

Estonia's Non-Citizens, Citizens of the European Union?¹

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Abstract

The present paper analyses the question of non-citizenship in Estonia. It presents the historical roots of this civic category as well as the various opinions across the world related to the subject. The paper tries refer to many sources from all sides in order to present a balanced and well documented situation of this peculiar case. Moreover the paper also presents the European Union attitude towards it.

Keywords: *Estonia; non-citizenship; human rights; Russian minority; right to vote*

Introduction

On 11 March 2014, the US magazine *The New Republic*, in the aftermath of the Crimean issue, published a debatable article by Julia Ioffe, "*Ethnic Russians in the Baltics Are Actually Persecuted. So Why Isn't Putin Stepping In?*"⁴ where she states:

Ethnic Russians are somewhere between one-fifth and one-quarter of the population. And yet, after Estonian independence in 1991, they were not given citizenship, even if they were born there. Russians who weren't living in Estonia before Soviet times are given a grey passport connoting their official status as "aliens."

The article practically happened in a very volatile period of East European history and it drew unexpected fire. On 13 March 2015, in an article, "*Mart Nutt: Is Putin preparing for aggression against NATO?*"⁵ published by the Estonian Embassy in Washington, Estonian politician Mart Nutt, who does not miss the opportunity to point out the Russian ancestry of Ms Ioffe, went into more detail:

A so-called grey passport (for persons with undetermined citizenship) is granted to a person who has not applied for Estonian citizenship, but who also does not have any other citizenship. This problem was not created by Estonia, but by Russia, when it decided to leave former citizens of the Soviet Union living abroad without Russian citizenship by way of its Citizenship Act of 1992. For various reasons, there are currently about 80 000 people in this situation. The majority of Russians living in Estonia have either Estonian or Russian citizenship. People with undetermined citizenship have travel documents, residence permits, the right to equal

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⁴ See <http://www.newrepublic.com/article/116970/estonia-lithuania-mistreat-ethnic-russians-nato-keeps-putin-out> (Last accessed 24 February 2015).

⁵ See <http://www.estemb.org/frontpage/news/newwin-middle50/aid-3269> (Last accessed 24 February 2015).



treatment and access to social services, as well as the right to vote in local elections, just as all long-term legal residents of Estonia.

Priit Järve and Vadim Poleshchuk in their report on Estonia⁶ show that:

By 1991, when Estonia regained its independence, the share of ethnic non-Estonians in the population was up to almost 40 per cent. [...] In 1992, the 1938 Citizenship Act was re-adopted [...] granting automatic citizenship almost exclusively to those who were citizens in 1940 (before the Soviet takeover) and their descendants. As a result, about one third of Estonia's population (mostly ethnic Russians and other Russian-speaking minorities) became (de facto) stateless, or in Estonian official terms, 'individuals with undefined citizenship'.⁷ To become Estonian citizens they had to take the path of naturalisation. Alternatively, while residing in Estonia, they could remain 'individuals with undefined citizenship', become citizens of other countries, including the Russian Federation, or leave Estonia altogether. In practice, all of these options have been used by the (de facto) stateless of 1992.

[...]In September 2012 non-citizens made up 16 per cent of the whole population (which includes the 7 per cent of the population who are (de facto) stateless).

Alexander Salenko in his report on Russia commented that⁸:

After 2002 many citizens of the former USSR (especially those living in the former Soviet republics) were considered as conventional foreigners by the authorities and were compelled to obtain Russian citizenship by the general process of naturalisation (opposite to the earlier simplified naturalisation procedure for former Soviet citizens). A whole new category of so-called 'captive illegal migrants' appeared ('nelegaly ponevole'), i.e. those former Soviet citizens who were declared to be foreigners in their native country. Since the entry into force of the new citizenship legislation in 2002 the naturalisation process has been complicated substantially. Stories about 'sufferings over citizenship from compatriots coming back to Russia have become well known.'. Stories about confiscation of passports from Russian citizens gained notoriety throughout Russia.⁹

We would not go into speculations on why a country or another decided to have procedures that led to creating non-citizens, whether we call them 'individuals with undefined citizenship' (quite euphemistically in Estonia) or 'stateless person'¹⁰ (rather directly in Russia), yet it is sure that geography and demography imposes history.

