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A new kind of citizenship accepted by EU?

Latvian non-citizens and the citizenship debates

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Hannah Arendt: „Citizenship is the right to have rights“

CONTENT

1. Introduction.....	1
2. Case study: Latvian non-citizens	3
2.1. Prehistory and politics: Important milestones and governing principles.....	4
2.2. The seven main characteristics of Latvian non-citizens	7
2.2.1. ethnic dimension	7
2.2.2. historic interwovenness	8
2.2.3. no political rights.....	8
2.2.4. social rights & civic rights.....	8
2.2.5. location of the granting authority in nation state.....	9
2.2.6. internal and external membership.....	10
2.2.7. non-citizenship as formal legal status	11
2.3. Future prospects and challenges.....	12
3. The legal status of Latvian non-citizens in the light of current citizenship debates	14
3.1. National citizenship (Brubaker).....	15
3.2. Multicultural citizenship (Kymlicka)	19
3.3. 'Denizenship' (Hammar)	21
3.4. Postnational membership (Soysal)	23
3.5. EU citizenship (Bauböck and Faist)	26
3.6. Statelessness and citizenship: Global formal citizenship (Hernandez-Truyol and Hawk)	30
4. Conclusion: A new kind of citizenship?	31
5. list of references	35
6. Annex	41

1. INTRODUCTION

On May 13th, 2011 the UN Human Rights Council published its national report about Human rights situation in Latvia. In this report, the members of the Council noted their concern about the very existence of the status of non-citizens (UN Human Rights Council, 2011: 11) as well as in particular mentioned two “particularly vulnerable groups (ibid.): elderly persons and the children born to non-citizens”. Furthermore, it expressed its hope that non-citizens will be granted voting rights in local elections stating that this would be appropriate considering the strong ties to Latvia these persons hold. In a similar manner, Knut Vollebaek, OSCE High Commissioner on National Minorities, during a visit in February 2011 “urged Latvia to allow non-citizens to vote in municipal elections” (Petrova, 2011) and recommended other changes in non-citizenship law.

This work examines the legal status of Latvian non-citizens in the light of citizenship debates and this legal status is by no means an outdated research subject as some would argue. In fact- as showed by the two examples above- it is currently discussed in international organizations. Although the legal status of non-citizens has now existed for more than 15 years and a lot of scholars already discussed it in various aspects (e.g. statelessness, obstacle to integration, social consequences of being a non-citizen), it is still relevant today and seems not yet covered adequately by academic science.

The legal status of non-citizens has been created in 1995. It was needed because the large shares of Russian-speaking migrants, who entered Latvia during the years of the Soviet Union, were not eligible to Latvian citizenship. Latvian non-citizens are former citizens of the U.S.S.R. who do not hold Latvian or any other citizenship. They essentially lack full citizenship rights. Full citizenship rights are considered social, civic and political rights since Thomas Marshall defined them in that way in 1950 (cf. Marshall, 1998). According to him, social rights are all those connected to access to social institutions of society, such as the right to education (cf. Marshall, 1998: 94), whereas civic rights are “rights necessary for individual freedom - [such as] freedom of the person, freedom of speech [etc.]” (ibid.). Political rights are “right[s] to participate in the exercise of political power” (ibid.), such as the right to vote and stand for office. Thus, non-citizens enjoy only civic and social rights in Latvia, but no political ones. Hence, non-citizens are not stateless. The rights of non-citizens clearly have a wider scope than those of stateless individuals: most rights of non-citizens are equal to those of Latvian citizens. Their strong ties to the Latvian state are also shown by a so-called non-citizen (Alien) passport conferred by the Latvian state - which is also the main symbol for the clear difference between stateless individuals and non-citizens. Furthermore, those Russian-speaking immigrants who were not able to obtain non-citizen status for several

reasons (e.g. having been involved into any activity of the Secret Service of Soviet Union¹), are in fact stateless and do not enjoy rights similar to non-citizens' rights.

As particularly shown by the statement of UN Human Rights Council, the status of being a non-citizen in Latvia has to be accounted as violating Human rights principles, most importantly the right to citizenship which is conferred in several Human Rights Conventions (e.g. International Convention on Civil and Political Rights). However, one could argue, that it is non-citizens' own fault to be deprived from important Human Rights, because they could simply naturalize and enjoy all privileges of being a citizen - a position which is also taken by the Republic of Latvia. But is important to notice, that some non-citizens are not able to do so (elderly persons) or should not be rendered responsible for their parents (children born to non-citizens). For most observers, such as the Special Rapporteur of UN Human Rights Council, this situation is acknowledged and confirmed that naturalization is not always easily to obtain. Changes to this practice are therefore frequently recommended. They mainly include "revisit[ing] the existing requirements for naturalization with the objective of facilitating the granting of citizenship to non-citizens; consider[ing] measures to tackle the problem of the low level of registration as citizens of children born in Latvia [...] to non-citizens parents, which could include granting automatic citizenship at birth without a requirement of registration by parents and relax naturalization requirements, in particular language proficiency exams, for elderly persons" (UN Human Rights Council, 2011: 11).

