one party in the dispute of the benefits stemming from the introduction of such mechanisms into what he saw as a potentially explosive ethnic democracy arrangement that would eventually challenge this arrangement. This would be achieved by allowing a greater degree of power- and resource-sharing with the other party - the badly mobilised and disenfranchised minority. In the Latvian case, it is, therefore, the extent to which the High Commissioner succeeded in helping to bring about the introduction of such condi-

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<sup>525</sup> Horváth 2002, p. 117.

<sup>526</sup> See: Smith 1996, op.cit.

tions and mechanisms that largely determines his effectiveness, especially considering that the minority had virtually no legitimate means of attempting their introduction.

### *8.1 Operational, Normative and Substantive Effectiveness*

In answering the question "How effective has the involvement of the High Commissioner been in Latvia?" three interdependent dimensions of his effectiveness are distinguished for the purposes of this project: operational, normative and substantive – the dimensions that, although not always easily separable from one another, allow for a more accurate assessment of the extent to which the HCNM's interference influenced the decisions taken in Latvia at various levels and at various points in time.<sup>527</sup>

By *operational effectiveness* we mean the High Commissioner's influence upon the ethno-political negotiations process as such. This refers to the manner in which he communicated his position to the Latvian officials and the impact his strategies had upon their discourse and behaviour. Operational effectiveness also includes the contribution of the High Commissioner to introducing and sustaining the lines of communication between the actors, as well as to setting other procedural conditions that would allow the parties with conflicting interests to resolve their disputes themselves, or that would facilitate the HCNM's or other actors' further involvement in terms of substantialising and sustaining the results. At this level, we also look at the High Commissioner's capacity for crisis management and immediate de-escalation of tensions.

When measuring the *normative effectiveness* of the High Commissioner's involvement, we look at whether he has socialized the primary actors with international norms and whether the norms he invoked in his recommendations and, more importantly, the interpretations of those norms that he offered when applying them to concrete situations, were in the end incorporated into the Latvian legislation. It is also analysed to what extent this incorporation occurred.

Both the operational and the normative dimension of the High Commissioner's involvement can be seen as bridges towards its *substantive dimension*, i.e. achieving viable results. Here, we attempt to assess whether and how many of the specific recommendations of the High Commissioner were, in fact, implemented, as well as to determine whether the High Commissioner was the causal factor behind their implementation and to assess the sustainability of the solutions found. The extent to which the actors made use of the operational and normative conditions brought about by the High Commissioner is also analysed.

When analysing the HCNM's involvement at any of the mentioned levels, a whole gamut of factors that influence his effectiveness is considered. Those include an assessment of the adequacy of his initial involvement, its timing and manner, the political context in which the involvement took place, the issues addressed, the leverage at his disposal, as well as the activities of other international actors. Finally, the effectiveness of the HCNM's involvement is assessed in terms of the degree to which he has achieved his primary task – that of conflict prevention, as well as in terms of his overall contribution to enhancing security in the OSCE's comprehensive sense, whereby it is "based upon the protection and promotion of human rights and fundamental freedoms and upon the strengthening of democratic institutions."<sup>528</sup>

#### *8.1.1 Operational Effectiveness of the High Commissioner*

The frequency and intensity of the High Commissioner's involvement in Latvia speak for themselves: during his term of office, van der Stoep paid 18 visits to the country, directed at least 20

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<sup>527</sup> See: Zellner 1999, op.cit.

<sup>528</sup> HCNM, Report of Max van der Stoep, the OSCE High Commissioner on National Minorities, Warsaw, 2 October 1995.



letters to at least seven Latvian officials, and issued seven public statements on Latvia. No other international actor has been involved in Latvia to such an extent. Evidence suggests that the High Commissioner played an important part in bringing about the decisions of the two post-independence Latvian presidents (Guntis Ulmanis and Vaira Vīķe-Freiberga) to veto problematic legislation on three occasions (the Citizenship Law in 1994, the amendments to the Labour Code in 1998 and the Law on the State Language in 1999). These facts alone do not yet point to the substantive success of the HCNM's involvement. However, taken together with the media coverage of his interference as well as the reactions to his activities of the actors involved, they provide evidence of the HCNM's capacity to exercise significant influence upon the discourse and behaviour of the key Latvian political actors, as well as upon the inter-ethnic atmosphere in general, thus pointing to his effectiveness in the operational sense.

For the few minority representatives in the Saeima (generally those of the faction For Human Rights in the United Latvia), the High Commissioner's recommendations have often served as the point of reference for their own, often identical, legislative proposals and political arguments. This fact that did not, however, increase the recommendations' chances of being followed (as happened, for instance, during the second reading of the Law on the State Language in the seventh Saeima). For the radical nationalists, most notably the Fatherland and Freedom/MNIL deputies, the HCNM's recommendations represented a manifestation of European (often confused with Russian) "dictatorship" that was to be resisted by all means. For the centre-right, Europe-oriented, but still rather nationalistic forces (such as Latvia's Way that entered in coalition with "Fatherland and Freedom" in 1997), the recommendations represented an unpleasant barrier that had to be skilfully overcome on the way to the aspired membership in international organisations - initially the Council of Europe and, at a later stage, the European Union. The general strategy of overcoming the barrier was to engage in negotiations with the High Commissioner (which often resembled political bargaining) in a search of compromises between the internationally acceptable letter of the legislation in question and its frequently unacceptable spirit.<sup>529</sup> Such occurrences include, for instance, the text of the Citizenship Law adopted in July 1994, the provision on stateless children adopted in 1998 and the text of the Law on the State Language adopted in 1999.

#### *HCNM's Recommendations and Latvia's Foreign Policy Priorities*

By means of mobilising the support of influential international actors (the CoE, the EU, individual Western governments, and later also the NATO) the HCNM linked his recommendations to Latvia's foreign policy priorities – a strategy that proved remarkably effective in the operational sense. His capacity for ensuring that the recommendations were backed and referred to by the international actors with the greatest political weight at various points in time was extraordinary. What also played an important role was the close co-ordination of positions and activities of international actors on the crucial issues.<sup>530</sup> Throughout the years of his activity in Latvia, the High Commissioner succeeded in making his recommendations the standard to which virtually all other international representatives subscribed. The EU, for example, on several occasions "fully subscribed" and "fully supported" the HCNM's recommendations, as did the CBSS Commissioner, the U.S., several diplomats as well as NATO. This international unanimity is the factor that appears to have contributed most to any of the successful outcomes of interference from the operational (but often not from the substantial) point of view.

It is also noteworthy that already during the negotiations of Latvia's admission to the CoE, van der Stoel came to symbolise international interference as such. The High Commissioner gradually became the personification of Europe, partly due to the fact that other influential actors lacked such a permanent "face" and also partly due to the fact that they chose van der Stoel to be their "face". In any event, it is obvious that no other international representative has been as outstanding on the Latvian political stage as was van der Stoel, and that his international authority and public image significantly conditioned the effectiveness of his operations in Latvia. From being an OSCE repre-

<sup>529</sup> See: Tsilevich (1998), *Zharkoe leto...* [The Hot Summer...], in: Tsilevich 1998, p. 150.

<sup>530</sup> HCNM held briefings with ambassadors and heads of international organisations accredited in Latvia during every visit.

sentative in 1993-1994 (the period when the OSCE as an organisation had more political weight in Latvia, partly because of its active involvement in the withdrawal of the Russian troops and the dismantling of the Skrunda radar station), the High Commissioner gradually turned into a major political figure associated and identified with international actors, including the EU (whose political support to the HCNM played a vital role, especially as of 1996).