Any empire (*per se* or not) is very careful about its peripheries, as Alexander J Motyl calls the territories at the fringes, in his study *Imperial Ends – The Decay, the Collapse, and the Revival*¹¹, where he defines the concept of *empire* as:

a hierarchically organized political system with a hub-like structure—a rimless wheel—within which a core elite and state dominate peripheral elites and societies by serving as

⁶ Priit Järve, Vadim Poleshchuk, *Country Report: Estonia*, Revised and updated January 2013, EUDO Citizenship Observatory, p.1 <http://eudo-citizenship.eu/docs/CountryReports/Estonia.pdf> (Last accessed 24 February 2015).

⁷ The term 'individuals with undefined citizenship' (maatratlemata kodakondsusega isikud) is widely used in Estonian official documents. However, it has never been legally defined.

⁸ Alexander Salenko, *Country Report: Estonia*, July 2012, EUDO Citizenship Observatory, p.1 <http://eudo-citizenship.eu/docs/CountryReports/Russia.pdf> (Last accessed 24 February 2015).

⁹ For further details see Lidia Grafova, "Beat on passport. Extrajudicial bureaucratic machinery of Russia deprives tens of thousands of people of citizenship." *Russian gazette*, N4972, 12.08.2009. <http://www.rg.ru/2009/08/12/migraciya.html> (Last accessed 24 February 2015).

¹⁰ Federal Law, No. 62-FZ of May 31, 2002, *On Russian Federation Citizenship*, (with the Amendments and Additions of November 11, 2003, November 2, 2004) <http://www.legislationline.org/documents/action/popup/id/4189> (Last accessed 24 February 2015).

¹¹ Alexander J Motyl, *Imperial Ends – The Decay, the Collapse, and the Revival*, Columbia University Press, New York, 2001.



intermediaries for their significant interactions and by channelling resource flows from the periphery to the core and back to the periphery.

Motyl conceptualizes further on showing that *decay* is the weakening of the core's rule of the periphery; *disassemblage* entails the emergence of significant interperiphery relations and spells the end of empire as a peculiarly structured political system; *attrition* is the progressive loss of bits and pieces of peripheral territories; *collapse* is the rapid and comprehensive breakdown of the hub-like imperial structure; *revival*, or *reimperialization*, is the reemergence of empire—that is to say, the reconstitution of a hub-like structure between a former core and all or some of the former periphery.¹²

For Motyl, one way of controlling the peripheries is the core elite's formal rule of the periphery, involving substantial meddling in the personnel and policies of the periphery. Peripheries interact with one another politically and economically via the core.¹³

Priit Järve and Vadim Poleshchuk in their report on Estonia¹⁴ show that:

After its incorporation into the USSR, Estonia experienced all the typical pressures and contradictions of Soviet economic and ethnic policies. The Soviet Union, inspired by the American 'melting pot', sought to merge the different ethnic nations and groups living in the country into a new civic identity—the Soviet people.

In a working paper dedicated to population dynamics, Kalev Katus *et alii* analyse the population dynamics in Estonia:

The demographic development of Estonia has been, to a great extent, influenced by the changing population composition during and after the WW II. [...] Between 1940 and 1953 the population losses of Estonia, due to war activities and sovietisation, have been estimated on the level of at least 17.5 percent of total population, [...] these losses were exceeded in numbers by mass immigration from different parts of the Soviet Union, mainly from Russia, which started after WW II. As a result, Estonia developed from a socially and nationally homogeneous society (Estonians formed 97.3 percent of population in 1945) into the country with residents from more than a hundred different ethnic backgrounds. The foreign-born population together with their second generation comprised 36 percent of the total population according to the 1989 census.¹⁵

The debate on citizenship between liberal and conservative camps started in Estonia at the end of the 1980s. The conservatives pointed to drastic changes in the ethnic composition of the population of Estonia due to a considerable influx of Russian-speaking migrants from other regions of the USSR after the Second World War. The conservatives emerged as winners in the debate on citizenship.¹⁶ The result is that some 80 000 people remained of “undetermined citizenship”.

For Lehte Roots, in “Balance between national interest and EU citizenship”¹⁷, citizenship is a sense of belonging. Analyzing the concept of *citizenship*, she shows that the classical legal approach to the state points out four basic elements, i.e. the state, people, territory and public authority as a function system of institutions and internal and external sovereignty.¹⁸ *The citizen is perceived as*

¹² Alexander J Motyl, *Imperial Ends – The Decay, the Collapse, and the Revival*, Columbia University Press, New York, 2001, p. 4.