Despite these clear notions of non-citizenship being a violation of Human Rights' principles, the European Union (EU) takes a different stance. In answer to a petition submitted to the European Parliament (EP) by a group of Latvian non-citizens, the European Commission (EC) stated that EU could not do anything about this status of non-citizens in Latvia for several reasons: granting membership is up to member states and moreover, the Union has no overall power regarding fundamental rights. The Commission pointed out that non-citizens enjoy already important rights at European level. Hence, it seems that this violation is not of utmost priority to the EU. But maybe the explanation of this reservation may also be that EU regards non-citizenship as a new kind of citizenship which has to be accepted as existing within the Union.

This thesis aims to examine whether this notion has to be considered valid. Consequently, it will use the method of a theoretically assessed case study. This comprises a case study, which later serves as starting point of a critical examination of existing theories.

Usually a case study comprises information about a certain setting, history of the evolvement of this specific setting and evaluates characteristics of the setting, e.g. the legal framework. The method of theoretically assessed case study then takes the findings of a case study as point of origin of a critical examination of existent theories on the topic of the case study.

¹ for a complete list of the people excluded from citizenship and non-citizenship see Citizenship law of the Republic of Latvia, Section 11 *Restrictions on Naturalisation* and Non-citizen law of the Republic of Latvia, Section 1, Art. 3 *This law does not apply to:*

Finally, the researcher should be able to discover if the case study can be explained by an existent theory or provides for a new specification of the topic which has not yet been theorized.

The topic of the present case study, namely Latvian non-citizens, raises several questions in respect to citizenship. Does citizenship still matter? If yes, is the age of nation states and national citizenship over? Is political participation no longer an essential part of citizenship in a globalized world? Or maybe, the other way around: is citizenship today, in our globalised world, more important than ever? To obtain orientation, show belonging, help to find the own identity in an ever changing world? Every single of these questions would be worth consideration, but this thesis cannot fulfill to consider every of them, but will rather examine whether there is a whole new kind of citizenship to consider in these debates.

To find out about this research question, the thesis is structured into three main chapters. The first chapter will portray Latvian non-citizens in a case study, which was divided according to three time periods into three subchapters. Chapter 2 will deliver a critical examination of six important existing citizenship theories in respect to their explanatory power in case of Latvian non-citizens. The examination is separately analyzing citizenship theories which locate authority either within the state or beyond the state. Finally, Chapter 3 will provide a synopsis of the conducted analysis and answer the central research question: Has Latvian non-citizenship to be considered a new kind of citizenship?

2. CASE STUDY: LATVIAN NON-CITIZENS

In the following section, the legal status of a non-citizen in Latvia will be examined in various aspects. Even if the number of naturalizations of non-citizens peaked in 2004, it slowed down since accession of the EU (Office of citizenship and Migration affairs, 2011a, see graph 1 in annex). There are still quite large numbers of non-citizens living in Latvia today. The current total number of non-citizens is 326 735 (as of January 1, 2011) (Office for Citizenship and Migration Affairs, 2011b). As the total population of Latvia is only 2 224 400 (as of May 1, 2011), non-citizens account for 14, 69% of the population (Latvijas Statistikas, 2011b).

The legal construct of non-citizenship is kind of unique in Public international law² and therefore, the following case study will try to familiarize you with it by providing information about its prehistory and the political principles and decisions, which led to its creation. Furthermore, this case study will describe the seven main characteristics of the status of a non-citizen. Those are *ethnic dimension, historic interwovenness, no political rights, social rights & civic rights, location of the granting authority in nation state, internal and external membership, and non-citizenship as formal legal status*. In concluding this part of the thesis, future prospects and challenges will be highlighted.

² only Estonia has a similar provision, but grants non-citizens more rights

2.1. Prehistory and politics: Important milestones and governing principles

Latvia gained independence for the first time in 1919, but independency did last no longer than 1940, when the country was annexed to U.S.S.R. After some years under changing occupational regimes³, the Republic of Latvia was part of the U.S.S.R. until the restoration of independence in 1991.

Following that event, citizens of U.S.S.R had the right to move freely to Latvia and during the 50 years of Soviet rule, large migration influxes from the territory of U.S.S.R. took place (Aasland, 2002:59). These “migrants”⁴ came mainly from Russia, Ukraine and Belarus and in 1989, they constituted about 52 % of residents of Latvia (Ibid.) and were attracted by jobs or the more open political climate in the Baltic Republic. During these years, a large Russian-language based infrastructure was established in Latvia, as Russian was the official language. Most migrants stayed after restoration of independence and even showed a certain attachment to Latvia by fighting for its independence (Wezel, 2008:131).

After having regained independence, Latvia restored its constitution of 1922 following the concept of state continuity which was valued very high (Gelazis, 2004: 228). Unlike most other newly independent states on the territory of former U.S.S.R, Latvia⁵ did not choose the option of founding a new state⁶. Instead, it restored independence, i.e. it reestablished the constitution and laws of pre-occupied Latvia. The main advantage of this practice was seen in the already effected international recognition of the independent Republic of Latvia.

The concept of ‘state continuity’ is based on the assumption of illegality of the “forcible incorporation of the Baltic states into the Soviet Union, [which] violated international law and [was], therefore, considered null and void” (van Elsuwege, 2003: 278). Following the law principle *ex iniuria non oritur ius*⁷, the independent Republic of Latvia was considered of having existed *de jure* during the time of Soviet occupation (Ibid.). The principle of state continuity also influenced citizenship legislation of Latvia. Against the practice of most other post-Soviet states, Latvia did not choose the “zero option”, by which all residents of a certain country (e.g. Lithuania) at the date of declaration of independence were automatically rendered citizens (Barrington, 1995: 733)⁸, but reinstalled its prewar citizenship law of 1919 according to the state continuity principle (van Elsuwege, 2003: 383). Only persons who were able to prove that they or their ancestors were citizens of Latvia in 1940 gained automatic citizenship of Latvia.