The HCNM has also played the most proactive role of the international actors present in Latvia, whereas the rest (the CoE, the EU and NATO) have been more reactive.<sup>531</sup> However, there has been a certain "division of labour" among international actors in dealing with minority issues in Latvia. For one, the OSCE Mission was active in monitoring the activities of the Citizenship and Immigration Department and also in providing information to the High Commissioner. The High Commissioner and his Office carried out thorough legal analyses of Latvian legislation in the sphere of minorities, monitored the situation, kept in regular contact with the responsible officials, as well as issued and negotiated recommendations. For the implementation of some of the recommendations, the CoE experts worked closely with the Latvian officials (for example on the simplification of the language tests). Lastly, the EU provided "weight" to the recommendations of the HCNM, as well as finances for various initiatives, such as language training.

It is particularly noteworthy that despite the fact that the EU and NATO had the capacity to exercise the most political influence upon the Latvian officials, neither had the adequate experience, the legal tools or the monitoring mechanisms that were necessary when compared to those held at the disposal of the HCNM for carrying out a thorough analysis and assessment of the minority situation. The EU did declaratively make minority rights part of its political conditionality policy contained in the 1993 Copenhagen criteria.<sup>532</sup> However, the exact content of that conditionality was not developed by the EU itself, but by the HCNM, on whose recommendations the EU relied. The recommendations issued by the EU to the Latvian government in the framework of the Agenda 2000, Accession Partnership and subsequently in the Regular Reports from the Commission on Latvia's Progress towards Accession (in 1998, 1999, 2000 and 2001) relied on the HCNM's recommendations to a large extent.

While recognising that the EU would probably not have been able to get as effectively involved in the situation in Latvia as the HCNM managed to, it is also true that without the EU's political backing the High Commissioner would not have achieved what he has accomplished. The involvement of the EU and the HCNM complemented each other; the EU relying on the HCNM's expertise and experience and the HCNM ensuring the public political support of the EU to his recommendations. In an interview to Michael Ignatieff who asked whether the High Commissioner agreed with the description of him being the "Gatekeeper to Europe", van der Stoep replied as follows:

Of course, the decision whether the gate will be opened is not finally up to me, but to the 15 present member states of the European Union, but it is certainly true that I am one of the organs which provides advice to the European Commission when it comes to questions whether certain political standards which have been formulated by the European Union are being respected. I certainly do try to convey to the various governments that if they meet these standards, for instance, in the field of minorities, the chances of having the gates opened will be increased, or there can be obstacles in the negotiations if certain minority questions are not solved in an equitable way.<sup>533</sup>

Because of the linkage of the High Commissioner's recommendations to Latvia's foreign policy priorities, the Latvian officials had no choice but to address the issues raised in the recommendations, in one way or another. Mobilisation of the political support of influential actors, particularly the CoE, the EU and NATO was used by the High Commissioner in crisis situations on a number of occasions. This strategy has contributed to certain de-escalation of tensions at various points in time, again pointing to the HCNM's operational effectiveness.

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<sup>531</sup> Muižnieks 2002, *The OSCE and Latvia: Arm Twisting, Hand Holding or Partnership?*, presentation at the conference "OSCE and Latvia: Past, Present and Future" Riga, 20 March.

<sup>532</sup> Commission of the European Communities 1994, p. 1.

<sup>533</sup> Hof Filmproductions 2000, *The Silent Diplomat*.

### *Crisis Management*

From the point of view of crisis management, the HCNM was also successful. IN 1994, an escalation of tensions was observed in the light of the debates around the citizenship policy. As outlined above, the HCNM's most important recommendations were not followed in the text of the 1994 as naturalisation was blocked by the "windows" system. Thus, in substantive terms, the involvement of the High Commissioner cannot be judged effective in 1993-1994. In operational terms, however, he could not have done more. While he had certain room for manoeuvre during the process of the parliamentary deliberations of the Citizenship Law (interfering between the readings, analysing the various drafts, addressing the key figures whose influence could have been instrumental), once the Law was adopted, vetoed and reconsidered, his room for manoeuvre narrowed down considerably, and further interference had to be postponed. Nevertheless, as a result of his initial involvement, the citizenship issue was widely internationalised and the expectations of the international community, as far as naturalisation was concerned, were very high. Not living up to those expectations would have required explanations and further action (which indeed occurred when naturalisation proved dysfunctional). The importance attached by the High Commissioner to solving the citizenship problem was demonstrated to the Latvian leaders, and it was evident that a follow-up could be expected. The very fact of the HCNM's and the CoE's interference also had an effect upon the minority, as it provided it with the hope of possible changes in its situation and diminished its sense of anxiety, albeit to a minimal extent. In this respect it may be argued that the High Commissioner's interference was successful from the point of view of crisis management, and brought about a certain de-escalation of the existing tensions. On the whole, however, it may be concluded that the High Commissioner was operationally effective in 1993-1994 mostly from the point of view of having laid the groundwork for further involvement, as it was evident that the approved citizenship policy was likely to result in a deep alienation of the minority from the state.

In his management of the 1998 crisis in the Latvian-Russian relations the HCNM again resorted to the extensive mobilisation of international support for his recommendations. A distinctive feature of the High Commissioner's work in comparison with other international actors has been his thorough preparedness for a possible crisis. The government's preoccupation with the possibility of conflict escalation was strong, and it was the High Commissioner who immediately intervened in order to lead the parties out of the mutually created deadlock. He was prepared like no other actor, as throughout 1996 and 1997 he had been regularly drawing the attention of the Latvian Foreign Ministry to the virtual stagnation of naturalisation, recommending amendments to the Citizenship Law and tracing the drafting process of the new language legislation. It was also just prior to the March 1998 crisis that the High Commissioner had worked with President Ulmanis on the amendments to the Labour Code, the aim of which was to expand the powers of language inspectors.<sup>534</sup> The HCNM had also been aware of the growing deterioration in the Latvian-Russian relations due to the chain of events in 1997-1998 described above. "The Season of Extremism" was almost certain to result in a crisis.

Because of his continuous involvement, the High Commissioner had specific proposals ready at hand when the crisis finally broke out in March-April 1998. He also knew which techniques could work best with the Latvians and concentrated on personal contacts with the relevant individuals and on extensive mobilisation of international political backing for his recommendations, linking their implementation this time to EU membership negotiations. The 1998 crisis was a rare opportunity for the High Commissioner to succeed in convincing the Latvians of the necessity to start addressing the problem of statelessness. Regardless of the degree of sincerity of Russia's concern for the rights of the non-citizens, it was clear that ungrounded bashing would not be possible if the genuine reasons for criticism were removed.

