



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, March 7, 2005

## JUDGMENT in the name of the Republic of Latvia

**in case No 2004-15-0106**

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Aija Branta, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse on the basis of the claim by 20 deputies of the Republic of Latvia Saeima (Parliament), namely – by Valērijs Agešins, Boriss Cilevičs, Andrejs Klementjevs, Jānis Urbanovičs, Vitālijs Orlovs, Ivans Ribakovs, Jānis Jurkāns, Aleksandrs Bartaševičs, Oļegs Deņisovs, Igors Solovjovs, Aleksandrs Golubovs, Sergejs Fjodorovs, Martijans Bekasovs, Aleksejs Vidavskis, Jakovs Pliners, Andrejs Aleksejevs, Juris Sokolovskis, Nikolajs Kabanovs, Andris Tolmačovs and Vladimirs Buzajevs, under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Items 1 and 6), 17 (Item 3 of the first Part) and 28<sup>1</sup> of the Constitutional Court Law in written proceedings at February 8 Court session reviewed the case

**”On the Compliance of Articles 1 (Item 5 of the Third Paragraph), 2 (Item 2 of the Second Paragraph) and 7 (Item 2 of the First Paragraph) of the Law ” On the Status of Former USSR Citizens, Who are not Citizens of Latvia or Any Other State” with Article 98 of the Republic of Latvia Satversme, Articles 2 and 3 of the Fourth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 12 of the International Covenant on Civil and Political Rights and Article 8 (Item 1) of August 30, 1961 Convention on the Reduction of Number of Stateless Persons”.**

## **The establishing part**

1. On April 12, 1995 the Saeima passed the Law "On the Status of Former USSR Citizens, Who are not Citizens of Latvia or Any Other State" (henceforth – the Non-citizen Law).

In the framework of the matter the compliance of the following norms of the Non-Citizen Law with the Republic of Latvia Satversme (henceforth – the Satversme) and international legal norms binding on Latvia are being assessed:

- 1) Article 1 (Item 5 of the Third Paragraph) of the Non-Citizen Law, which establishes that this Law shall not apply to "persons who after July 1, 1992, without the limitation of the term, are registered (recorded) in the place of residence within partner countries of the Commonwealth of Independent States (henceforth – CIS) or have received a permanent residence permit in a foreign country". The text "or who have received a permanent stay permit in a foreign country" was incorporated in the Law by May 20, 2004 Amendments to the Law;
  - 2) Article 2 (Item 2 of the Second Paragraph) of the Non-Citizen Law, which determines that a non-citizen has the right not to be expelled from Latvia, except in cases where such expulsion is performed under the procedure stipulated by law and the consent of a foreign country to shelter the expelled person has been received; expulsion to the country where the person will be persecuted because of his race, religion or ethnicity as well as collective expulsions are prohibited".
  - 3) Article 7 (Item 2 of the First Paragraph), which establishes that a person is deprived of a non-citizen status if he/she belongs to any of the categories of persons mentioned in the Third Paragraph of Article 1 of this Law. Persons mentioned in Article 1 (Item 5 of the Third Paragraph) of this Law, who have received a permanent residence permit in a foreign country, shall lose their non-citizen status if the above permit has been received after June 1, 2004". The last cited sentence was incorporated in the norm by May 20, 2004 Amendments to the Law.
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2. **The submitters of the claim** – the Saeima deputies – request to assess the compliance of Article 1 (Item 5 of the Third Paragraph), Article 2 (Item 2 of the Second Paragraph) and Article 7 (Item 2 of the First Part) of the Non-Citizen Law (henceforth – the impugned norm) with Article 98 of the Satversme, Articles 2 and 3 of the Fourth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Human Rights Convention), Article 12 of the International Covenant on Civil and Political Rights (henceforth – the Covenant) and Item 1 of Article 8 of August 30, 1961 Convention on

the Reduction of the Number of Stateless Persons” (henceforth – Statelessness Convention).

2.1. The submitters of the claim point out that the objective of the Non-Citizen Law is first of all to disunite non-citizens of Latvia from foreign citizens (aliens), secondly to determine the specific status of these persons in Latvia, thirdly, to issue to non-citizens a document, which attests their personality – the non-citizen passport.

At the time, when the Non-Citizen Law was passed, the potential Latvian non-citizens had the possibility of obtaining citizenship of Russia or other places of the former Union of Soviet Socialist Republics (henceforth – the USSR) just by receiving a permanent residence registration in the territory of these states. In its turn at present permanent registration (record) of residence in Russia and other CIS states does not automatically establish for the person the right to citizenship or some other definite status.

The submitters hold that at this moment, when ten years have passed since the adoption of the Non-Citizen Law, it is necessary to revise the status of non-citizens in Latvia, as the understanding that the non-citizens are nationals has become stronger. Besides, with May 20, 2004 Amendments to the Non-Citizen Law the Saeima has not strengthened the status of non-citizens but has worsened it by determining that the person is deprived of the non-citizen status not only if it is permanently registered (recorded) in its place of residence in CIS but also if it has received a permanent residence permit in a foreign country.

2.2. It is pointed out in the claim that the impugned norms are unconformable with the Satversme and violate the liabilities Latvia has undertaken, when acceding to international agreements in the sector of human rights, adopted within the framework of UNO and European Council.

The submitters of the claim stress that the impugned norms restrict freedom of movement of a person. To their mind restriction of this right has no legitimate aim and it is not proportionate.