³ from 1941-1944, Nazi-Germany occupied Latvia

⁴ during this time, they have to be considered moving within one state and hence they cannot be regarded as migrants in the traditional meaning of the word.

⁵ alongside with Estonia and Lithuania

⁶ which would have been needed to be recognized internationally

⁷ translated as “there can be no justice from injustice”

⁸ for a discussion of the consequences of choosing zero option against state continuity see Barrington, 1995: 731-763

This state continuity approach in citizenship legislation can be considered the outcome of long-lasting debate about the different options in citizenship legislation. Two options were discussed: zero option and state continuity. The debate which way to take in citizenship legislation took place in the Supreme Council⁹ right after declaration of independence at May 4, 1990. Zero option was only supported by a minority¹⁰. The state continuity option was supported by majority of groupings, even by such representing non-Latvians (e.g. Harmony Center), which however set the condition to establish a new citizenship law or at least a citizen-alike status for persons not eligible to 1919 Citizenship law (Pabriks, 2003: 80). “Restored states whose territory has been occupied have no obligation to grant nationality to settlers”¹¹ (van Elsuwege, 2003: 383), so that Latvia had to find a solution for the persons (former U.S.S.R. citizens) living on its territory without being eligible for citizenship. As Latvia had ratified several international agreements concerning the topic of statelessness, it was not possible to assign for former U.S.S.R. citizens to this status (Gelazis, 2004: 235). The *UN Convention on the reduction of statelessness* (1961) (hereinafter called UN Convention) and *European Convention on Nationality* (1997) (hereinafter called European Convention) are the most important documents for this stage.

The UN Convention was most influential during formulating of non-citizen legislation, as it states in Art.4: “A Contracting State shall grant its nationality to a person who would otherwise be stateless” (United Nations, 2011b: 177). The citizenship law of Latvia did not allow granting nationality (i.e. citizenship) to the former U.S.S.R. citizens in question. Hence, Latvia broadened the definition of ‘nationality’ used by the Convention and created non-citizens with social and political rights as another kind of Latvian ‘nationality’. The Convention does not use the term ‘citizenship’, so Latvia acted in compliance.

However, the introduction of non-citizen status was not without controversy: it tackled the question of safeguarding Latvian nation through citizenship legislation. Seen from today, the shaping of non-citizenship as laid down in the *Law on the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any other state* (hereinafter referred to as *Non-Citizenship law*¹²) can be also considered as reflecting a compromise between fundamental Human Rights principles and a sort of *constitutional nationalism*¹³, which was also acknowledged as justified by Latvian Constitutional Court in case 2004-18-0106¹⁴.

⁹ The Supreme Council as political institution was a relic from Soviet times, it got a new composition after first elections after independence in 1990, but remained the most important political institution during transition period until election of the 5th parliament in 1993

¹⁰ *Equal Rights* and *Democratic Initiative Centre* voted in favor (Kruma, Indans, Meijere, 2008:5). But *Equal Rights* evolved from the hard-line communist, previous Interfront political camp (for more information on the topic see Pabriks, 2003: 80) and was therefore discredited.

¹¹ This assumption is backed by various historic examples; the most important is the one of Alsace, whose German inhabitants were not granted French citizenship after its recapture by France. For a discussion of this see van Elsuwege, 2003: 838f

¹² no official acronym, but also used by Latvian Constitutional court in Case number 2004-15-0106

¹³ i.e. “constitutional and legal structures that privilege members of one ethno-nation over other residents” (Verdery, 1998: 294)

¹⁴ „When assessing the conformity of the impugned norm with several legal norms, incorporated in the Satversme and international human rights instruments, one has first of all to take into consideration that the above matter cannot be reviewed

Also, conditionality of several European organizations had great impact in shaping citizenship legislation, as they had to “offer [...] acceptance of the newly independent as a part of Europe” (Barrington, 1999: 192) - a goal which had been defined as crucial for maintaining independence by Latvian decision-makers (Morris, 2003: 3). Simultaneously, they used the threat of non-membership as most effective tool to influence legislation (Galbreath, Muiznieks, 2009: 138). Influence of international organizations took place in different time frames: *Organisation for Security and Cooperation in Europe* (OSCE) and *Council of Europe* (CoE) had most impact during the first years after independence, whereas *European Union* (EU) was more active from 1997 until accession in 2004. Nevertheless, ultimately gaining accession to EU can be valued the most significant incentive for Latvia to act in the way demanded by European Organizations. But the European organizations had different possibilities to impact Latvian policies: *CoE* and *EU* were able to sanction Latvia for non-compliance, whereas *OSCE* acted in a purely advisory capacity.