During the crisis, the High Commissioner also succeeded in delaying the potentially restrictive decisions on language that could have further frustrated Russia and urgently concentrated all his efforts on the citizenship issue. His visit to Latvia between March 31 and April 2, 1998 was an important signal to Russia from the point of view of creating the impression of an active international

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<sup>534</sup> Kemp (ed.) 2001, p. 159.

mediation of the citizenship question. It is noteworthy that, while mobilising major Western actors, especially the EU, to refer to and support his recommendations, the High Commissioner, in fact, *discouraged* the Russian government to do the same, knowing that the effect would be the opposite of the desired. Thus, on April 2, 1998, he addressed a letter to the Russian Foreign Minister Yevgeny Primakov in which he urged Russia not to link the normalization of relations to the full implementation of all HCNM recommendations as this might cause some Latvian politicians to oppose them.<sup>535</sup>

All in all, the involvement of the High Commissioner (in concert with the other actors he mobilized) in managing the 1998 crisis was effective from the point of view of both short-term de-escalation of interstate tensions as well as in affecting long-term stability. On the one hand, it left Russia with a feeling of having achieved a foreign policy success. The decision of the Latvian government and then also the Saeima to abolish the "windows" system contributed to comparative de-escalation, and the positive outcome of the subsequent referendum provided some hope for the normalization of the situation in Latvia. The Latvians, on the other hand, were assured of Europe's concern and support, and were shown the West's willingness to assist Latvia in difficult situations. Thanks to the abolition of the "windows", the non-citizens were given the opportunity to alter their situation by going through naturalisation and acquiring political rights – a substantive result brought about by the effective operational involvement of the High Commissioner.

The process leading up to the adoption of the new Law on the State Language may be viewed as a mini-crisis, as a certain escalation of tensions was observed during that period. As noted above, the minority organised a number of protest actions such as pickets and signature-collecting campaigns, as there was a danger of introducing provisions that would allow unlimited state regulation of language use in the private sphere. The High Commissioner's involvement in this process is characterised by his and his experts' frequent contacts with the responsible standing parliamentary committee (on Education, Culture and Science). However, what proved crucial was the involvement of the EU, as the linkage between the adoption of the internationally acceptable text of the law and the invitation to start accession negotiations with the EU was made rather obvious. A chain of developments similar to the one that accompanied the adoption of the 1994 Citizenship Law took place. At first, the Law was adopted in the wording unacceptable to international actors. Consequently, there was intensive pressure upon the President to veto the Law (which she finally did). A slightly modified wording was adopted just prior to the December 1999 Helsinki Summit of the EU, during which Latvia received an invitation to start accession negotiations. Generally speaking, the HCNM's diplomatic efforts helped to avoid the significant restriction of the previously existing language policy, but it was made clear that future revisions of the adopted provisions would be expected (as implied in the HCNM's statement of August 31, 2000).

#### *Distribution of Involvement*

It should be noted that while working with the government and the parliament on the citizenship amendments, the HCNM was involved equally intensively in the drafting process of the new Language Law – the process that was overshadowed by the citizenship debate and could have easily been overlooked by outside observers. It is, therefore, to the credit of the High Commissioner that he did not let this process escape his attention. In this respect, his "distribution of involvement" is of major importance from the operational point of view. On the one hand, the HCNM worked with Prime Minister Krasts and the Speaker of the Saeima Alfreds Čepānis on citizenship issues (his 1998 letters dealing with citizenship questions were addressed to the aforementioned individuals). On the other hand, the HCNM discussed the issues of language almost exclusively with Dzintars Ābiķis, Chairman of the Parliamentary Committee on Education, Culture and Science, writing to him personally and copying the letters to the Foreign Minister. Furthermore, in an unprecedented diplomatic move, the High Commissioner addressed the Latvian Minister of Justice personally when dealing with the Cabinet of Ministers' Language Regulations, as that ministry was responsible for drafting the Regulations. Had all recommendations on all issues been addressed to the For-

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<sup>535</sup> Reference to the letter is given in: Ratner 2000, Does International Law Matter in Preventing Ethnic Conflict?, *Journal of International Law and Politics*, Vol. 32, No. 3, p. 680.

eign Minister only, it is quite probable that the High Commissioner would not have achieved as much as he finally did. The HCNM's strategy allowed him to save time and exercise more influence on the officials directly responsible for the respective legislative initiatives. This kind of distribution of involvement was an important factor that contributed to the effectiveness of the High Commissioner in the operational sense.

### *Fostering Dialogue*

As follows from the implementation analysis, the efforts of the High Commissioner have been rather ineffective in terms of establishing formal lines of communication between the majority and the minority in Latvia (especially the non-citizens), mostly due to the lack of the government's political will in this area. The National Commissioner on Ethnic and Language Questions was never established and the President's Consultative Council on Nationalities (which was not the High Commissioner's idea, but for which he voiced support) proved dysfunctional shortly after its creation. Furthermore, the Latvian National Human Rights Office (LNHRO, the result of the UNDP and the government's cooperation rather than an effect of the HCNM's activities) was far from the vision of an ombudsman that was advocated by the High Commissioner. It may be argued, however, that the Latvian language acquisition by the Russian-speakers has been viewed by the High Commissioner as a step towards a more meaningful dialogue between the majority and the minority, and his fundraising efforts for language training form part of his operational effectiveness in this area.

### *8.1.2 Normative Effectiveness of the High Commissioner*

For the purposes of this project, normative effectiveness means that the primary actors are socialized by the HCNM with international human rights and minority rights norms, and that these norms are internalised (or enforced) into domestic legislation. This is done for the wider purpose of conflict prevention, i.e. the norms are used by the HCNM as tools that can potentially affect the actors' behaviour and ease tensions.

Looking at the Latvian context, it appears that the High Commissioner managed to be normatively effective in the sense of arriving at what may be termed "normative compromises" with the Latvian authorities through an exchange of concessions during the negotiations process. It also appears that it was the legal precision of the norms (or, for that matter, their vagueness) that determined the extent to which those norms could be negotiated and, in the end, compromised. As one of the HCNM's strategies was the "translation of norms"<sup>536</sup> in order to adjust them to the local circumstances (a strategy also exercised by the Latvian law-makers), it is often difficult to speak of the end result of the HCNM's activity in terms of compliance or non-compliance of Latvian legislation with international instruments.<sup>537</sup> In general terms, however, the HCNM on several occasions succeeded in bringing the normative behaviour of the Latvian side closer to ensuring compliance than would have been the case without his interference. Touval has described this process as follows:

While the notion that negotiating compliance with norms entails compromise might sound offensive, negotiation actually can produce a desirable outcome. Negotiation brings behavior closer to desirable standards than it would have been otherwise. Indeed, it may be that efforts to bring behavior and policy into conformance with normative standards commonly require that norms be reinterpreted to render them applicable to the case in question. In the process, norms are adjusted to fit the circumstances, and behavior is modified to fit the norms. It is a form of a compromise.<sup>538</sup>

It seems that the HCNM's succeeded in norm enforcement only as much as the existing norms allowed him to. His references to norms had a political dimension, as they ensured an adequate justi-

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<sup>536</sup> Ratner 2000, p. 623.

<sup>537</sup> The difficulty in determining the degree of compliance is implied, for instance, by the HCNM's statement on the Law on the State Language and the Language Regulations, where he speaks of the provisions being "essentially in conformity" with Latvia's international obligations (HCNM's statements of 9 December 1999 and 31 August 2000).

<sup>538</sup> Touval Saadia 2000, Does the High Commissioner Mediate?, *Journal of International Law and Politics*, Vol. 32, No. 3, p. 712.

fication for his involvement as such, and helped him to avoid being perceived as a representative of minority interests by the Latvians. By referring to certain norms and standards (thereby "socializing" the primary actors with the existing norms), the HCNM provided a framework for the debates on minority issues, where the norms served to balance the extreme positions.<sup>539</sup> Although minority actors would also often invoke the same international human rights instruments, their opinion was usually disregarded. When referred to by the HCNM and the EU, however, the norms acquired political weight and had to be addressed by the Latvian side in one way or another. It can be stated that the references to international norms were part of the HCNM's operational strategy and contributed to his operational effectiveness from the point of view of impacting the political discourse in Latvia rather than to his normative effectiveness as far as compliance with norms is concerned.