It is pointed out in the claim that it is ungrounded and disproportionate to deprive a person of the status of a non-citizen only because it has received a permanent residence permit in a foreign country. A permanent residence permit in a foreign country does not guarantee citizenship of the particular state or a status connected with citizenship.

They hold that the objective of the legislator to decrease the number of non-citizens of Latvia by forced administrative methods is not legitimate enough. Even if the objective of the legislator is acknowledged as legitimate, it might be

reached with the help of other measures, which restrict the rights of a person in a lesser degree.

The norms of the Non-Citizen Law, which refer to deprivation of the status of non-citizen, to their mind might create a negative attitude of foreign states to the nationals of Latvia, as deprivation of the status of a non-citizen may make the non-citizens, living in foreign countries, stateless persons. Also the norm, which refers to expulsion of non-citizens may make these persons stateless, as expelling to another state does not give the right to citizenship of this state.

The submitters of the claim hold that in the context of Article 3 of the Human Rights Convention the right to non-expulsion is restricted as this Article shall be attributed not only to the citizens of Latvia but also to the nationals, namely, the non-citizens.

3. The institution, which has passed the impugned norm – **the Republic of Latvia Saeima** (henceforth – the Saeima) does not agree with the arguments, expressed in the claim.

3.1. It is pointed out in the Saeima written reply that the necessity of passing the Non-Citizen Law has been substantiated by the decision "On the Renewal of the Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalization", adopted by the Supreme Council of the Latvian Soviet Socialist Republic (henceforth – the Supreme Council) on October 15, 1991, the aim of which was to realize the aggregate amount of citizens of Latvia to the moment of the Citizenship Law taking effect. The same objective was expressed in the Law "On Entry into and Residence in the Republic of Latvia of Aliens and Stateless Persons", passed by the Supreme Council on June 9, 1992, it was required also because of the circumstance that the Citizenship Law, which was adopted on July 22, 1994, did not regulate the issue on those aliens and stateless persons, who up to the moment of the Law "On Entry into and Residence in the Republic of Latvia of Aliens and Stateless Persons" taking effect (namely, to July 1 1992) had acquired permanent registration of residence and were entered in the residents' register in accordance with valid the normative acts.

Thus in 1994 in Latvia there was a situation that persons, who had entered the territory of Latvia from the USSR during the period of occupation of Latvia, starting from 1940, and who after the collapse of the USSR had lost their Soviet citizenship remained in Latvia.

3.2. Taking into consideration the historical situation of Latvia, the Non-Citizen Law was necessary to determine a specific status to those persons, the status of who did not comply with that of an alien or a stateless person, defined in international instruments.

The Saeima reminds that already initially the issue on the resolution, into which internationally recognized category the former USSR citizens shall be placed, has been essential. The deputies have expressed different viewpoints, comparing the above persons with the aliens, stateless persons and permanent residents as well as have proposed to determine a specific status for them.

At the same time unmistakable has been the viewpoint of the deputies that the Non-Citizen Law shall be attributed only to those persons, who have permanent legal connection with the State of Latvia and just this viewpoint was fixed in Article 1 of the Non-Citizen Law. When defining the range of persons to whom the impugned norms refer, several requirements were determined, namely- the person shall be the former citizen of the USSR, who before July 1, 1992 permanently lived in Latvia in whose passport residence registration in the territory of Latvia is entered without limitations of the period and this person lives in the Republic of Latvia. It was decided to determine to the above persons the range of the rights, which are enjoyed by every person in the state.

The Saeima states that by determining the status of a non-citizen to a certain group of persons Latvia has undertaken the duty of guaranteeing a specific status for these persons and determined for them specific rights and duties, but only with the provision that these persons shall have legal connection with the Republic of Latvia. On the other hand, these persons have the possibility of obtaining the citizenship of Latvia through naturalization in accordance with the provisions of the Citizenship Law.

The Saeima stresses that the legislator has the absolute right of determining the range of the Latvian citizenship subjects, in their turn the persons may choose whether to choose the Latvian citizenship and the guarantees, connected with it, or not. The Saeima points out that a non-citizen of Latvia shall not be regarded as a Latvian national, because belonging to the State follows only from the institute of citizenship. It is fixed in the first Paragraph of Article 1 of the Citizenship Law, which determines that the citizenship of Latvia is a person's permanent legal connection with the State of Latvia. In the written reply it is pointed out that a non-citizen of Latvia shall be regarded as the permanent inhabitant of Latvia –a long-term resident, as this status envisages a stable legal connection and such persons, who are permanently residing in Latvia, may obtain citizenship through naturalization.

The Saeima especially stresses that since 1998, when the limitations for naturalization were abrogated, they have the right to naturalization at any moment, may obtain citizenship and enjoy the rights of a Latvian citizen. If a non-citizen wants to permanently live in a foreign country, but also preserve legal connection with Latvia, there are neither legal nor administrative obstacles for naturalization and enjoyment of the rights, which the status of Latvian citizen guarantees to him/her, including the right of staying out of the territory of the Republic of Latvia for unlimited time.

3.3. It is pointed out in the written reply that the aim of May 30, 2004 Amendments has been to solve in a legally correct way the situation when non-citizens have obtained a permanent residence permit in a foreign state and in accordance with 1954 Convention on the Status of a Stateless Person have received travel documents. When moving to live in another state the non-citizens lose their connection with Latvia. Practice of the states, in accordance with which persons have to live in the state for several years before obtaining the permanent residence permit in the particular state, is used as an argument, substantiating the loss of the connection with the state.