At first, membership in *Council of Europe* ranked high on the agenda of newly independent Latvia, in particular as it was perceived as essential prerequisite for joining the *EU* afterwards. Thus, Latvia applied for joining the CoE as early as 1991. As the parliamentary assembly of CoE in concluding the readiness to apply stated that “[the] lack of a Citizenship Law, and there being no legal status for non-citizens, remain[...] key problems for the prospect of Latvian membership of the Council of Europe” (Morris, 2003: 5), citizenship legislation in the following years was more likely to include the recommendations provided by CoE. Hence, negotiating citizenship law in 1994 was mainly influenced by the recommendations and objections of CoE (e.g. objections of quotas for naturalization, establishment of a naturalization board). Consequently, President Ulmanis refused to sign the initial version of citizenship law, which included quotas, and urged for a more inclusive citizenship law (Galbreath, Muiznieks, 2009: 138).

Besides the recommendations of CoE, those of *OSCE* represented by its High Commissioner on National Minorities found their way to citizenship- respectively non-citizen legislation (Morris, 2003: 14). He provided proposals for the shaping of citizenship law in 1994 (Morris, 2003: 9) and urged Latvia to establish a legal framework for residents not eligible to citizenship as soon as possible (Dorodnova, 2003: 31f). In order to add authority to its recommendations, *OSCE* used representatives of its member states to exert pressure on Latvian politicians (Morris, 2003:13). However, impact of *OSCE* diminished after Latvia’s failure to join the accession talks with EU in 1997.

Subsequently, EU gained most influence, but included recommendations of *OSCE* concerning the issue of non-citizenship. The Latvians’ desire to join the *EU* was most influential concerning the liberalization of citizenship law in 1998 in order to ease

as isolated from the complicated ethno-demographic situation, which was created as the result of the Soviet occupation” (Latvian Constitutional Court, 2005a: 26)

naturalization procedure for non-citizens. The most effective tool of EU has been the so-called *Copenhagen Criteria*, which frame the conditions to be met by countries wishing to access the Union. As the legislation of Latvia concerning non-citizens and their possibilities to naturalize were not in line with the *Human Rights Criteria* and the *Protection of National Minorities Criteria*, demands of EU had to be transferred in national law (Morris, 2003: 19f and Sasse, 2008: 849).

In addition to the demands of these European organizations, the *European Convention on nationality* has to be considered influential. The contracting parties of this convention commit themselves to facilitate acquisition of nationality (i.e. citizenship) for “persons who were born on its territory and reside there lawfully and habitually” (Council of Europe, 1997: Art 4., clause e.) and to provide in its laws for naturalization of these persons (Ibid.: Art. 3). Moreover, the Convention explicitly deals with successor states¹⁵ and instructs them to take explicit account of “the genuine and effective link of the person concerned with the State; the habitual residence of the person concerned at the time of State succession; the will of the person concerned” (Ibid.: Art. 18 II). Latvia respected these obligations and incorporated them into the citizenship law of 1998¹⁶. However, after accession of EU, conditionality of European organizations became less important in shaping non-citizens legislation in Latvia (Galbreath, Muiznieks, 2009: 140) and no further liberalizations or important changes were made concerning the topic of non-citizen legislation.

2.2. The seven main characteristics of Latvian non-citizens

2.2.1. ethnic dimension

Latvian non-citizens cannot be considered a homogenous group. Being ethnic Russian holds for a majority of non-citizens (214 834 as of January 1, 2011). The second and third largest groups are Belarusians (44 091) and Ukrainians (31 291). Other groups are only marginal (see graph 2 in annex) (Office of Citizenship and Migration Affairs of the Republic of Latvia, 2011b).

By the characteristic *ethnic dimension* it should be revealed that the legal status of non-citizens shows a strong ethnic component. Because only ethnic Latvians or their descendents could obtain citizenship after independence without naturalization, the status of non-citizen was the only one left for former immigrants from Russia, Belarus and Ukraine. This ethnicity-bias in citizenship legislation can be considered caused by a feeling of having been ‘minoritized’ during the years of Soviet occupation, when Russian was state language and the share of ethnic Latvians had been fallen to only 52 % of total population in 1989 (Demoscope.ru, 1989). It can be still observed in debates about naturalization of non-citizens

¹⁵ even if Latvia does not consider itself as a “successor state”, these provisions apply to it too

¹⁶ Besides these, compliance with Art.7 II¹⁶ of *UN Convention on the rights of the Child* did in particular influenced liberalization of Latvian citizenship law concerning children born to non-citizen parents (Gelazis, 2004: 235) in 1998 by granting them the right to become citizens through birth (if registered by parents as citizens).

as well as in the regulations governing naturalization procedure (see below). Furthermore, non-citizens' needs are often advocated for by Russian-speaking parties and NGOs¹⁷. This is symptomatic for the perception of non-citizens as mainly Russian.

2.2.2. historic interwovenness

Besides ethnicity, non-citizen's status can also be characterized in terms of its historic interwovenness with the Republic of Latvia. As described above, today's non-citizens came to Latvia as immigrants from other Soviet republics. Most of those former immigrants share a common history with Latvia, but the perception of this history is clearly different. Latvia regarded them as unlawful invaders and occupants, while non-citizens self-identify as holding strong ties to the Latvian state (Hanovs, 2011: 3). The creation of non-citizen status obviously shows that Latvia acknowledges these strong ties, but considers them less strong compared to those of Latvian citizens.

The historic interwovenness of non-citizens and the Latvian state provide for one major distinguishing feature between stateless persons and non-citizens of Latvia.