¹³ *Op. cit.*, p. 8.

¹⁴ Priit Järve, Vadim Poleshchuk, *Country Report: Estonia*, Revised and updated January 2013, EUDO Citizenship Observatory, p.1 <http://eudo-citizenship.eu/docs/CountryReports/Estonia.pdf> (Last accessed 24 February 2015).

¹⁵ Kalev Katus, Marek Kupiszewski, Philip Rees, Luule Sakkeus, Anne Herm, David Powell, *Internal Migration and Regional Population Dynamics in Europe: Estonia Case Study*, Working Paper 98/14, School of Geography, University of Leeds, United Kingdom, 1998, p. 3.

¹⁶ Kalev Katus, Marek Kupiszewski, Philip Rees, Luule Sakkeus, Anne Herm, David Powell, *Internal Migration and Regional Population Dynamics in Europe: Estonia Case Study*, Working Paper 98/14, School of Geography, University of Leeds, United Kingdom, 1998, p. 3.

¹⁷ Lehte Roots, “Balance between national interest and EU citizenship” (MS) in Kinga Flaga-Gieruszyńska, E.; Wacinkiewicz, C.; Wacinkiewicz, D. (Eds.). *Citizen, State, International Community. A collection of studies*, C. H. Beck (forthcoming).

¹⁸ R. Donner, *The Regulation of Nationality in International Law*. Irvington-on Hudson, New York 1994, pp. 1–29; R. Zippelius, *Allgemeine Staatslehre (Politikwissenschaft)*. Dreizehnte, neubearbeitete Auflage. München 1999, pp.48–91.



*the constitutive member of the nation, people or citizenry*¹⁹ as the member of the “community of fate.” *The relations between the state authority and citizen are relatively close and well defined, entailing mutual and exclusive loyalty, rights and obligations, clearly defined borders of the citizenry, manifested by passports and territory of jurisdiction - distinct by state border structures.*²⁰

Unfortunately as Roots rightfully and fairly notices this is what we cannot always claim regarding EU citizenship. Very often people do not perceive themselves as EU citizens, especially when they do not or are hindered in using their EU citizenship rights, such as free movement within EU. For centuries citizenship has been regulated by country legislation. Logically, Roots also draws our attention to an interesting state of affairs: *There is no world citizenship status although we have uniformed human rights, derived from the UN Declaration of Human Rights*²¹, *which should be applicable to everyone regardless of citizenship.*

Reference must be made to the provisions of the Treaty on European Union, Maastricht, 1992, concerning citizenship of the Union, where Article 8 provides that:

1. *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.*
2. *Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.*

Further on, in the Declaration on Nationality of a Member State in the Final Act, it is stated:

“The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary.”

According to Kalev Katus *et alii* in Estonian²², the term ‘nationality’ (*rahvus*) refers to ethnic origin only. There is no formal definition of this term in Estonian law. In practice, for most purposes a person’s ‘nationality’ is based on his or her self-definition. The permanent legal link between the state and an individual is described by the term ‘citizenship’ (*kodakondsus*). Most relevant issues are covered by the Citizenship Act. Furthermore, in Estonian, the term ‘non-Estonians’ (*mitte-eestlased*) refers to both citizens and non-citizens of minority ethnic origin: the terms ‘Estonian’, ‘Russian’ etc. are an indication of a person’s ethnic origin.²³

Even if we do not speak Estonian, but using our experience in translations and already knowing that *nationality=rahvus*, referring (as we know) to ethnic origin only, and *citizenship=kodakondsus*, with the help of parallel texts, we noticed the following:

¹⁹ R. Zippelius, op.cit., pp. 72–84, K. Faulks, *Citizenship*. London and New York 2000, pp. 21–35, C.H.Conrad; J. Kocka (Hrsg.) *Staatsbürgerschaft in Europa. Historische Erfahrungen und aktuelle, Debatten*. Hamburg: 2001, p.9-28; C.H. Pierson, *The Modern State*. London and New York 2004, pp. 106–111.

²⁰ K. Leif, *Minimaalriik, rahvastervik või kaasatud kodanik? Kodakondsuse põhimõtted taasiseseisvunud Eesti poliitikas*. “Acta Politica” 2004, No. 1, p. 12.

²¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III). Available at: <http://www.refworld.org/docid/3ae6b3712c.html>, (Last accessed 30 March 2015).

²² Kalev Katus, Marek Kupiszewski, Philip Rees, Luule Sakkeus, Anne Herm, David Powell, *Internal Migration and Regional Population Dynamics in Europe: Estonia Case Study*, Working Paper 98/14, School of Geography, University of Leeds, United Kingdom, 1998, p. 3.

²³ In the report by Kalev Katus *et alii*, the terms ‘Estonian’, ‘Russian’, etc. designate ethnicity. The term ‘non-Estonians’ refers to all individuals whose ethnic origin is not Estonian, the term ‘non-citizen’ refers to a person who does not have Estonian citizenship.



English	Estonian
Citizenship of the Union is hereby established. Every person holding the <i>nationality</i> of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.	Käesolevaga kehtestatakse liidu kodakondsus. Iga isik, kellel on mõne liikmesriigi <i>kodakondsus</i> , on liidu kodanik. Liidu kodakondsus täiendab, kuid ei asenda liikmesriigi kodakondsust.

First point of the Article 8 of Maastricht Treaty states that any person holding the nationality of a Member State is citizen of the Union and the Treaty of Amsterdam (1997) added that “*Citizenship of the Union complements national citizenship and shall not replace it*”.

There is no common EU policy on the acquisition of European citizenship as it is supplementary to national citizenship (one cannot be an EU citizen without being a national of a member state). One has to have the citizenship of a Member State, Estonia, in our case, to be a citizen of the European Union.

The concept of *rahvus* (nationality) does not appear in the Estonian version of the Treaty, instead there is the concept of *kodakondsus* (citizenship), even if the concept of *citizenship* is linked to the concept of *nationality*. In a more modern understanding, the term ‘nationality’ defines the status of membership to a community based upon a common history, culture, ethnicity and common political convictions or values.²⁴ Technically one may enjoy the citizenship of the Union, but the citizenship of Estonia is mandatory, in our case, or any other Member State, in general. The Estonian translation is that, one does not need an Estonian *rahvus* (nationality) to have a *liidu kodakondsus* (citizenship of the Union), so Russians or persons of any other *rahvus* (nationality) without the citizenship of their national states or the Estonian *kodakondsus* (citizenship) prior to 1940, may be categorised as *maaratlemata kodakondsusega isikud* (individuals with undefined citizenship), since they are not citizens of Estonia, as a Member State, they would not be citizens of the European Union either.

In the Glossary accompanying Volume 1: Comparative Analyses of the study *Acquisition and Loss of Nationality, Policies and Trends in 15 European States*²⁵, *Nationality / Status as National* is defined as: [the] *Legal relationship between a person and a state (country) as recognised in international law. In some countries, the status may be called citizenship rather than nationality and the persons holding the status are referred to as citizens rather than nationals*; which might be one explanation of the use, in the Estonian translation, of only *kodakondsus* (citizenship), and *kodanikeks* (citizen) for *nationals*, as in another passage of the Treaty, where *kodakondsus* (citizenship) also translates *nationality*.

English	Estonian
In that connection, it should also be noted that ‘the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their <i>nationals</i> for Community purposes by way of declaration	Selle kohta meenutan ka, et „küsimust, kas isikul on ühe või teise liikmesriigi kodakondsus, reguleeritakse ainult lähtudes asjaomase liikmesriigi siseriiklikust õigusest. Liikmesriigid võivad teavitamise eesmärgil täpsustada, missuguseid isikuid tuleb pidada nende <i>kodanikeks</i> ühenduse taotletud eesmärkidel, esitades eesistujariigile

²⁴ Rainer Baubock, Eva Ersbøll, Kees Groenendijk, Harald Waldrauch (eds.), *Acquisition and Loss of Nationality, Policies and Trends in 15 European States, Volume 1: Comparative Analyses*, IMISCOE Research, Amsterdam University Press, 2006, p. 35.