The Saeima points out that in the international practice persons, who have left Latvia with a non-citizen passport and have received a permanent residence permit in a foreign state, are not regarded as non-citizens of Latvia in the meaning of the Non-Citizen Law, but as stateless persons in the meaning of 1954 Convention on the Status of a Stateless Person. Thus as regards the above persons, the norms of the Convention on the status of a stateless person shall be applied to them, including that of Article 27, which determines the duty of the home country to grant travel documents to the persons, who legally reside in the country. The Saeima states that the information, summarized by the Ministry for the Interior, confirms the above. The states, in which the Latvian non-citizens are residing, issue travel documents for a stateless person to them. Besides, when requesting issuance of a new passport, the Latvian non-citizens, living in a foreign state, address the institutions for the interior of the particular state and not the Latvian institutions, located in that state. Thus the persons attest their wish to reside and be connected with this state and not to be non-citizens of Latvia.

The objective of the Non-Citizen Law has not been to preserve the status of a non-citizen for everybody and for an unlimited time, but only for a certain period of time so that the person with the above status, if he/she wishes so, might obtain the citizenship of Latvia or choose another state for long period living and attesting connection with that and not with Latvia. The aim of the Law has been to determine the status of persons, living in Latvia or being in terminated absence from the Republic of Latvia and regulate their rights and obligations to the moment the persons obtain the citizenship of Latvia or other state.

The Saeima points out – if the Latvian non-citizen permanently resides in another state, he/she has no objective necessity to enjoy specific rights of a non-citizen, which are guaranteed to him/her only in the Republic of Latvia.

It is argued in the written reply that the procedure for expulsion of non-citizens, determined in the Non-Citizen Law does not lack legitimacy. A person may be expelled only under the procedure determined by the law and only if an agreement from another state to harbor the person has been received. Article 3

of the Fourth Protocol of the Human Rights Convention shall not be attributed to non-citizens of Latvia, as it shall be applied only to the citizens of the State.

The Saeima holds that the Convention for Stateless Persons shall not be attributed to non-citizens of Latvia, as it determines only the prohibition to deprive a person of the citizenship.

4. During the preparation of the matter for review the Ministry of Foreign Affairs, the Ministry for the Interior, Department of Citizenship and Migration and the Secretariat of the State Minister for Integration Affairs were asked to submit information as well as conclusions of the Professor of the Riga Graduate School of Law Dr.iur. Ineta Ziemele, the representative of the Cabinet of Ministers in international human rights institutions Inga Reine and the State Human Rights Bureau were requested.
5. **The Ministry of Foreign Affairs** in its reply points out, that citizenship issues are regarded as the competence sphere of every state. Even though in compliance with the Latvian legal acts non-citizens cannot be regarded as the citizens of the Republic of Latvia, the scope of their actual rights is close to the scope of the rights of the citizens.
6. **The Ministry for the Interior** in its answer stresses that the non-citizens have the right of freely leaving Latvia and they make use of the right. However, not all the persons fulfill the requirement of the Law to inform the Department of Citizenship and Migration about leaving Latvia to permanently live abroad. Such information is fragmental and is received from Diplomatic and Consular Missions of the Republic of Latvia in foreign countries or foreign institutions.
7. **The Secretariat of the State Minister for Integration Affairs** in its answer points out that the person may be deprived of the status of a non-citizen because it loses connections with the Republic of Latvia, which has set a task of integrating non-citizens in the society of Latvia, by realization of naturalization and enacting of several measures for strengthening civil society. In fact, the State of Latvia has no possibility of decreasing the number of non-citizens with measures, facilitating naturalization, if the special purpose audience for the measures is outside of Latvia.
8. **Inga Reine – the representative of the Cabinet of Ministers in international human rights institutions** has analyzed the conformity of the impugned norms with international legal norms binding on Latvia and deals with the status of non-citizens in the context of international law, paying special attention to the assessment of the status of Latvian non-citizens in the reports addressed to international institutions by the

representatives of Latvia. In her reply she points out that the status of a non-citizen cannot be quite equaled to any status of a physical entity determined in international laws. The author of the reply stresses that in case of limitation of human rights, the legitimate aim of the restriction shall be pointed out.

**9. The State Human Rights Bureau** (hereinafter – the Human Rights Bureau), when answering to the questions of the Constitutional Court, assesses the compliance of the impugned norms with the Satversme and international legal norms as well as the status of a non-citizen in the context of international law. The Human Rights Bureau points out that the status of a Latvian non-citizen is a specific status, which differs from the status of a citizen, an alien, a refugee and a stateless person. The Human Rights Bureau draws attention to the duty of Latvia to realize the international liabilities it has undertaken.

**10. The Professor of the Riga Graduate School of Law Dr.iur. Ineta Ziemele**, when assessing the status of a non-citizen in international law and its connection with Latvia, in her reply stresses that the fact of occupation of Latvia gave the Saeima the right to regulate the consequences of occupation in such a way that the persons, who had entered the territory of Latvia in the Soviet time, were not automatically granted the status of a citizen. When granting the above persons the status of a non-citizen was created a new - up to that time unknown in the international law – category of persons – non-citizens of the Republic of Latvia with a non-citizen passport.

The author of the reply has also analyzed the contents and consequences, which concern non-citizens, of the international liabilities, mentioned in the claim of the submitters, pointing out that Article 12 of the Covenant envisages for everybody the right to return to his/her state, even to the state, which is not the state of citizenship.

It is stressed in the reply that the Fourth Protocol of the Human Rights Convention refers to persons with a legal status in the territory of the state, which is determined in accordance with the national laws; however, the Human Rights Convention does not interfere in the issue on the criteria by which the state establishes the right to remain in its territory, enter or leave it.