Our findings point to the extreme difficulty the HCNM faced when attempting to internalise invoked norms in Latvia. As noted by Ratner, many Latvian legislators are of the opinion that certain international human rights norms are not suitable for the unique situation in Latvia, and this unique situation justifies deviation from the general practice with regard to norms or reluctance to interpret them broadly.<sup>540</sup> The norms invoked by the HCNM thus have no domestic significance in the eyes of these politicians, and are addressed, if at all, only for foreign policy purposes. Also, whenever certain normative concessions (or what was presented as concessions) in some areas were made by the Saeima under strong international pressure, restrictions were immediately introduced in other areas in order to compensate for any liberalisation of minority-related legislation (an example of this is the stiffening of the language and educational policy that followed the abolition of the naturalisation "windows").

To support a number of his arguments, the HCNM invoked binding international legal instruments to which Latvia is a party, such as the CoE and the UN Conventions. The provisions of these instruments, however, are in most cases formulated in general terms and are sometimes rather vague, allowing for a variety of interpretations. It was, therefore, not an easy task for the High Commissioner to convince the Latvians to accept his suggested interpretations of the norms he invoked and to base concrete policy measures on those interpretations. In order not to be associated with the minority and not to alienate the Latvians, the HCNM did not insist on the broadest interpretation of norms. When his recommendations seemed excessive to the Latvians, he was ready to compromise and relax his initial stance, thereby gradually sliding towards the minimalist approach to norm interpretation. However, even his minimalist approach was usually too much to ask from the Latvian side (as happened, for example, in the case of stateless children).

As to the High Commissioner's references to non-binding political instruments and international legal instruments to which Latvia is not (or not yet) a party, they have proved ineffective. "I would also like to note that Latvia is not a signatory to the European Convention on Nationality, to which you have referred"<sup>541</sup> was the reaction of the Foreign Minister to the HCNM's argument used in 1997 based on the Convention. Nor is Latvia a party to the Framework Convention on the Protection of National Minorities, explaining why the High Commissioner could not insist upon applying its provisions in his argumentation in the Latvian context.

It appears from the actions of the Latvian law-makers that, in their view, whatever is not explicitly prohibited by international norms, can be practiced. When the HCNM implied that Latvian legislation was not in compliance with Latvia's obligations under international law, the Latvian side usually inquired into which exact provisions of which instruments were meant, whether the instrument was binding to Latvia, why it was the HCNM's specific suggestion that would ensure compliance with that instrument and whether the other state parties to that instrument followed the same practice. The legal arguments were, most of the time, not sufficient for the Latvian side, and strong po-

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<sup>539</sup> Packer explains that, "Referring to pre-existing standards already voluntarily accepted by the state(s) in question preserves the HCNM's claim to impartiality by protecting him against any accusation that he is inventing his own yardsticks." (Packer 2000, *Making International Law Matter in Preventing Ethnic Conflict: A Practitioner's Perspective*, *Journal of International Law and Politics*, Vol. 32, No. 3, p. 716).

<sup>540</sup> Ratner, *op. cit.*, 622.

<sup>541</sup> Birkavs's letter to HCNM, 11 September 1997.

litical pressure such as that of the EU was indispensable for backing the HCNM's legal argumentation.

Overall, the decade since independence saw a process of a gradual and consistent restriction of the rights the Russian-speakers had once enjoyed. Whether justified by international norms or not, the taking away of the rights previously in place has been painfully perceived by the affected minority. The HCNM's interventions helped to smooth this painful process, but not to re-direct it.

One of the greatest difficulties for the High Commissioner, especially as far as citizenship legislation is concerned, was the fact that, as Smith has put it, "Europe has been willing to accommodate the Baltic states in welcoming them into European organisations, which in turn has added further legitimacy to an exclusionary stance on citizenship."<sup>542</sup> The UN *Fall Report* of 1992 released two years prior to the adoption of the Citizenship Law and widely cited in Latvia, concluded that, "As to generally accepted principles of international law concerning the granting of citizenship, Latvia is not in breach of international law by the way it determines the criteria for granting its citizenship."<sup>543</sup> After that it was, naturally, rather difficult for the High Commissioner to introduce legal arguments that would hold the contrary. The absence of international legal instruments that could significantly challenge the policy line established by the 1994 Citizenship Law combined with the lack of the political will in the West to challenge it at that stage allowed Latvian President Ulmanis to state in his speech at the CSCE Budapest Conference in December 1994 that, "the Latvian legislation in the field of interethnic relations meets the highest international standards."

Latvia's admission into the Council of Europe served as proof of the West's acceptance of the citizenship policy, and it is not surprising that the Foreign Ministry turned a deaf ear to the High Commissioner's subsequent legal arguments which implied that the Citizenship Law violated the provisions of a number of UN instruments. The Foreign Minister noted in one of his replies that, "The existing Citizenship Law does not directly contradict Article 7 of the Convention on the Rights of the Child or the provisions of the International Covenant on Civil and Political Rights and the Convention on the Reduction of Statelessness ...." The minister also stated on that occasion that, "it is the view of the Government of Latvia that the provisions of the mentioned instruments have been observed" recognizing, however, that there may be different interpretations of the above-mentioned human rights documents.<sup>544</sup> That reply was given in spite of the High Commissioner's reference to the unanimous opinion of a number of recognized international legal experts all of whom supported his argumentation.

The fact that the Latvian side finally addressed the issue of stateless children was determined by political circumstances (the Latvian-Russian crisis and EU pressure), rather than by the HCNM's legal arguments. When one analyses the evolution of the High Commissioner's argumentation, it appears that he virtually fell into the trap of his own references to the UN Convention on the Rights of the Child: as described in Chapter 4, during the negotiations process, he gradually slid towards the minimalist approach and, in the end, out of political considerations, had to settle for even less than the minimum. Contrary to his recommendation, the requirement for the children to present proof of having been educated in Latvian or to pass tests were introduced into the provision. Whether this robs the adopted provision of its meaning remains an open question.

There may be different views on whether the text of the provision currently in force brings or does not bring the Latvian Citizenship Law into compliance with the Convention on the Rights of the Child. The welcoming messages of both the High Commissioner and the EU issued following the adoption of the provision by the Saeima imply that the international community has no more objections to the situation of stateless children in Latvia and that, in their interpretation, compliance with the above-mentioned Convention has been ensured. From some welcoming statements, such as that issued by the EU following the Saeima's approval of the amendments, it may even seem that Lat-

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<sup>542</sup> Smith 1998, p. 109.

<sup>543</sup> Fall 1992, op. cit., p. 301.

<sup>544</sup> Birkavs's letter to HCNM, 11 September 1997.

via, in fact, has unconditionally recognised all stateless children as its citizens (which is not the case). Such a warm welcome may have been given out of the consideration that any provision, even one that is not fully in line with the HCNM's recommendation on this issue and is of limited practical significance, had an important symbolic value and was better than a complete rejection to consider the issue, given the highly unfavourable political context at the time of the adoption of the provision and the difficulty of the negotiations process. Besides, a negative assessment of the adopted provision would most probably have caused more tension and, possibly, more "compensatory" measures. Furthermore, the reaction of the minority did not imply a threat of conflict escalation, which ensured that the international welcome would not be challenged seriously.