²⁵ Rainer Baubock, Eva Ersbøll, Kees Groenendijk, Harald Waldrauch (eds.), *Acquisition and Loss of Nationality, Policies and Trends in 15 European States, Volume 1: Comparative Analyses*, IMISCOE Research, Amsterdam University Press, 2006.



lodged with the Presidency and may amend any such declaration when necessary'.	deklaratsiooni; nad võivad oma deklaratsiooni vajadusel muuta”.
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According to the above mentioned Glossary: *nationality in a non-legal sense, i.e. membership of a nation sharing a common history, culture, language or descent (which does not necessarily coincide with the totality of persons holding the nationality of a country in the legal sense defined above), or nationality as referring to membership of a national minority living within a state and/or culturally linked to an external national 'homeland'.*

That means that Estonia is on a rather safe side when using *maatlemata kodakondsusega* (undefined citizenship), since Estonian citizenship is quite related to *rahvus* (nationality as ethnicity), which is quite obvious when speaking about naturalisation, see paragraphs (3), (4), (6) and (7) of § 6. *Conditions for acquiring Estonian citizenship by naturalisation* in the Estonian Citizenship Act.

An alien who wishes to acquire Estonian citizenship by naturalisation must:

- 1) *be at least 15 years of age;*
- 2) *hold a long-term residence permit or the right of permanent residence;*
 - 2¹) *prior to the date on which he or she submits the application for Estonian citizenship, have lived in Estonia for at least eight years on the ground of a residence permit or by right of residence, of which at least the last five years on a permanent basis;*
 - 2²) *have lawfully and on a permanent basis resided in Estonia on the ground of a long-term residence permit or by right of permanent residence for six months from the day following the date of registration of the application for Estonian citizenship;*
- 2³) *have a registered place of residence in Estonia;*
- 3) *be proficient in the Estonian language in accordance with the requirements provided in section 8 of this Act;*
- 4) *know the Constitution of the Republic of Estonia and the Citizenship Act in accordance with the requirements provided in section 9 of this Act;*
- 5) *have a permanent legal income which ensures his or her own subsistence and that of his or her dependants;*
- 6) *be loyal to the Estonian state;*
- 7) *take an oath: " Taotledes Eesti kodakondsust, tõotan olla ustav Eesti põhiseaduslikule korrale." [In applying for Estonian citizenship, I swear to be loyal to the constitutional order of Estonia.]*

[RT I 2006, 29, 224 - entry into force 08.07.2006]

Lehte Roots points out that “[t]he only official legal term used is citizen, not a national, when referred to the Estonian who has an Estonian passport. In Estonia citizenship is regulated by the citizenship act, but in everyday life also the word national is used. Estonians very often identify themselves on the basis of language knowledge. The Estonian community does not accept voluntarily to call a



person who does not speak Estonian an Estonian national, although this person might hold an Estonian passport.”²⁶ This type of feeling of belonging has deep historical roots.²⁷

According to the Estonian Ministry of Interior, “[o]n 21 January 2015, the Estonian Parliament approved several amendments to the Citizenship Act. The aim of the amendment is to halt the perpetuation of persons with undetermined citizenship by guaranteeing a right to acquire Estonian citizenship by naturalization to all children born in Estonia that have parents with undetermined citizenship.

*The amendments will enter into force from the 1st of January 2016.”*²⁸

The language test is not to be taken by persons that were schooled in Estonian.²⁹ It is true that Estonian is a rather difficult language, and it is one of the reasons why with the new *Citizenship Act*, the rate of naturalisation dropped for a while.

In the Federal Law, No. 62-FZ of May 31, 2002, *On Russian Federation Citizenship* (with the Amendments and Additions of November 11, 2003, November 2, 2004), in Article 13. Admission into Russian Federation Citizenship on General Terms, paragraph (1), point (e) we read: [...] *command of the Russian language; the procedure for assessing the level of knowledge of the Russian language shall be established by regulations on the procedure for considering issues concerning Russian Federation citizenship.*

This situation came under closer scrutiny during the negotiations for European Union accession where the situation of non-citizenship came under closer scrutiny in order to try to identify a working solution for yet an uncharted problem at the time - the status of non-citizens being unique and without precedent in prior cases in the international law: “non-citizens [...] are neither citizens, nor foreigners, nor stateless persons. A great proportion of the large Russian-speaking population of the country falls within this category, unknown in public international law.”³⁰ It was a situation with a discriminatory aspect as it affected their rights to take part in the European Parliament elections of 2004.

²⁶ Lehte Roots, “Balance between national interest and EU citizenship” (MS) in Kinga Flaga-Gieruszyńska, E.; Wacinkiewicz, C.; Wacinkiewicz, D. (Eds.). *Citizen, State, International Community. A collection of studies*, C. H. Beck (forthcoming).