The author of the reply points out that the duty of the Republic of Latvia is not to pass laws and procedures, which could cause increase of the number of stateless persons in the State, stressing that the state may not deprive the persons of the status of a non-citizen just because the person permanently resides out of the territory of the State.



## The concluding part

11. To assess the conformity of the impugned norms with the Satversme and international legal norms binding on Latvia, one has to analyze the historical and political circumstances of determination of the status of a non-citizen as well as the legal consequences of determination of the status of a non-citizen. To come to the conclusion on the international liabilities of Latvia with regard to non-citizens of Latvia one has to assess the status of a non-citizen and the fact whether and how much the international public (foreign states and international organizations) has acknowledged it.
12. Adoption of the Non- Citizen Law in Latvia was determined by the historical and political situation in Latvia after the collapse of the USSR.

The former USSR Republics chose different procedures for determining the aggregate body of citizens. It was determined both on the basis of territorial origin and permanent residence in the particular territory before the moment of regaining independence. In several former USSR Republics registration of residence served as a sufficient basis for receiving the citizenship of the new state automatically. In other states the length (number of years) of permanent residence was chosen as the main criterion (*see: Ziemele I. Citizenship and Human Rights in the Context of Succession of States.// The Law and the Rights, 2002, No. 8, p.234*). In comparison with other former Soviet republics, the fundamental principles for determining the aggregate body of citizens in Latvia and Estonia were different.

Regaining of independence after the period of occupation of Latvia gave the legislator the possibility to determine the citizen aggregate of Latvia. Continuity of Latvia as the international legal subject created the legal basis for not automatically granting the status of the citizen to a certain group of persons.

The legal basis of continuity of Latvia is fixed in the May 4, 1990 Supreme Council Declaration on the Renewal of the Independence of the Republic of Latvia (henceforth – Independence Declaration). It regulates both – the legal status of Latvia in the understanding of international law and judicial fundamental issues.

The preamble of the Declaration on Independence, which includes historical facts and their legal assessment, *inter alia* provides :”[...] according to international law, the incorporation of the Republic of Latvia into the Soviet Union is invalid. Accordingly, the Republic of Latvia continues to exist *de jure* as a subject of international law and is recognized as such by more than 50 nations of the world”. Well-

grounded is the viewpoint, expressed in the legal doctrine, that just consolidation of the doctrine of continuity of the State of Latvia in the Latvian legal system shall be regarded as the main preamble of the Independence Declaration (*see: Levits E. May 4 Declaration in the Legal System of Latvia.// May 4. Collection of Articles, Remembrances and Documents on the Independence Declaration, Riga: the Foundation of the Latvia University Journal "The History of Latvia", 2000, p.57*).

13. The aggregate body of Republic of Latvia citizens was determined by October 15, 1991 Supreme Council Resolution "On the Renewal of the Republic of Latvia Citizens Rights and Fundamental Principles of Naturalization" It is pointed out in the Resolution: Although the Republic of Latvia was occupied on June 17, 1940 and the state lost its sovereign power, the aggregate body of the Republic of Latvia citizens, in accordance with the Republic of Latvia "Law on Citizenship" of August 23, 1919, continues to exist. The resolution envisaged both - the procedure for determination of the aggregate body of the Republic of Latvia citizens and the fundamental principles for naturalization.

Taking into consideration continuity of Latvia as an international legal subject, there was reason for renewing the aggregate body of Latvia in the same way as it was determined in 1919 "Law on Citizenship". Thus, Latvia did not grant citizenship to persons, who had it before occupation of Latvia, but renewed the right of these persons *de facto* (*see: Ziemele I. International Law and Human Rights in Latvia: Abstraction or Reality. Riga: Agency of the Court Houses, 2005, p.103*).

It follows from both – 1991 Supreme Council Resolution "On the Renewal of the Republic of Latvia Citizens Rights and Fundamental Principles of Naturalization" and the Citizenship Law, passed in 1994 that the aggregate body of the citizens was renewed and not determined anew.

Thus, ungrounded is the viewpoint that Latvia has had the obligation to automatically guarantee citizenship to those individuals and their descendants, who have never been citizens of Latvia and entered Latvia during the years of occupation. Besides, these persons were given the possibility to receive Latvian citizenship under the procedure of naturalization.

14. In its written reply the Saeima reasonably points out that the necessity of passing Non-Citizen Law was determined both by 1991 Supreme Council Resolution "On the Renewal of the Republic of Latvia Citizens Rights and Fundamental Principles of Naturalization" and by June 9, 1992 Law "On Entry into and Residence in the Republic of Latvia of

Aliens and Stateless Persons” as well as the Citizenship Law, which was adopted on July 22, 1994.

In 1994 Citizenship Law the issue on those aliens and stateless persons, who up to the time the Law ” On Entry into and Residence in the Republic of Latvia of Aliens and Stateless Persons” took effect (July 1, 1994) had received permanent residence permit in the Republic of Latvia and in accordance with the valid normative acts were registered in the Resident’s Register, remained unregulated. Thus there was the necessity to determine a specific status for those persons, who had entered the territory of Latvia during the years of occupation, lost the USSR citizenship and did not acquire any other allegiance.

Granting of the status of a non-citizen to a certain group of persons was the result of a complicated political compromise. Besides, when adopting the Non-Citizen Law Latvia had to observe also the international human rights standards, which prohibit increasing the number of stateless persons in cases of state continuity.