It appears that the HCNM's welcoming statements often represented what Ratner describes as a "classic mediation technique in bolstering one side when it makes concessions that the other may find inadequate.... By citing the High Commissioner's statement, Latvia could claim that it had accomplished what he had asked, that it was complying with international standards, and that any further criticism from Russia was unwarranted."<sup>545</sup> This implies that the HCNM has, in fact, very closely followed his mandate, and gave priority to what he saw would be the measures that would diminish the threat of the international conflict spill-over. The actual content of the minority-related legislative provisions or the fact of their compliance or non-compliance with international instruments has been of secondary importance to the High Commissioner. On the other hand, the High Commissioner has always aimed at the solutions that would potentially ensure long-term stability in the country:

Sometimes I have the impression that minority-related policies are followed grudgingly as if one were going down a checklist of points that have to be ticked off in order for a State to acquire a certain respectability. True, respect for minority rights is an important barometer of a State's compliance with international standards and this can facilitate closer integration, for example, EU accession. But it should not be seen as a "one time" initiative to appease the international community. Rather, it should be regarded as a process to foster long-term inter-ethnic stability. This is in the best interest of the State concerned.<sup>546</sup>

Touval is correct in pointing out that, "Human Rights norms obviously played a role in the mediations ... but mainly in the argumentation supporting the parties' position. However, the central issues mediated and agreed upon were specific policy measures, not the question of the states' compliance with human rights norms."<sup>547</sup> This fact, however, raises questions as to the adequacy of the welcoming statements claiming compliance when compliance is, in fact, questionable, for the internal context of majority-minority relations.

It is probable that, had there been an international binding instrument obliging a state to grant its citizenship unconditionally to children of stateless persons born on its territory, the High Commissioner would have achieved Latvia's compliance with such a norm, as in operational terms his involvement was exemplary. However, none of the international instruments invoked by the OSCE HCNM unequivocally obliges a state to grant its citizenship to the children of stateless parents born in the country. It would probably also have been possible to convince Latvia to comply with EU norms, had there been any binding ones on minority rights. However, all the most influential international actor could do was to "fully support" the HCNM's recommendations based on the UN and CoE norms, as the EU lacks legal conditionality tools in the field of minority rights, and specifically dealing with stateless children. Thus, in spite of the almost unlimited political authority of the EU in the eyes of the Latvian policy-makers, a legal development of the kind that has occurred in the case of stateless children was possible due to the absence of clear and uniform international standards in this area and the lack of political will to broadly interpret the existing norms on the part of the Latvian legislators.

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<sup>545</sup> Ratner 2000, p. 679.

<sup>546</sup> Max van der Stoep, High Commissioner on National Minorities, OSCE, Nationhood and Statehood: Reconciling Ethnicity and Citizenship in an Interdependent World. Address to the Raoul Wallenberg seminar on Human Rights, Budapest, May 7, 2001.

<sup>547</sup> Touval 2000, p. 710.



A similar process was observed when the High Commissioner resorted to legal arguments while discussing the draft Law on the State Language with the Latvian side. The HCNM's idea that the state should not regulate language use in the private sphere at all was unacceptable to the Latvians. The High Commissioner thus concentrated on the extent to which international law allows for such regulation by referring to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, ICCPR and case law of the European Court of Human Rights. His argument ran that in many situations the mentioned instruments allow for no more than a legal requirement of an *additional* use of the state language *alongside* another language. However, the only concession the Latvian side was ready to make was to permit the use of another language alongside the state language in some exceptional cases (determined by the Cabinet of Ministers). Furthermore, because of the limitations international law sets for regulating the use of language in the private sphere, the Latvian legislators were interested in defining the public sphere (where such regulation could be unlimited, as the HCNM had no objections to this) in the broadest possible sense. This resulted in intense discussions between the HCNM and the Latvian law-makers as to what share of state capital made an enterprise belong to the public sector: a share of the capital, 51 per cent of the shares, or the largest share (the third variant was finally accepted as a compromise). The legitimate public interest clause on which the HCNM was insisting was finally introduced into the text of the Law, but in a wording that could potentially make the list of legitimate public interests infinite. As in the situation with the initial adoption of the Citizenship Law, the President's veto was needed to reconsider the wording and to shorten the list.

The final text of the Law may be seen as an attempt of the parliament to both stiffen language policy and, at the same time, to leave an impression of having satisfied the High Commissioner. The law represents a series of legal labyrinths capable of confusing even experienced legal experts and makes numerous references to the executive regulations. The subsequently adopted Regulations of the Cabinet of Ministers had to be re-drafted several times under the scrutiny of the HCNM, and the final result is that some articles are still not in line with certain international provisions. Referring to the final Regulations in his August 31, 2000 statement, the HCNM noted that specific matters would have to be reviewed upon Latvia's anticipated ratification of the Framework Convention for the Protection of National Minorities (FCPNM). This was an important signal to Latvia, as it still remains the only EU candidate state that has not ratified this minority protection instrument at present and appears reluctant to do so.<sup>548</sup> In addition to the HCNM, the EU has also made references to the FCPNM in its Regular Reports, but it has not been made part of the EU's conditionality policy, possibly because the EU strives to avoid accusations of using double standards, as not all current EU member states have ratified the FCPNM. At present, however, the question of the ratification of the FCPNM by Latvia is over-politicised, as the FCPNM is not as strong a minority protection instrument than it is often presented to be. Besides, the key concerns of the Russian-speaking minority in Latvia, particularly regarding education, go beyond the provisions of the FCPNM. The HCNM's and EU's calls for its ratification thus appear to be more of symbolic rather than of practical significance.

Ratner has noted that "securing compliance with international law forms only part of the task of the High Commissioner. And norm compliance hardly suffices to prevent conflict. One side in a conflict may ask for more than the norms require, even if the norms do not prohibit what they are seeking, or a tense situation may not really concern norms at all, but dialogue or political cooperation between different groups."<sup>549</sup> In the field of education, the Russian-speaking minority in Latvia is, indeed, seeking more than the existing international norms on minority rights require. Their demand is that the state continue to finance secondary education in the Russian language. Even the FCPNM, which is seen as the most progressive minority protection instrument in Europe, does not oblige the state to do this. Nor does it prohibit such practice. This implies that the solution to the much disputed issue of the medium of instruction in minority schools will most probably lie outside of the strictly normative framework. The HCNM, however, has opted not to address this issue so

<sup>548</sup> Although the FCPNM was signed on 25 May 1995, its ratification has been rejected on four occasions. In March 1999 a high ranking Ministry of Justice official argued that "the signature of this Convention was itself a mistake", see: Open Society Institute 2001, p. 278.

<sup>549</sup> Ratner 2000, p. 622.

far. Should the issue become more conflictual, the HCNM may choose to interfere. If, however, the situation does not provoke serious conflict, implying a threat of violence or international escalation, the HCNM's involvement is unlikely.