²⁷ L.Roots, „European Union Citizenship or Status of Long-Term Resident: A Dilemma for Third - Country Nationals in Estonia“, „Baltic Journal of European Studies“ 2012, No. 2(1), pp. 61 - 75.

²⁸ See <http://estonia.eu/about-estonia/society/citizenship.html> (Last accessed 30 March 2015).

²⁹ *Citizenship Act*, Revision of entry into force, date: 02/13/2015, The validity of the final version: 06/30/2015, §8 point 5.

³⁰ *Synthesis report : conclusions and recommendations on the situation of fundamental rights in the European union and its member states in 2003*, E.U. network of independent experts on fundamental rights, 4 February 2003, p. 90, available online at http://ec.europa.eu/justice/fundamental-rights/files/cfr_cdf_synthesisrep2003_en.pdf (Last accessed 14 March 2015).



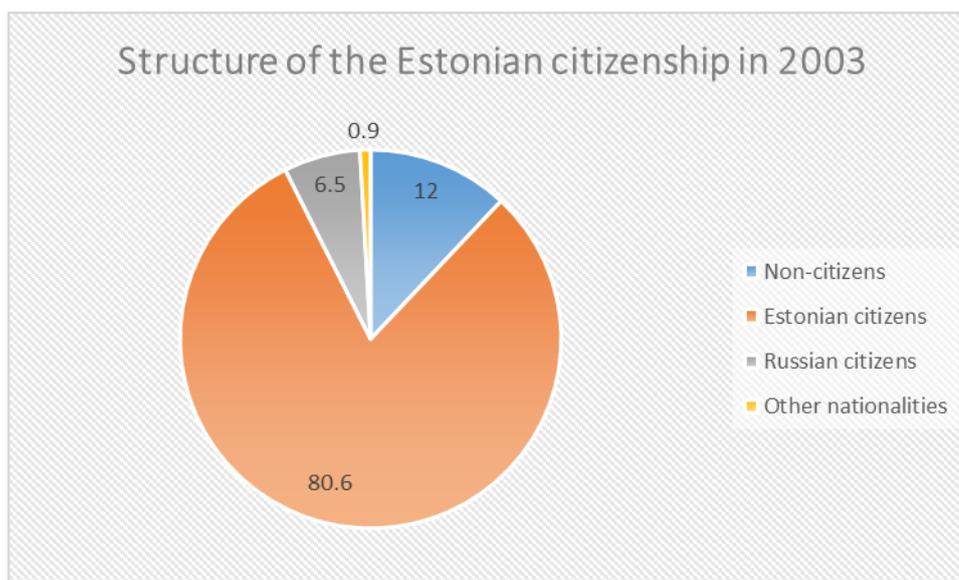


Figure 1. The composition of the Estonian citizenship in 2003 before EU accession³¹

There was also the view that the use of the Estonian language as a pretext for not granting citizenship was an artificial barrier that needed in the end to be addressed:

“Although including a language test requirement as a naturalization condition cannot be criticized as such, provided that such a test is organized in conditions which are transparent and non-discriminatory, the Network takes the view that Estonia should send a more clear signal to its non-citizens that citizenship is both worth acquiring and acquirable. Information campaigns for the non-citizens to encourage them getting citizenship are desirable. Estonia should also make further efforts in making the study of Estonian language accessible in all regions of the country.”³²

After the three Baltic States joined the united Europe, the EU had to develop a directive to legalize the status of “non-citizens” which still are in a great number (Estonia, almost 90 000³³; Latvia, almost 300 000³⁴). Lithuania has granted citizenship to permanent residents since 1989, while Estonia and Latvia have been more hesitant. In Estonia, 25% of the population is Russian, and in Latvia closed to 50%. The concept of “permanent EU resident” was implemented. The non-citizens of Estonia may benefit from the automatic accordance of the status of a permanent EU resident thanks to Directive No 2003/109/EU, passed on 25 November 2005, implemented it in national legislation by 23 January 2006.

Most of us take citizenship for granted since, in the great majority of cases, we acquire it by birth, and most probably most Europeans do not have the chance to meet *non-citizens*, be they called *persons with undetermined citizenship* or *stateless persons* or, as we find it in a study *Acquisition and Loss of Nationality*³⁵ mentioned before, *denizens*³⁶ or *quasi-citizens*³⁷.