15. After passing of the Non-Citizen Law appeared a new, up to that time unknown category of persons – Latvian non-citizens. Latvian non-citizens cannot be compared with any other status of a physical entity, which has been determined in international legal acts, as the rate of rights, established for non-citizens, does not comply with any other status. Latvian non-citizens can be regarded neither as the citizens, nor the aliens and stateless persons but as persons with ”a specific legal status”.

Latvia has clearly indicated that non-citizens shall not be regarded as stateless persons, as Article 3 (the Second Paragraph) of the Law on Stateless Persons determines that persons, who are subjects of the Law ” On the Status of Former USSR Citizens, Who are not Citizens of Latvia or any Other State”, cannot be regarded as stateless persons. Latvian representatives at the international institutions have also consequently defended the stand that the status of a non-citizen cannot be equaled with the status of a stateless person.

Non-citizens shall not be regarded as stateless persons, because – in accordance with Section 1 of the Immigration Law – alien is a person, who is not a Latvian citizen or a non-citizen of Latvia.

Also EU Network of Independent Experts on Fundamental Rights in its 2003 Report on the issues of fundamental rights in the European Union and its Member States point out that the non-citizens, who are determined in the Law ” On the Status of Former USSR Citizens, Who are not Citizens of Latvia or any Other State” are neither citizens, nor

aliens and stateless persons. The expert group points out that Latvian non-citizens belong to a category of persons, up to this time unknown in international public law (*Synthesis Report: Conclusions and Recommendations on the Situation of Fundamental Rights in the European Union and its Member States in 2003, 4 February, 2004, p.90*).

16. The **Saeima** expresses the viewpoint that the objective of the Non-Citizen Law has not been to retain the status of a non-citizen to everybody forever. The status was established as a temporary status, so that the person might obtain the citizenship of Latvia or choose another state with which to strengthen legal ties.

However, the aim of the legislator was not clearly expressed in the 1995 Non-Citizen Law, but it is indirectly expressed in the procedure for the naturalization process of Latvia, which bestows on non-citizens the right to acquire a certain status – the citizenship of Latvia.

One shall stress that since 1998, when the restrictions to naturalization, established for non-citizens, were eliminated, they experience the right to naturalize at any moment, obtain Latvian citizenship and enjoy the rights of a Latvian citizen. Thus, Latvia has created preconditions for persons, to whom the status of a non-citizen was determined by the Non-Citizen Law, to acquire Latvian citizenship. However, to make use of this right or not is a free will of every person.

17. The status of a non-citizen is not and cannot be regarded as a variety of Latvian citizenship. However, the rights and international liabilities, determined for the non-citizens testify that the legal ties of non-citizens with Latvia are to a certain extent recognized and mutual obligations and rights have been created on the basis of the above. It follows from Article 98 of the Satversme, which inter alia establishes that everyone having a Latvian passport shall be protected by the State and has the right to freely return to Latvia.

The rights, which Latvia has determined for its non-citizens, may influence immigration policy of other states with regard to the above persons; as the other states take into consideration the fact that Latvia undertakes certain liabilities with regard to them, for example, guarantees diplomatic protection of the persons abroad, as well as guarantees the right to return to Latvia.

Thus, the Saeima, when amending the Non-Citizen Law, had to consider the potential international consequences of it. Thus it is necessary to analyze the compliance of the impugned norms with the rights, following from Article 98 of the Satversme, namely – the right of

everybody to freely depart from Latvia as well as the right of everyone having a Latvian passport to protection by the State when abroad and the right to freely return to Latvia. In the same way it shall be assessed, whether the impugned norms are in conformity with liabilities, determined to Latvia by Articles 2 and 3 of the Fourth Protocol of the Human Rights Convention, Article 12 of the Covenant as well as Article 8 (Item 1) of the Convention on Stateless Persons.

18. It follows from the claim that only the compliance of the impugned norms with the first two sentences of Article 98 of the Satversme, which determine: " Everyone has the right to freely depart from Latvia. Everyone having a Latvian passport shall be protected by the State when abroad and has the right to freely return to Latvia", should be assessed.

The Constitutional Court has already earlier indicated that in cases, when there are doubts about the contents of the human rights norms, incorporated in the Satversme, they should be defined as close as possible to the interpretation used in the practice of international human rights norms (*see: the Constitutional Court August 30, 2000 Judgment in case No. 2000 – 03 – 01; Item 5 of the concluding part*). Besides, from Article 89 of the Satversme, which establishes that " the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia" follows that the aim of the legislator has been to attain mutual harmony of the legal norms, included in the Satversme and the international human rights norms (*see: e.g. the Constitutional Court June 27, 2003 Judgment in case No. 2003 – 04 – 01, Item 1 of the concluding part and January 17, 2005 Judgment in case No. 2004 – 10 – 01, Item 7.1.*). Therefore it shall be established to what extent the rights , determined in the Covenant and Human Rights Convention and the practice of their implementation, shall be applied, when interpreting the contents of the rights, incorporated in Article 98 of the Satversme.

The right to depart from the state, even from his/her own state, incorporated in Article 12, Item 2 of the Covenant, concerns every person, not only the citizens of the particular state. Thus, the contents of this norm may be applied, when assessing the conformity of the impugned norms with Article 98 of the Satversme.