Thus, although he did not generally succeed in convincing the Latvian side to accept his normative recommendations, the HCNM's references to international norms have, on the whole, conditioned the Latvian political discourse to an important extent. Without such references, it is unlikely that the Latvian authorities would have addressed minority-related issues at all. The legal dimension of the HCNM's involvement is, however, intrinsically linked to the political one, which inevitably leads to the politicisation of the norms he invokes. From the point of view of reducing the tensions in society, the HCNM's normative initiatives have had ambiguous effects. On the one hand, they provided a tangible framework for the debate. The President's veto of the Law on the State Language was based on strong normative arguments, and was very much welcomed by the minority regardless of the end result to which the reconsideration of the law would lead. That decision also improved the public image of the then newly-elected President in the eyes of the Russian-speakers, which was important from the point of view of boosting the minorities' trust of state authorities. On the other hand however, considering the parliament's reaction to the HCNM's normative recommendations expressed by the final wordings of the provisions in question, the "compensatory measures" introduced for counter-balancing concessions in some fields by introducing restrictions in others, and the welcoming statements offered by the HCNM and the EU whenever the Saeima addressed, even in a rather unsatisfactory way, the issues of concern, implies that norms can, in fact, be compromised. This also implies that the HCNM is ready to accept the compromised norms, if not ways around the norms, if this reduces the chances of conflict escalation from his point of view. In this way, the HCNM has contributed to bringing the conflict into a normative dimension. Lately, the relations between the minority and the state have acquired an increasingly pronounced legal character, particularly with the increasing number of cases brought by minority representatives before national and international courts (particularly to the European Court of Human Rights). Thus, the HCNM has contributed to the gradual transformation of the majority-minority conflict in Latvia, whereby, from a purely political conflict, it was transformed into a conflict of legal nature – the process that serves as evidence of the normative effectiveness of the HCNM.

### *8.1.3 Substantive Effectiveness of the High Commissioner*

In this section, we attempt to assess whether and how many of the specific recommendations were implemented and determine whether the HCNM was the causal factor behind their implementation, as well as assess the sustainability of the solutions found. Finally, the extent to which the actors made use of the operational and normative conditions brought about by the High Commissioner is analysed.

In 1993, the HCNM touched upon a wide range of problem areas where urgent changes were necessary in order for the inter-ethnic relations in Latvia not to aggravate. In his April 1993 recommendations, the HCNM addressed 18 points that dealt with the citizenship and naturalisation issues (granting citizenship to stateless children born in Latvia, the level of difficulty of the language and constitution tests, exemption of the elderly from naturalisation examinations and the provision of adequate information on naturalisation procedures, etc.). He also advocated the establishment of the National Commissioner on Ethnic and Language Questions, and dealt with Latvian language legislation, language training for non-Latvians and the necessity to implement a policy of dialogue and integration. Each of these issue areas required extensive involvement and a long process of negotiations with the Latvian side. To enhance the chances of the initial recommendations to be implemented, the High Commissioner had to concentrate on one or two issues at a time, depending on their importance in the given political context, and had to exercise "distribution of involvement" by working with different individuals and institutions on different issues. He also resorted to the close coordination of activities and positions as well as to the "division of labour" with other international organisations.

The Latvian parliamentary situation significantly conditioned the High Commissioner's prioritisation of issues: some issues acquired more acuteness in the pre-election campaigns while others were pushed into the background. However, if we look at the issue areas highlighted by the HCNM in 1993 and at his subsequent activities, it becomes evident that the HCNM followed up on most of them, in addition to addressing new issues depending on what was of utmost importance at the time. It is also noteworthy that, in the course of time, each issue dealt with by the HCNM compelled him to go into its details during the negotiation process (as, for example, in the case of the Law on the State Language in 1999). This made his recommendations increasingly more specific in comparison with the general guidelines he presented in 1993. They also acquired an increasingly greater political weight due to the support for them mobilised by the HCNM, voiced by international actors, in particular by the EU that often made them its conditionality tools.

Although there are a number of correspondences between what was recommended by the HCNM and what was implemented by the Latvian government, such correlation is almost never exact: the implemented solutions mostly represent compromises arrived at as a result of complex negotiations. It is, however, important that virtually all issue areas to which the HCNM directed his attention throughout his term in office have been addressed both by the other international actors and by the Latvian government by 2002, in one way or another. In some situations, the HCNM's direct influence is obvious, while in others determining his precise role is more complex.

The main point is, however, that the government has taken a number of steps that may be viewed as substantive results of the HCNM's involvement. In the citizenship sphere, the change of the situation since 1993 can be measured by the number of naturalised persons. The HCNM did not advocate the "zero" option and accepted the idea of naturalisation, which he hoped would be speedy. However, only about 10,000 people were naturalised by 1998, as his recommendations were ignored by the parliament in 1994. The total number of the naturalised (over 60 000 today) indicates the extent to which the actors (in this case the non-citizens) made use of the operational and normative conditions brought about by the HCNM. The High Commissioner undoubtedly contributed to the increase in the number of naturalisations by having insisted on the removal of the obstacles to it, first of all, by advocating the abolition of the "windows" system. The current figures are still relatively low in relation to the total number of non-citizens (around 500 000) but they have set the naturalisation process in motion. Indeed, the process could very well have remained stagnant had it not been for the active involvement of the HCNM. Had the High Commissioner not interfered, and had the EU not made his recommendations part of its conditionality policy, the abolition of the "widows" system would most probably not have become widely and openly discussed questions. It is, therefore, fair to consider the HCNM the main driving force behind the changes manifested by an increase in the number of naturalisations due to the use of the liberalised procedures. This is undoubtedly an example of the High Commissioner's substantive effectiveness.

The High Commissioner's concern with the necessity to provide sufficient information about naturalisation procedures to non-citizens is now being addressed by the Naturalisation Board. It is undeniable that the HCNM was the direct causal factor behind the issuing of one of the first informative brochures of the kind he had in mind, supported by finances from the Foundation for Inter-Ethnic Relations. Further initiatives regarding information have, however, been undertaken by the Naturalisation Board itself. Currently, the EU PHARE programme is among the financial contributors to the information campaigns. The process analysis allows us to conclude that the HCNM raised the issue of information to the level of a top priority, and this status of the issue has been sustained by both the OSCE and other actors, including domestic ones. The recommendation regarding information is, perhaps, among the few where the HCNM has not met with major resistance towards its implementation.

The issue of the simplification of the naturalisation tests addressed by the HCNM was taken up by the CoE experts and the OSCE mission members who worked with the responsible officials of the Naturalisation Board on test optimisation. In the end, this resulted in the simplification of the tests. However, the HCNM's specific recommendations in the area of test simplification have been only partially implemented (for example, the recommendation to exempt the elderly and the disabled

from the language requirements). However, the HCNM was ready to compromise in this area. While initially referring his recommendation to language requirements in general, he subsequently only pleaded for exempting the elderly from the written part of the test. Over the years, the elderly were exempted from the written part of the test, but not from its oral part. Besides, the HCNM never touched upon the issue of the history and constitution test for the elderly, which is to be taken in Latvian. As to the disabled persons, specific groups were exempted from various parts of the tests depending on the nature of their disability. The complete exemption of the disabled from the tests has not occurred.

In June 2001 the government finally accepted that the final Latvian language examination at general and secondary Russian-language schools is to count as the naturalisation language test. This decision is likely to have been motivated by the anticipated closure of the OSCE Mission to Latvia that was desired by the government. The decision undoubtedly represents an important substantive result of both international involvement and domestic pressure. The idea of equating the school exams with naturalisation tests had been frequently expressed by minority representatives and advocated by both the CoE and by the OSCE Mission. The HCNM's influence in this case is indirect, as his recommendations did not explicitly mention this option.

The initiative in the area of language training to which the HCNM directed particular attention in his recommendations, the establishment of the National Programme for Latvian Language Training (NPLLT), was taken by the UNDP, not by the OSCE. The funding has generally come from international organisations (UNDP, EU) and individual Western governments. The Latvian government allocated funds for it in the state budget in 2001 for the first time. By coincidence, this step was taken prior to the closure of the OSCE Mission. The HCNM's role has been to raise the issue of language training to become a high priority issue for the government, in addition to participating in fundraising for the language training initiatives. The substantive results can be roughly measured by the statistics provided by the NPLLT (see the section on Language Training). However, further improvements are needed, as free language training is not available for all interested persons in all regions.