³¹ Own calculus based upon information provided in *Synthesis report : conclusions and recommendations on the situation of fundamental rights in the european union and its member states in 2003*, E.U. network of independent experts on fundamental rights, 4 February 2003, p. 64, available online at http://ec.europa.eu/justice/fundamental-rights/files/cfr_cdf_synthesisrep2003_en.pdf (Last accessed 14 March 2015).

³² *Ibidem*, p. 63.

³³ See <http://estonia.eu/about-estonia/society/citizenship.html> (Last accessed 24 February 2015).

³⁴ See [http://en.wikipedia.org/wiki/Non-citizens_\(Latvia\)](http://en.wikipedia.org/wiki/Non-citizens_(Latvia)) (Last accessed 24 February 2015).

³⁵ Rainer Baubock Eva Ersbøll, Kees Groenendijk, Harald Waldrauch (eds.), *Acquisition and Loss of Nationality*, Policies and Trends in 15 European States, Volume 1: Comparative Analyses, IMISCOE Research, Amsterdam University Press, 2006, p. 28-29.

³⁶ The term *denizen* describes the status of a person approximately halfway between a citizen and a non-citizen. It is often used for immigrants who are granted free access to the labour market, the same rights as nationals to social security, a form of protection against sudden expulsion from the country and, sometimes, some political rights as well.

³⁷ *Quasi-citizenship* is defined as a status of enhanced denizenship that entails almost identical rights as those enjoyed by resident nationals, including voting rights at some level (local or national) or access to public office, as well as full protection from expulsion.

The bright side of non-citizenship (statelessness) is that, depending on the country they live in, these people enjoy more and more rights as well as obligations, not to mention that some are non-citizens by choice. The non-citizens living in Estonia may travel to Russia without a visa as well as within the European Union – Estonian citizens (be they of Russian ancestry) have to apply for a visa when travelling to Russia.

On the other hand, as of 25 February 2015³⁸, Protocol No. 12 to the *Convention for the Protection of Human Rights and Fundamental Freedoms*³⁹ was not ratified by Estonia, though it signed it on 4 November 2000.

The issue of non-citizenship also acted as a sort of revelatory substance, according to some scholars, who in the context of the debate between “old” and “new” Europe spoke about the West’s inability to achieve real scrutiny over their own minority issues: “the issue of double standards has regularly come to the fore in relation to debates over minority rights and protection, with “old” Europe traditionally far from willing to have its own policies subjected to the same scrutiny as “new” member states. In addition, there is a desire to differentiate between recent migrants in the EU – 15 and more historical minorities in the new member states, the former being subject to the justice and home affairs and immigration debate rather than the minority rights discourse afforded to the latter. “New member state governments – including Latvia – and their wider populations may feel that adherence to EU demands has been foisted upon them by countries unwilling to subject their own minority policies to similar scrutiny.”⁴⁰

This was obvious if we look at the response of a Petition drafted in 2008 and addressed to the Petition Committee by Maksim Reva (Estonian), on the rights to vote in the European elections of persons with undetermined citizenship living in Estonia. Although declared admissible it was finally rejected due to the lack of European Commission means to get involved. This is a *de facto* non-intervention declaration on behalf of the European Union institutions that needs to be revised for any hope of stability in the future.

“The petitioner denounces the situation in Estonia where persons with undetermined citizenship are not entitled to vote in the European elections. According to the petitioner this results in a democratic deficit. He recalls that the principle of democracy, as enshrined in Article 6(1) TEU, is a common principle to all Member States on which the Union itself is founded.

In electoral matters, European Community law grants the right of the citizens of the Union to participate in municipal and European Parliament elections in their Member State of residence, under the same conditions as the nationals of that Member State. These rights were put into effect by Directive 94/80/EC and 93/109/EC respectively.

European Community law does not grant electoral rights to persons who are not citizens of the Union. Therefore, the Commission cannot intervene in the issue of granting electoral rights in Estonia for persons not holding citizenship of the Union.”⁴¹

³⁸ See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=&DF=&CL=ENG> (Last accessed 25 February 2015).

³⁹ Article 1 – General prohibition of discrimination 1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

⁴⁰ Morris, H. M. (2005). “The non-citizens of the EU”. In Smith, D. J. *The Baltic States and their region: new Europe or old?.* Amsterdam - New York: Rodopi, pp. 263–264, available online at <http://books.google.ro/books?id=PSNML8BIGkUC&pg=PR5&pg=PA264#v=onepage&q&f=true> (Last accessed on 14 March 2015).