Article 12, Item 4 of the Covenant determines the right to return to the state. Human Rights Committee has indicated that the rights, included in this norm shall be interpreted by taking into consideration the special connection of the person with the state. Application of the above right is not limited to the state of citizenship in its formal understanding. The right to return to the state refers also to the state with which the person has a special link [*see: Joseph S., Schultz J., Castan M. (ed.) The*

*International Covenant in Civil and Political Rights. Cases, materials and Commentary, 2<sup>nd</sup>. Ed., Oxford University Press, 2004, p. 366*]. Thus the contents of the rights, incorporated in Article 12, Item 4 of the Covenant is applicable when assessing the compliance of the impugned norms with Article 98 of the Satversme.

Article 2, Item 2 of the Fourth Protocol of the Human Rights Convention determines the right of everybody to depart from any state, also his/her own state. Up to now the European Court of Human Rights has not stated that the rights, incorporated in the above Article, shall be attributed only to the citizens of the particular state. Thus the norm may be applied when interpreting the right to depart from the state, established for everybody.

Article 3, Item 2 of the Fourth Protocol of the Human Rights Convention establishes that no one shall be deprived of the right to enter the territory of the state of which he is a national. The European Court of Human Rights has indicated that "the Convention does not guarantee for the person, who is not the citizen of the state the right to enter and reside in the particular state; as well as it does not guarantee the right of not being expelled from this state. In accordance with the principle established in the international law, the Contracting States have the right of controlling entry, residence and departure of persons, who are not citizens (*non-nationaux*) of the state". (*Cour européenne des Droits de l'Homme, Décision finale sur la recevabilité de la requête n<sup>o</sup> 50183/99 présentée par Aleksandr Kolosovskiy contre la Lettonie, le point B.c*). Thus the above norm of the Human Rights Convention guarantees the right only for the citizens of the particular state and may not be applied with regard to non-citizens of Latvia, when interpreting the right to return to Latvia, which is determined in Article 98 of the Satversme.

It follows from the above that the scope of rights, determined in the Covenant and the Convention, are diverse, but from the viewpoint of the Latvian Law the most extensive international standard of human rights is binding on Latvia.

- 19.** Article 98 of the Satversme determines **the right of everyone to freely depart from Latvia**. This right includes several aspects. The right to depart from the territory of the state may not be restricted by asking for the reason why the person wants to depart from the state. In the same way the above right cannot be limited by determining for how long a period the individual may remain outside of the state territory (*see: Joseph S., Schultz J., Castan M., p.355*). It includes also the right of the individual to freely depart for another state of his/her choice, if the particular state is ready to shelter him/her (*see the European Court of*

*Human Rights February 13, 2004 Judgment in case "Napijalo v. Croatia" § 68).*

Article 98 of the Satversme also determines **the right of everyone having a Latvian passport to freely return to Latvia**. The range of persons, who have a constitutionally established right to freely return to Latvia, shall be determined in the context of the law on documents, certifying the identity of the person. Article 4 of this Law envisages, what passports shall be issued in Latvia. In conformity with this Article a Latvian passport is granted not only to the citizens, but also to the non-citizens. Thus, the right to freely return to Latvia is attributed also to the non-citizens of Latvia.

Article 98 of the Satversme establishes that **everyone having a Latvian passport shall be protected by the State**. It means that Latvia puts into effect diplomatic protection of persons, who have a Latvian passport. Diplomatic protection does not belong to the fundamental rights but can be regarded as a mechanism of implementation of human rights and it may manifest itself in such a way that access to consular institutions is ensured to the person. And the state in its activities is free to put the diplomatic protection with regard to the individual into effect or not. However, the state may have the duty to put diplomatic protection into effect, if *ius cogens* norms with regard to the individual have been violated.

There are different viewpoints on whether diplomatic protection shall be put into effect only with regard to persons, who in the context of international law are considered to be persons connected with the state in the understanding of *Nottebohm case* [ *Nottebohm Judgment (Liechtenstein v. Guatemala), Second Phase, 1955 ICJ Reports*] besides permanent residence in the particular state may be a circumstance of the same importance [see: *Report of the International Law Commission on the work of its fifty-second session, 1 May to 9 June and 10 July to 18 August, 2000 (A/55/10, Chapter V; <http://www.un.org/law/ilc/reports/2000/English/chp5e.pdf>]*. Formulation of Article 98 of the Satversme indicates that Latvia determines diplomatic protection also with regard to non-citizens of Latvia.

20. As concerns contents of the impugned norms they are diverse, therefore it shall be established whether their contents shall be regarded as the restriction of the rights, determined in Article 98 of the Satversme.

Article 1 (Item 5 of the Third Paragraph) determines the range of persons, who cannot apply for the status of a non-citizen. This norm, especially in cases when it is assessed as being read in conjunction with Item 1 of Article 7 of the same Law, may affect immigration policy of

other states with regard to non-citizens of Latvia. Taking into consideration the fact that by May 20, 2004 Amendments (Article 1, Item 5 of the Third Paragraph of the Law on Non-Citizens) the range of persons to whom the Non-Citizen Law does not pertain was enlarged, contents of this norm shall be considered as a norm, which may restrict freedom of movement, determined in Article 98 of the Satversme as well as state guaranteed protection, which is established to everyone having the Latvian passport.

Article 2 (Item 2 of the Second Paragraph) determines the procedure of expulsion of non-citizens. Conformity of this norm with Article 98 of the Satversme cannot be assessed as the above Article does not concern expulsion.

Article 7 (Item 2 of the First Paragraph) envisages the possibility of depriving the status of a non-citizen and thus also the specific state protection of persons, who have lengthy and stable ties with Latvia. Thus, the rights, set out in Article 98 of the Satversme may be restricted. In the same way the impugned norm may influence the immigration policy of other states with regard to non-citizens of Latvia.