The anticipated closure of the OSCE Mission to Latvia also seems to have prompted the government to finally reduce the standard naturalisation fee from 30 to 20 LVLs in 2001. The substantial reduction of the fee had been one of the most frequently reiterated recommendations of the HCNM since 1996, but only the prospect of the Mission's closure made the Latvian government act upon it. As can be seen from the analysis of the fee issue, the HCNM played a crucial role in the process of its reduction, and he was supported along the way by both the EU and the CoE, both of which called for a reduction of the fee in their Reports up until 2001.<sup>550</sup> At the time when this text went to print, the fee was further reduced for students and other groups to 3 LVL upon the proposal of the Minister of Integration N. Muižnieks.

In 1996, the HCNM recommended to stop the practice of indicating a person's ethnicity in the Latvian passports. Until recently, however, the issue was not addressed by the government. Finally, on May 23, 2002, the Parliament adopted a new Law on Identification Documents that introduced the identification card as the principal identification document for the internal use in Latvia. The ethnicity entry in both passports and in identification cards will be optional. This development is not entirely a direct consequence of the HCNM's recommendation. Rather, it is explained by the necessity to bring the Latvian identification documents in line with international standards. The new format for the Latvian passports can be seen as another step in the process of Europeanisation. This is an example of how domestic authorities themselves came to the same conclusions as the HCNM had in 1996. Undoubtedly, the authorities have been aware of the international criticism of the ethnicity entry and this has probably contributed to the final decision to make the ethnicity entry optional in identification documents. Therefore, although the HCNM's influence is not obvious in this case, it must not be underestimated.

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<sup>550</sup> Wilkens 2001a.

The High Commissioner's key role in the process of bringing the new Law on the State Language into minimal conformity with international standards is, on the other hand, very obvious. He and his Office have been in permanent contact with the parliamentary committee on Education, Culture and Science, submitting comments and legal evaluations of Law's numerous drafts. Due to this, the text of the Law gradually came closer to the desirable internationally acceptable result. It is reported that the High Commissioner also had personal contact (in writing and by telephone) with President Vīķe-Freiberga, who returned the unacceptable Law back to the Saeima for repeated consideration. At present, the Law remains a highly restrictive legal instrument as far as the use of languages other than Latvian is concerned. However, when one compares the early drafts of the Law with its final text, the provisions appear milder – an undeniable achievement of the High Commissioner.

The above conclusion also applies to the nine sets of the Regulations on language of the Cabinet of Ministers. Their first drafts are much harsher than the final text, and this is to a large extent a consequence of the direct involvement of the High Commissioner, who corresponded with the Latvian Minister of Justice on the issue. Thus, through his long-term involvement, the High Commissioner has been able to achieve that the Law on the State Language and the Regulations did not significantly alter the previously existing language policy that had been in place since 1992. The new legislation did bring about changes in the direction of further restriction of the rights of persons to use languages other than Latvian. However, without the HCNM's interference and the political support he was afforded by the EU and other actors, it is highly probable that the policy would have been tightened in a much more radical way through these new legislative initiatives.

Recognising the positive contribution of the HCNM to soothing or reversing the various radical initiatives of the Latvian authorities in the field of minority policy, it is also to be observed that international interference has caused a certain degree of further radicalisation of the centre-right political forces. The plans concerning the substantial linguistic reform in the Russian-language secondary schools may be seen as one of the major manifestations of such radicalisation taken in response to the abolition of the "windows" system of naturalisation. The new Law on the State Language, with its Regulations that initially envisaged unlimited state regulation of language use in the private sphere, may also be seen as a protest response to the liberalisation of naturalisation decided upon following international pressure.

The substantive results of the HCNM were "neutralised" or "compensated" for also in several other areas. Such measures include the termination of the procedure of granting citizenship for special accomplishments to the non-citizens, the explicit differentiation of the legal status of the non-citizen of Latvia from that of a stateless person in the Citizenship Law, the narrowing down of the quota in TV and radio broadcasts from 30 per cent to 25 per cent in the Law on Radio and Television (now declared unconstitutional by decision of the Constitutional Court), the reinforcement of the official status of the Latvian language as the sole state language in the Latvian Constitution, the establishment of fines for language violations in the Administrative Violations Code (including for the "disrespect towards the state language") and the new Constitutional amendments that require MPs to swear an oath in which they undertake to protect the Latvian language as the sole state language. However, most of the above-mentioned measures have not significantly altered or worsened the already existing situation.

In general substantive terms, after the eight years the High Commissioner dedicated to the normalisation of the interethnic relations in Latvia, the position of the mostly Russian-speaking and largely non-citizen minority remains rather unsatisfactory. The proportion of non-citizens in society remains high, the Russian-speakers are heavily underrepresented in public administration,<sup>551</sup> Russian is considered a foreign language in Latvia, individuals have no right to address public authorities (including at the municipal level) in Russian, the future of the public secondary education in Russian is rather grim, and bans for non-citizens to exercise certain professions still remain. Nevertheless, the OSCE Mission to Latvia was closed and the monitoring procedure of the CoE has been

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<sup>551</sup> Pabriks 2002, pp. 15-35.

terminated. The closures apparently took place in exchange for what was viewed as important positive steps taken by the Latvian government in the direction of integration. Throughout the years, it has also become quite clear that Russia's influence upon the minority situation in Latvia is minimal, that the Russian-speaking minority in Latvia is largely not responsive to Russia's initiatives to protect its rights, that the minority does not by any means represent a Russian irredenta and that, in general terms, the "threat" from Russia is an imagined phenomenon. The realisation of these factors may have contributed to the certain relaxation of the West's pressure towards Latvia as far as the Russian-speaking minority is concerned. In other words, the minority situation in Latvia has lost its topicality, as it ceased to be seen as a factor that threatens the security and stability in the OSCE region. Prioritising security over minority rights, the major Western actors, as it seems, have approximated themselves to the position of the Latvian government on a number of minority issues.

One issue that remains a concern for international actors, such as the EU, is the lacking right of non-citizens in Latvia to participate in the local elections (unlike in Estonia). This issue has not been addressed by the HCNM. The EU as well as other organisations (CBSS, CoE) have repeatedly recommended to the Latvian government to grant this right to the non-citizens. It appears that the HCNM has left it to the other actors to initiate the negotiations on such a step. This may be due to the fact that the HCNM promised the Latvian government in July 1998 not to introduce more recommendations in the field of citizenship, and his refraining from officially making such a recommendation has added to his credibility in the eyes of the Latvian ruling majority. The issue, however, appears to be the next one to be seriously addressed by the international community, parallel to the issue of the Russian-language secondary education.

## *8. 2 Overall Assessment*

On the whole, the general impact of the High Commissioner on the Latvian minority politics has been very significant in all the three dimensions analysed above – with regard to operational, normative and substantive effectiveness. Although not all of the HCNM's initiatives were welcomed and not all of his specific recommendations were implemented, it is important that under the HCNM's influence, the crucial decision to make naturalisation available for all non-citizens was finally taken. This decision has had the farthest-reaching consequences for the dispersion of the conflict constellation in Latvia and, in the long run, for the challenging of the ethnic democracy arrangement. It provided the non-citizens with the access to the acquisition of political rights and, thus, to the influence in the decisions connected with minority rights. The unique role of the High Commissioner during the process of negotiating the abolition of the "windows" system in the circumstances of the 1998 crisis in the Latvian-Russian relations allowed him to influence the stances and actions of both the Latvian and the Russian government, achieving a certain relaxation in their positions. From then on, Russia's impact on the minority situation in Latvia has not been of major importance. However, because many of the points in Russia's position were shared and communicated to the Latvians by their European allies, Russia could feel supported by the West to a certain extent. Latvia, in turn, also received Western assurances of support and partnership in exchange for some concessions in the minority policy.