⁴¹ European Parliament, Committee on Petitions, *Notice to members*, 1.09.2009, available online at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/cm/789/789462/789462en.pdf (Last accessed on 14 March 2015).



The ECJ and the case of non-citizens

What sets apart the Estonian case is the relatively high number of third-country nationals (mostly the Russian ones) who have the status of long-term resident⁴² (in accordance with the European provisions) and who are in search of the citizenship. Although having a series of social and economic rights this status is yet to be equal to that of full citizenship, thus creating a division between various categories of people.

After joining the EU, persons who didn't have Estonian citizenship but only a permanent residence permit became long-term residents in accordance with the EU legislation, for the owners of a so-called "grey passport"⁴³ the question that is being often addressed is whether this is a result of political difficulties in obtaining citizenship or a result of deliberate personal calculation.

What we must notice is that the European Court of Justice didn't address the question of non-citizens as a distinct matter but rather treated the question in connection with separated cases treating distinct matters.

Article 20 (1) of the Treaty on the Functioning of the European Union states that:

"Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship."⁴⁴

What we notice immediately is that the EU does not grant citizenship independently. The Member States decides this upon nationality, which gives Union citizenship dependent status. The Community competence in this context is marginal. We must therefore conclude that the statement made in the judgment of the Court of 7 July 1992⁴⁵ that "at the present stage of development of Community law an independent definition of Community citizenship does not exist"⁴⁶ is still relevant. EU citizenship status depends on a decision made by the Estonian state. Therefore, in order to discuss the problems related to EU citizenship this is taken as a starting point.

We have thus the question of responsibility – who is responsible and to whom the European citizens must hold accountable – the Member State or the EU? We have through this a legal no man's land from the point of view of citizenship. Although the Member States are those who in theory must decide about their own citizenship, the European Court of Justice has started to take more bold moves that sometimes disregard national competencies.

One such landmark cases can be that of Judgment of the Court (Second Chamber) of 20 February 1975. *Jeanne Airola v Commission of the European Communities*. Case 21-74 where the Court declined to recognise Italian nationality of an official working for the Commission and considered her as a Belgian citizen because Italian legislation was purporting 'unwarranted difference of treatment as between male and female officials'.⁴⁷

⁴² For the definition of long-term resident please see the *Council Directive 2003/109/EC* of 25 November 2003 concerning the status of *third-country nationals who are long-term residents*. EU countries must recognise long-term resident status after five years of continuous legal residence." Available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l23034>

⁴³ For further legal details regarding the status of Estonian citizens and long-term residents please see Lehte ROOTS, "European Union Citizenship or Status of Long-Term Resident: A Dilemma for Third-Country Nationals in Estonia", in *Baltic Journal of European Studies*

Tallinn University of Technology, Vol. 2, No. 1 (11)

⁴⁴ See <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT&from=EN>

⁴⁵ *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*. Reference for a preliminary ruling: Tribunal Superior de Justicia de Cantabria - Spain. Freedom of establishment - Persons eligible - Dual nationality. Case C-369/90.

⁴⁶ Case C-369/90 *Mario Vicente Micheletti and others v. Delegacion del Gobierno en Cantabria*, available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61990CJ0369>

⁴⁷ See Case 21/74 *Jeanne Airola v. Commission of the European Communities* [1975], ECR 00221 available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61974CJ0021&from=EN>



We would end in a positive key citing Lehte Roots (in a letter to us): *Also §36³⁴⁸ is important as from 1st January 2016 the child born in Estonia who would otherwise be stateless will have a right to get Estonian citizenship. This change of the law should stop producing statelessness.*

For us the concept of non-citizenship (or any other politically correct term would do) also questioned the concept of EU citizenship. We could go further deeper and question the actual EU and its institutions, we may have a union, but are we united? In the beginning, Estonia – and Latvia, for the matter – might have been right in their way of approaching the concept of citizenship, but Estonia is also right when relaxing the *Citizenship Act*, which could be taken us a step towards not only being a Union, but being united, a real, factual EU citizenship getting us united would be a real, factual foment of EU progress.

⁴⁸ *Citizenship Act*, Revision of entry into force, date: 02/13/2015, The validity of the final version: 06/30/2015



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