2.2.3. no political rights

This characteristic is the most important one in describing Latvian non-citizenship. Rights and duties of every inhabitant of Latvia are specified in Chapter VII of Satversme (Latvian Constitution) on Fundamental Human Rights. Political rights as defined by Marshall are only granted to citizens of Latvia respectively EU citizens permanently residing in Latvia¹⁸. Art 101 grants only citizens the right to vote and to be elected (Republic of Latvia, 2011) for local and national governments. Thus, Latvian non-citizens enjoy absolutely no political rights. They are neither allowed to vote and stand for office in their country of residence nor to do so in European elections.

By this provision, Latvian non-citizens are rendered unique in Public International Law. It is often cited as a point of concern by most international observers (see introduction). The Latvian government provides several reasons for this restriction of rights, of which the most prominent seem to be that by granting any voting rights the incentive for naturalization would cease to exist.

2.2.4. social rights & civic rights

Unlike stateless persons, Latvian non-citizens enjoy all social and civic rights, which are usually tied to citizenship. Besides fundamental human rights such as *the right to life* (Art. 93), those rights are specified in Chapter VIII of the Satversme, too.

¹⁷ e.g. the Russian speaking party Harmony Center (Saskanas Centrs), which calls for voting rights for non-citizens (cf. Saskanas Centrs, 2011)

¹⁸ only in local elections

Civic rights “rights necessary for individual freedom - [such as] freedom of the person, freedom of speech [etc.]” (Marshall, 1998: 94). They are designed in order to ensure equal treatment of individuals by the state and safeguard them against arbitrary state actions. Usually, those civic rights are seen as an important part of a contract between a state and its citizen. Civic rights granted to non-citizens are for example judicial rights such as *equality before law and courts* (Art. 91) and *the right of fair trial* (Art. 92) and others such as *freedom of thought* (Art.99) and *of expression* (Art. 100).

Furthermore they are granted the right *to form and join associations, political parties and other public organizations* (Art. 102).

Social rights are all those connected to access to social institutions of society (cf. Marshall, 1998: 94). Such rights are important to ensure equal opportunities and the possibility to obtain help by the state. Social rights such as the *right to education* (Art. 112), *the right to social security* (Art.109), *the right to strike* (Art. 108) and the *right to own property* (Art. 105) are also granted to every inhabitant in Chapter VIII of the Satversme.

Furthermore, non-citizens enjoy besides rights and duties granted and obliged to them in Latvian *Chapter VIII of Latvian Constitution on Fundamental Human Rights* additional rights granted by Non-citizenship law, namely preserving their native language and culture and protection against expulsion from Latvia (Ibid.: Section 2, Art. 2, Clause 2).

Usually, those civic and social rights are seen as an important part of a contract between a state and its citizen, which is called citizenship. All the more, it is remarkable that Latvian non-citizens enjoy those rights, too.

2.2.5. *location of the granting authority in nation state*

Any citizenship has to be granted by an authority. According to different theories (cf. Isin & Turner, 2002: 4), this authority can be either located in nation state itself or beyond the nation state. However, current citizenship is mainly granted by nation states. Likewise, non-citizenship of Latvia is granted by authorities of Latvia, i.e. all rules and regulations governing non-citizenship are defined by the Latvian state.

The naturalization procedure for non-citizens according to the provisions of citizenship law, being the only possibility for them to obtain full citizenship, is an important example of this authority. This law is mainly based on a *ius sanguinis* approach and contains only some *ius soli* provisions¹⁹. The only exclusion from this is represented by children of non-citizens born in Latvia which can be registered as citizens by their parents up to the age of 15. All non-citizens have to fulfill several preconditions before being allowed to undergo naturalization procedure: having reached the age of 15, permanent residence and having a legal source of income (Republic of Latvia, 2005: Section 12, Art.1). During naturalization procedure,

¹⁹ for a discussion of *ius sanguinis* vs. *ius soli* in citizenship provisions see Weil, 2001: 17-35

applicants must prove fluency in Latvian language, knowledge of the basic principles of the Constitution of Latvia, the full text of the national anthem and the history of Latvia. Furthermore every applicant is obliged to give a pledge of loyalty to the Republic of Latvia (ibid.)²⁰. Only successfully completing this procedure allows for naturalization.

So, Latvian non-citizenship was only granted by the Latvian state, although international organizations influenced citizenship legislation of Latvia.

2.2.6. *internal and external membership*

Usually, citizenship is considered as consisting of internal and external membership of a state²¹. This concept describes the two different consequences of obtaining citizenship, namely holding certain important rights and obligations vis-à-vis within the granting state and being acknowledged as member of this state in foreign countries (cf. Hammar, 1990: 33f), e.g. by being eligible to consular protection.

As described above, Latvian non-citizens enjoy internal rights and obligations as defined by Chapter VIII of *Satversme*. Although they have not been granted political rights, they enjoy important internal membership rights. Moreover, non-citizens also enjoy external membership rights; most importantly they are allowed to receive consular protection (Kruma, 2010: 73). Namely, Art. 2 (1) of the Latvian *Law on Diplomatic and Consular Service*, determines the right of non-citizens to “protection of [...] interests” (Republic of Latvia, 2004) by Latvia. Hence, Latvian non-citizens enjoy internal and external membership rights. This is important to note, because usually only citizens are considered as enjoying both kinds of rights.