**Thus, Article 7 (Item 2 of the Second Paragraph) Of the Non-Citizen Law, which shall be assessed as read in conjunction with Article 1 (Item 5 of the Third Paragraph) of the Non-Citizen Law shall be considered as a restriction of the rights, set out in Article 98 of the Satversme.**

21. The greatest part of the fundamental rights, set out in the Satversme is not absolute and in circumstances of certain provisions, the State may restrict them. In accordance with Article 116 of the Satversme the rights of persons set out in Article 98 of the Satversme may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State and public safety, welfare and morals.

Article 2 (Item 3) of the Fourth Protocol of the Human Rights Convention also provides that no restrictions shall be placed on the exercise of the right to be free to leave any country, including his own other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Similarly, Item 3 of Article 12 of the Covenant establishes that the right of everybody to leave any country, including his own, shall not be



subject to any restrictions except those which are provided for by the law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

As concerns the right to enter his own country, Item 4 of Article 12 of the Covenant provides that no one shall be arbitrarily deprived of the right.

**Thus, the rights, set out in Article 98 of the Satversme may be subject to restrictions, if the restrictions are provided for by the law, comply with the legitimate aim and are necessary in a democratic society.**

22. Restriction of the rights, set out in Article 98 of the Satversme is provided for by the Law, namely – Articles 1 (Item 5 of the Third Paragraph) and 7 (Item 2 of the First Paragraph). This Law has been, first of all, announced under the procedure set out by law, is in effect and is publicly accessible. Secondly, the legal norm is clear enough, thus an individual may anticipate the consequences of its application.

**Thus the restriction, included in the impugned norms, is provided for by law.**

23. It is indicated in the annotation of the draft of the amendments to the Non-Citizen Law , submitted by the Cabinet of Ministers, that the amendments have been needed, first of all for abrogation of privileges of those non-citizens, who move to permanent residence in the states, which are not CIS Member States and, secondly, to anticipate the possibility for a person to disclaim the status of a non-citizen, if it permanently resides in another state and has received travel documents from it (*see Annotation of the Draft Amendments to the Law "On the Status of the Citizens of the Former USSR, Who do not have Latvian Citizenship or the Citizenship of another Country", MInot\_190503;p.49 of the I Volume of the Materials in case*).

When amending the Non-Citizen Law, the legislator has not mentioned another aim of the Amendments.

Also the State President, when forwarding the Draft for the second revision, has mentioned that it is groundless and disproportional to deprive a person of the status of a non-citizen just because the person has received a permanent residence permit in a foreign country, which guarantees for the person neither the citizenship of a concrete foreign country nor a certain status connected with citizenship. The President

has stressed that the legislator, when taking the decision of applying the above precondition for depriving the status of a non-citizen of the persons, who had received the permanent residence permit before the adoption of the 2004 Amendments to the Law, has violated the principle of legitimate trust [see: *Requirement to Revise the Law "Amendments to the Law "On the Status of the Citizens of the Former USSR who do not have Latvian Citizenship or the Citizenship of Another Country"*". *Latvijas Vēstnesis*, March 25, 2004, No. 47 (2995)].

However, the legislator, when reviewing the Amendments to the Non-Citizen Law under the procedure of the second reading took into consideration the objections of the President incompletely and, when amending Item 2 of the First Paragraph of Article 7, determined that the status of a non-citizen shall be deprived of persons, who have received the permanent residence permit in a foreign country only after June 1, 2004. Thus the Amendments maintained the approach that deprivation of the status of a non-citizen may be connected with the fact of receiving a permanent residence permit in a foreign country or registration in the place of residence without any time limit in the CIS Member State.

At the Saeima session neither the Saeima Committee of Legal Affairs nor the deputies before the adoption of the Amendments under the procedure of the second reading indicated the legitimate aim of the amendments. Thus the legislator did not make use of the chance to pass the Amendments of the Non-Citizen Law in the wording, which would comply with the Satversme and international legal norms binding on Latvia.

The legitimate aim of the Amendments was not included in the Saeima written reply either.

Taking into consideration the fact that the restrictions of the fundamental rights, which follow from Articles 1 (Item 5 of the Third Paragraph) and 7 (Item 2 of the First Paragraph), lack a legitimate aim; there is no necessity to assess the need of the restrictions in a democratic society, as well as their conformity with the proportionality principle.

- 24.** It follows from the claim that the conformity of Article 2 (Item 2 of the Second Paragraph) with Article 3, Item 1 of the Fourth Protocol of the Human Rights Convention, which provides, that no one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national, is contested.

The European Court of Human Rights has pointed out that the above Article ensures the absolute and indisputable right not to be expelled only for those persons, who can be regarded as the nationals of the

particular state. However, the contents of the notion shall be set out in the national laws (*see: The Decision of the European Court of Human Rights on Acceptation of the Complaint No. 48321/99 "Slivenko and others v. Latvia" for Review; §77 and §78*).

The fact, whether the Latvian non-citizens can be regarded as the nationals in the understanding of the international law is not only a juridical but mainly a political issue, which shall be reviewed within the framework of the democratically political process of the state.

However, when assessing the principle of prohibition of expulsion, included in this Article of the Convention with regard to Latvian non-citizens, it can be concluded that the procedure for expulsion, set out in the Non-Citizen Law, does not violate human rights.