The Latvian side, unfortunately, has not seen the domestic importance of following the HCNM's recommendations. Whenever concessions were made, it was done mostly for foreign policy reasons, and a liberalisation of minority policy in one area was usually neutralised or compensated for by its tightening in another field. Nevertheless, negotiations over minority issues were held almost exclusively with the HCNM and other international representatives. Identical suggestions of the domestic pro-minority leaders have been rejected on most occasions. The situation is likely to persist also during the next parliamentary term. This implies that in spite of what appears as a premature closure of the OSCE Mission and the CoE Monitoring Procedure, international involvement continues to have an important role to play for the interethnic relations in Latvia. It seems that with van der Stoep's departure from office, the HCNM's involvement in Latvia has decreased, and it is now EU and NATO representatives who play a greater role. However, in a complex situation

marked by a number of important unresolved issues, the future expertise of the HCNM's Office is highly desirable and seems indispensable in the future.

Similarly to the Estonian and Romanian cases, a major factor that has enhanced the effectiveness of the HCNM's involvement in Latvia is undoubtedly the prioritisation of European integration by all key domestic actors, including even the radical nationalist "Fatherland and Freedom" faction. Because of the policy of Europeanisation, the majority actors have been very open to negotiations with international representatives. This explains why the HCNM did not encounter difficulties in paying visits to Latvia and in accessing the information that he required. In the end, the carrots of the EU and NATO membership have outweighed the sticks of conditionality expressed in the form of the HCNM's recommendations. This is because the goal of European integration is also largely shared by the minority and constitutes a unifying factor in the interethnic relations. Had this not been the case all throughout the last decade, the High Commissioner would probably not have succeeded to the same extent as he did. It must be granted though that he brilliantly used the momentum of pre-accession by filling the EU's general conditionality guidelines with the specific content of his recommendations, and by creating a network of highly respected international officials whose opinions (often marked by references to the HCNM) the Latvian side could not disregard. However, as Muižnieks argues, "the ability of the OSCE to invoke the EU and NATO was a unique historical window that is now closing as NATO and EU accession approaches."<sup>552</sup> This means that although the momentum of pre-accession helped the HCNM to succeed, the most effective strategies of involvement for the future when Latvia becomes an EU and a NATO member are yet to be developed. As the High Commissioner himself implied, it is not enough for a state to comply with a letter of this or that statement. Solutions aiming at long-term stability must be found:

Sometimes I have the impression that minority-related policies are followed grudgingly as if one were going down a checklist of points that have to be ticked off in order for a State to acquire a certain respectability. True, respect for minority rights is an important barometer of a State's compliance with international standards and this can facilitate closer integration, for example, EU accession. But it should not be seen as a "one time" initiative to appease the international community. Rather, it should be regarded as a process to foster long-term inter-ethnic stability. This is in the best interest of the State concerned.<sup>553</sup>

Among the main factors that undermined rather than enhanced the HCNM's effectiveness, we can mention the unfavourable parliamentary context in Latvia where the minority faction has found itself in the opposition until today, the general unwillingness of the majority to loosen the grip on citizenship and language, as well as the vagueness of the international legal standards with which the HCNM operated. A lack of political weight of the OSCE as an organisation in Latvia also threatened the success of the High Commissioner, but he resolved this issue by skilfully involving the actors with more political weight who backed his position. Another factor that could have potentially threatened the success of the HCNM was the lack of coordination of the activities, positions and recommendations of various international actors. This almost occurred in 1998 when the Latvian government perceived that the recommendations of the CBSS commissioner went beyond those of the HCNM. However, this appears to have been an isolated incident, as opposed to the generally excellent coordination of statements and positions among the international actors present in Latvia. What is likely to continue to represent a general problem in the future is the discrepancy between the political leverage and the minority-related expertise of the key actors. The CoE's and the OSCE's political leverage is currently of minor significance, in spite of their expertise with minority issues. On the other hand, the actors with most political authority, the EU and NATO, have not yet developed powerful tools or expertise in the area of minority rights. The EU's first step in this direction is the Race Directive of 2000, which now makes part of the *Acquis Communautaire*. It is to be hoped that the binding human rights and minority rights agenda of the EU will continue to expand.

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<sup>552</sup> Muižnieks 2002, op.cit.

<sup>553</sup> OSCE HCNM, *Nationhood and Statehood: Reconciling Ethnicity and Citizenship in an Interdependent World*. Address by Max van der Stoep to the Raoul Wallenberg seminar on Human Rights, Budapest, May 7, 2001.

On the whole, the High Commissioner has effectively impacted the interethnic situation in Latvia, as well as influenced Latvia's relations with both Russia and the West. It is more difficult to draw an unequivocal conclusion as to whether the HCNM has, in fact, prevented conflict in Latvia, as it is not evident that a conflict would have broken out without his interference. As Cohen argues, "success in conflict prevention [...] is generally the result of multiple interventions as well as internal changes which are influenced by a whole gamut of social, economic and political processes. [...] successes are not always visible since the absence of conflict is not sufficient to conclude that a conflict has been prevented."<sup>554</sup> Taking into account the utmost uncertainty as to the status of the minority in the newly independent Latvia that overwhelmed the Russian-speakers in the early 1990s, the perceptions of threat experienced by the Latvians because of the presence of the Russian troops on its territory, the occasional linkages made by the leaders of Russia between its troop withdrawal and the rights of the Russian-speakers, it appears that the theoretical pre-conditions for the outbreak of ethnic conflict, or the recurrence to provocations that could lead to it, were in place in Latvia at the point of the High Commissioner's initial interference. Taking this into account, it appears that the High Commissioner's involvement was indeed justified and in line with the provisions of his mandate.

One could also argue that it is not evident that the danger of conflict was pressing at the time of the HCNM's involvement due to a number of factors. In the late 1980s, both the democratically-minded Latvians and Russian-speakers had cooperated during the struggle against totalitarianism. Power was successfully transferred to the pro-independence forces by parliamentary means, in spite of the attempts of the pro-Soviet forces to deter and prevent the process and to exercise violence. It could be argued that by the time of the HCNM's involvement in the early 1990s, the crucial moment where a violent conflict could have broken out, had been overcome. True, the rapid radicalisation of the nationalist forces immediately after independence created conditions that could have led to an outbreak of violence, which brought international attention to Latvia once again. However, the weak consolidation of the Russian-speakers in Latvia, the diversity of the group, the absence of the nationalistic drive within it and, as a consequence, the absence of a clash of two classic nationalisms in Latvia, made a violent ethnic conflict rather improbable. Nevertheless, the degree of conflict probability has not remained constant over the post-independence years, and the High Commissioner's efforts were directed at diminishing the probability when it arose. The above analysis of the operational, normative and substantive effectiveness of the High Commissioner's involvement allows us to conclude that he has managed to eliminate a number of factors that could potentially have caused conflict. Although further attempts at restricting minority rights in Latvia are not ruled out, the High Commissioner's activity has most certainly helped to reduce the likelihood of a violent conflict in the country to an irreversible extent – a fact that the Latvian society will hopefully come to appreciate in the future

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<sup>554</sup> Cohen 1998, p. 51.



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