Further clarifying on the rights constituting the status of non-citizens in Latvia, the Latvian constitutional court gave a ground-breaking judgment at March 7, 2005²²: it defined for the first time Latvian non-citizens as a new category in Public international law holding strong ties to their country of residence without being citizens (Latvian Constitutional Court, 2005b: 14). This was especially important because it clarified the status of non-citizens in relation to regional and international organizations. In 2004, 20 deputies of the Latvian Parliament claimed that Articles 1, 2 and 7 of the *Non-citizenship law* were partly not in compliance with Human Rights provisions in *Satversme* (Constitution of Latvia), the Fourth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights (Latvian Constitutional Court, 2005b: 1), which Latvia had all ratified. The court decided to accept the question and found Art. 7, Part 2 read in conjunction with Art 1, Part 5 as not complying with Art 98 of *Satversme* and gave the new definition of the status of a non-citizen in Latvia: “Latvian non-citizens can be regarded neither as the citizens, nor the aliens and stateless persons but as persons with “a

²⁰ Exclusions of this procedure, such as having attended Latvian school are laid down in Republic of Latvia, 1998, Chapter 2, Section 14, Art. 2

²¹ This concept was proposed by Brubaker in 1989

²² Case number 2004-15-0106

specific legal status". (Ibid.: 13) And about the status in international law it stated: "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."(Ibid.).

2.2.7. non-citizenship as formal legal status

The *Non-citizenship law*, which established non-citizenship as legal status, was adopted at April 25, 1995 and has undergone several amendments (Republic of Latvia, 2005). It defined this status in detail. First of all, it provides the following definition: "non-citizens are such citizens of the former USSR who reside in the Republic of Latvia as well as who are in temporary absence and their children who simultaneously comply with [several] conditions". These conditions specify persons eligible for non-citizenship by determining the exclusionary date of July 1, 1992 to have been registered as resident of Latvia without possessing citizenship of Latvia or any other state. But the law does not apply to all persons fulfilling these before-mentioned conditions. Military experts and their families if not having resided permanently in Latvia before subscribing into military service (Ibid.: Section 1, Art. 3, Clauses 1-3) are excluded as well as persons having received compensation for departure from Latvia and taking permanent residence in other states.

Moreover, the law specifies rights and duties of non-citizens. Non-citizens enjoy all rights and duties granted and obliged to them in Latvian *Chapter VIII of Latvian Constitution on Fundamental Human Rights*, but the *Non-citizenship law* grants them some additional rights: preserving their native language and culture and protection against expulsion from Latvia (Republic of Latvia, 2005: Section 2, Art. 2, Clause 2).

The most important symbol of the status as non-citizen is described in the Non-citizen Law: a non-citizen (Alien) passport as well as an identification card issued by the Republic of Latvia (Republic of Latvia, 2005: Section 3). This *Alien passport* grants the holder the right to receive diplomatic help in Latvian embassies in foreign countries and freely return to Latvia. Holding this document, Latvian non-citizens are allowed to travel visa-free to EU-27 and most EEA countries²³. The Non-citizen passport is an essential criterion of differentiation between stateless persons and non-citizens because there are different passports for them in Latvia. This kind of passport was unknown before in public international law.

²³ such as Norway, Iceland and Georgia (Buzajevs, Dimitrovs, Ždanoka, 2008: 30f), but need visa for most other states

2.3. Future prospects and challenges

Currently, the large share of non-citizens still deeply influences Latvian society. This concerns rather the delegitimization of Latvian politics resulting in a democratic deficit and subsequent problems and not so much the living conditions of non-citizens themselves: a study in 2002 found hardly any difference between citizens and non-citizens in Latvia in terms of unemployment, social contacts, risk of poverty and social exclusion (Aasland, 2002: 3ff).

However, the democratic deficit seems to be a severe problem. Political decisions of Latvian government can be hardly considered democratically legitimized, if nearly 15% of the affected population does not enjoy political rights. This democratic deficit exists on the local, national and European level. On the local level, it is experienced by not being able to influence political decisions. E.g., non-citizens are obliged to pay taxes (as every citizen of Latvia) without having any possibility to influence decisions on the use of tax money (Brands Kehris, 2010: 105). Moreover, since Latvia joined the EU in 2004, nationals from other EU member states registered as permanent residents in Latvia are allowed to vote and stand for office in local elections. This adds to the local democratic deficit and evokes tensions (ibid.). On the national level, the denying of political rights to non-citizens delegitimizes decisions taken by elected officials. This is a point of concern for international organizations monitoring Latvian politics. The OECD stated: "Despite the ongoing naturalization process, the fact that a significant percentage of the adult population of Latvia does not enjoy voting rights represents a continuing democratic deficit." (OECD, 2006: 7). As political representation is an essential element of legitimization of democratic principles, outcomes of Latvian political system can hardly be categorized as democratically legitimate. Consequently, the democratic deficit is carried on to the European level. All decisions taken by the Latvian government representatives in European institutions lack legitimization if these representatives suffer from insufficient legitimization on the national level. Moreover, seats in European Parliament are assigned by taking into account population size²⁴. Due to the large number of non-citizens, Latvia qualifies for at least one seat more than without taking them into account (Zdanoka, 2008:1). This clearly creates a democratic deficit, because non-citizens are not allowed to vote in European elections.