Article 2 (Item 2 of the Second Paragraph) of the Non-Citizen Law provides that a non-citizen experiences the right of not being expelled from Latvia with an exception of cases, when expulsion takes place under the procedure, set out by law and an agreement of some foreign state to shelter the person to be expelled has been received. Expulsion of a non-citizen to a country where this person might be persecuted because of the reasons of race, religion or ethnic belonging as well as collective expulsion is not permissible.

Thus the procedure for expulsion set out in Non-Citizen Law is strictly regulated and does not permit arbitrary violation of the principle of expulsion. When analyzing the concept "under the procedure provided for by law", which is incorporated in the impugned norms, it shall be indicated that expulsion of a person in Latvia may take place under the procedure provided for in the Immigration Law or the Criminal Law.

The procedure for expulsion of persons, established in the Immigration Law does not refer to non-citizens of Latvia. First of all, the purpose of the Immigration Law is to determine the procedures for the entry, residence, transit, exit and detention of aliens, as well as the procedures by which aliens are held under guard in the Republic of Latvia and expelled from it in order to ensure the implementation of migration policy conforming with the norms of international law and the State interests of Latvia (Section 2 of the Immigration Law). Secondly, in the understanding of the Immigration Law alien is a person, who is not a Latvian citizen or a non-citizen of Latvia.

The Criminal Law permits adjudging deportation from the Republic of Latvia as an additional sentence (Section 36 of the Criminal Law). Section 43 of the Criminal Law in its turn rules that a citizen of another state or a person, who has a permanent residence permit of another state

may be deported from the Republic of Latvia if a court finds, that considering the circumstances of the matter and the personality of the offender, it is not permissible for him or her to remain in the Republic of Latvia. Thus this section may refer only to those non-citizens, who have a permanent residence permit of another state. It is vital that the judge, when adjudicating deportation as an additional sentence, has the obligation to consider the circumstances in the particular case and the personality of the offender. Thus the judge in every particular case has to check whether deportation from Latvia as an additional sentence does not create ungrounded restriction of human rights.

Thus, it can be concluded that Article 2 (Item 2 of the Second Paragraph) complies with the principle of prohibition of expulsion of a person.

25. The submitters of the claim state that it is necessary to assess the compliance of the impugned norms also with Article 8, Item 1 of the Convention on Stateless Persons.

Latvia has acceded to the Convention on Stateless Persons by may 4, 1990 Declaration "On Acceding of the Republic of Latvia to International Legal Instruments on Human Rights Issues". This Convention is in effect in Latvia from July 13, 1992. Even though the Convention on Stateless Persons is binding on Latvia, its official translation into Latvian is not published. Thus in accordance with Article 33 of 1969 Vienna Convention on the Law of International Treaties the unofficial translation of the Convention into the Latvian language may be used only as far as it is not at variance with the authentic text of the above Convention.

The authentic texts of the Convention, namely – in English and French-specify that Article 8, Item 1 of this Convention refer to the prohibition of deprivation of *nationality* (English) or *nationalité* (French). The issue on what the status of a non-citizen will be in the understanding of the Convention on Stateless Persons and that of the international law shall be resolved under the procedure, established in Item 24 of this Judgment.

However, it should be taken into consideration that the Convention on the Stateless Persons incorporates the principle of prohibition of general increase of the number of stateless persons. This Convention is an international agreement, which has been adopted to implement the duty of the state to decrease the number of stateless persons.

When assessing the contents of the impugned norms, it can be concluded that Article 7 (Item 2 of the First Paragraph) in its present

wording potentially allows increasing of the number of stateless persons. This norm connects deprivation of the status of a non-citizen with receiving a permanent residence permit in a foreign state or with permanent registering of the place of residence in CIS Member State. As has been pointed out in this Judgment, neither receiving of a permanent residence permit in a foreign state or permanent registration in IUS Member State does not establish for a person such a status, which obtaining citizenship (nationality) would provide.

Thus Article 7 (Item 2 of the First Paragraph) of the Non-Citizen Law shall be regarded as unconfirmable with the principle of prohibition of increasing the number of stateless persons.

**26.** Articles 1 (Item 5 of the Third Paragraph) and 7 (Item 2 of the First Paragraph) groundlessly restrict the human rights, provided for in the Satversme and international legal norms, binding on Latvia.

Abrogation of the impugned norms from the moment of the announcement of the Judgment, as the submitters of the claim request, would create a situation of vanishing of any legal regulation of concrete relations.

Therefore, when taking the decision on the moment beginning with which the norm shall lose effect, the Constitutional Court takes into consideration the fact that a certain period of time is needed to express these norms in a wording, which complies with the human rights standards, set out in the Satversme and binding on Latvia.

### **The substantive part**

On the basis of Articles 30-32 of the Constitutional Court Law the Constitutional Court

**hereby rules:**

1. to declare Article 1 (Item 5 of the First Paragraph) of the Law "On the Status of Former USSR Citizens, Who are not Citizens of Latvia or Any Other State" as unconfirmable with Article 98 of the Republic of Latvia Satversme and null and void as of September 1, 2005;
2. to declare Article 7 (Item 2 of the First Paragraph) of the Law " On the Status of Former USSR Citizens, Who are not Citizens of Latvia or Any Other State" as unconfirmable with Article 98 of the Republic of Latvia Satversme and null and void as of September 1, 2005;

3. to declare Article 2 (Item 2 of the Second Paragraph) of the Law "On the Status of Former USSR Citizens, Who are not Citizens of Latvia or Any Other State" as being in compliance with Article 3, Item 1 of the Fourth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms".

The Judgment is final and allowing of no appeal.

The Judgment takes effect on the day of its publishing.

The Chairman of the Court session

A. Endziņš