Besides the main point of democratic delegitimization, there are some other subsequent problems: integration of minorities and backlog of reforms in immigration law. During the last years, efforts to achieve better social integration of the Russian-speaking minority in Latvia have been undertaken. However, as most non-citizens are members of this minority at the same time, this status hinders integration. As Ilze Brands Kehris stated: "inclusion into citizenship and political participation of minority groups [should] not [...] [be treated as] an option, but a necessity for the integration of society" (2010: 94). Otherwise, integration seems

²⁴ although according to the concept of "degressive proportionality", bigger member states agreed to have less seats, as if they would obtain if only population size would be considered.

much more difficult, because decisions taken by politicians and civil service agents are “Latvian biased” in the sense that they favor Latvian language. Also, newly arriving third country nationals do not enjoy appropriate treatment, as there is a backlog of reforms in Latvian immigration legislation and practice. This is due to the fact that non-citizen legislation was disputed for a long time. Latvia is often claimed to be less open for immigrants as compared to other European states (Brands Kehris, 2010: 99). Even though recent changes in immigration lead to more openness, integration programs still mainly target the social integration of national minorities. Thus, Latvia will face serious problems in the future regarding the integration of third-country nationals, who will be needed because of professional skills shortage on the Latvian labor market (Latvijas Statistika, 2011a).

Furthermore, the judgment of Latvian Constitutional Court of March 7, 2005 poses new challenges. As the judgment defined for the first time, that Latvian non-citizens are not a category caught by public international law, some international treaties Latvia ratified, could not be relied upon by non-citizens. These treaties had to be revised and are still under revision to include also non-citizens. However, most international law experts recommend to treat Latvian non-citizens nevertheless as “nationals” of Latvia (a category well known in International law), but as the Court stated is “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” (Ibid.: 22). This revision process is still not finished.

Coming to a conclusion, in the last years Latvian state did not do more about the status of non-citizens than defend it against international and national criticism. The main arguments seem to be the state continuity argument (Reine, 2007: 3) and the naturalization argument (there is no need to consider further change because non-citizens are able to naturalize) (Ibid.). However, the Latvian state has fallen short to have reviewed non-citizen status for several years now. This is especially true as the only other country having a similar non-citizen status introduced, Estonia, granted them local voting rights in 2004 and discusses further reforms. Eventually the Latvian government will consider easing naturalization procedure for some non-citizens, e.g. elder persons, in order to meet international recommendations. However, at least at this point of history, it does not seem that there will be any major changes of the status of non-citizens in Latvia in near future.

3. THE LEGAL STATUS OF LATVIAN NON-CITIZENS IN THE LIGHT OF CURRENT CITIZENSHIP DEBATES

After the collapse of the Soviet Union in 1991, the issue of citizenship gained much impact and the academic debate about citizenship intensified. During the last twenty years citizenship issues continued to appear on the political and academic agenda- a trend surprisingly not weakened but encouraged by ongoing globalization. In the light of this evolvments, Latvian non-citizenship seems to be simultaneously anachronistic and more modern than ever before. In the following, this work will assess whether any theories are adequate to describe Latvian non-citizenship or this legal status provides for a new kind of explicitly non-political citizenship. Hence, the following theoretical assessment of the case of will analyze Latvian non-citizenship in the light of citizenship debates.

“Citizenship” is a broad and contested concept. Thus, it seems important for the understanding following examination of current citizenship theories, to first clarify on the conception of citizenship used in this work.

Two main conceptions of citizenship can be identified in the current debate: democratic citizenship and state citizenship. The latter identifies citizenship as a formal legal status, whereas the former defines it as shared membership of a political community (Stewart, 1995: 63). State citizenship is explicitly “state-centered, eminent” (ibid.: 65), democratic citizenship in contrast is “non-state-centered, immanent” (ibid.: 65). Although the latter conception receives much attention in current citizenship debates and is indeed important for an understanding of the modern civil society, this work will only discuss citizenship theories relating to the “state citizenship”-conception. Hence the following conception will be applicable for all theories discussed in this work: State citizenship is mainly concerned with the definition of inclusion and exclusion to membership of a state.

Consequently, the following definition of “Citizenship” is used for the purpose of this work: Citizenship is understood as a certain legal status, which includes given rights and demanded obligations. Citizenship rights are understood as civil, social and political rights (as defined by Marshall). Obligations are not narrowly defined, but reach from economic obligations- such as paying taxes- to heroic obligations- such as fighting to protect citizenship rights. Citizenship as used in this thesis defines the criteria for inclusion and exclusion of a nation state, but not considered to be solely based on nation state authority, but also driven by the power of trans- and supranationally guaranteed fundamental rights.

This work questions the current theories about citizenship in respect of their explanatory power for the legal status of non-citizens in Latvia. All examined theories were chosen because they prima facie seem to cover some important features of non-citizenship in Latvia. Six main theories are discussed. Those are Brubaker’s theory of national citizenship,

Kymlicka's proposal of multicultural citizenship, Soysal's model of postnational membership, Hammar's 'denizenship' model, EU citizenship models as normatively described by Bauböck and descriptively by Faist and the global formal citizenship model aimed to describe a model of obtaining formal citizenship for stateless people.

3.1. National citizenship (Brubaker)

Brubaker presented the core aspects of his theory in a comparative study explaining citizenship policies in France and Germany with the help of their respective understanding of nationhood. He introduced the ideal model of citizenship in the nation state by abstracting six membership rules out of theories on nation states and specified two different models of nationhood influencing citizenship, which are not only valid for the two examined countries, but can be considered exemplary.

It is important to notice, that Brubaker does explicitly name the nation-state as the main source of authority and access to citizenship. The concept of national citizenship is a nation-state based model, as for him every transnational component of citizenship "represent[s] an extension and adaption of the nation-state model, not its transcendence" (Brubaker, 2010: 78).

Hence, every theory of nationalist citizenship begins with the notion of the "nation-state". According to Brubaker, the nation state is on the one hand "a distinctive way of organizing and experiencing political and social membership" (1998: 132), on the other hand it "is also an idea -and an ideal" (ibid.). The ideal of a nation-state, influenced by "public narratives [...] and self-understandings" (Brubaker, 2004: 123) can be regarded as the main factor shaping membership (i.e. citizenship) access. Consequently, Brubaker identified six membership norms, namely "*egalitarian, sacred, national, democratic, unique, and socially consequential*" (emphasis by the author, 1998: 132).

In the following, these norms will be examined in detail. In an ideal nation state, there should be *egalitarian membership*, i.e. "[only one] status of full membership, and no other" (ibid.). This norm derives from the notion of differentiated citizenship²⁵ in other regimes, which should be avoided in nation states (cf. ibid.). Whereas this norm is currently applicable to most nation states, the principle of *sacred membership* seems anachronistic today, as it implies that every citizen "must make sacrifices [...] for the state" (ibid.), which ultimately means "being ready to die for it if need be" (Walzer 1970, as cited in Brubaker, 1998: 132). But this norm of membership access has to be regarded a symbolic one: citizens have to make sacrifices in social and economic terms, rather seldom in terms of securing the actual survival of the nation-state. *National membership* refers to membership of an ethnic nation, i.e. the "political community [of a given nation-state] should be simultaneously a cultural community" (Brubaker, 1998: 133). This seems the norm most unrealizable today- unlike

²⁵ differentiated according to property, gender, social status etc.

democratic membership, which affects participation of citizens in a given nation state, meaning “full membership should carry with it significant participation in the business of rule” (ibid.). This can be considered one of the core assumptions of modern nation-states, but is often violated in practice. Based on this assumption, “residence and membership must coincide” (ibid.), at least in the long term. Furthermore, citizenship of an ideal-nation state should be *unique*, i.e. “exhaustive and mutually exclusive” (ibid.). Lastly, a *socially consequential* membership should be achieved, i.e. citizenship should equip citizens with “important privileges” (ibid.). These privileges clearly differ between citizens and nonmembers of the nation state.

As these norms represent an ideal nation-state, no contemporary one would be able to meet them and derivations often occur. However, Brubaker presents them as a benchmark against which existing nation-states are modeled and can be examined. Unfortunately, the norms are somewhat contradicting in shaping actual politics of admission to citizenship: “The norms of egalitarian and democratic membership require the admission of long-term residents to full citizenship. But the norms of unique, sacred and national membership can be used to justify [...] restrictive preconditions for admission” (Brubaker, 1998: 136).

Bearing this in mind, the theorist describes two forms of nationhood differing in their citizenship practices in emphasizing different norms of membership. These two models could be characterized as political nation state and ethnocultural nation state.

Political nation states can be described as “universalist, rationalist, assimilationist, and state-centered” (Brubaker, 1998: 139). In historical terms, cultural unity followed political unity. So, shared institutions and territory, “not shared culture [have] been understood to constitute nationhood” (ibid.). Hence, inclusion into the political nation is an essential prerequisite for national citizenship. Political nation states therefore value the norms of egalitarian and democratic membership higher than determining restrictive criteria for admission. The civic incorporation of all residents is seen as helping to form a cultural nation. Brubaker chose France as an example of such a political nation state.

Contrastingly, ethno-cultural nation states are characterized as “particularist, organic, differentialist, and *Volk*-centered” (emphasis by the author, Brubaker, 1998: 139). Historically, these nation states could be described to have evolved from a prepolitical “*Volksgemeinschaft*” (ibid.), i.e. political unity followed cultural unity. Hence, in terms of the principles of an ideal nation state outlined above, ethnocultural nation states establish more restrictive admission rules by putting an emphasis on unique, sacred and national membership norms. Citizenship in these nations is mainly based on the *ius sanguinis* principle. According to the self-understanding of these nations, based on the assumption of cultural community, political unity of the state can only be achieved by loyal and cultural homogenous citizens. Brubaker chose Germany as an example. Since the release of the

article, this notion was often criticized and seems outdated today²⁶. However, the assumption of existence of ethno-cultural nation states can be considered still valid.

To examine explanatory power of Brubakers model of national membership in the case of Latvian non-citizens, it seems reasonable to first assign Latvia to one of the models of nation states defined by Brubaker in order to shortly analyze citizenship in Latvia by investigating the norms of membership outlined above.

Membership in Latvia is clearly not egalitarian, because the legally defined status of non-citizen exists in addition to full citizenship. Furthermore, Latvia clearly does not meet the *democratic membership* criteria; Latvian non-citizens are a legally defined group of members of the nation, but without political rights. Hence, not all defined members of the nation share “significant participation in the business of rule” (Brubaker, 1998: 133).

Contrastingly, the principle of *sacred membership* is clearly given in the conception of citizenship and non-citizenship in Latvia. Russian speaking people, who represent the majority of non-citizens, were perceived to be unready to make sacrifices for the continuity of the young Latvian state and even being against a Latvian state²⁷ and consequently the non-citizenship status should prevent ‘such persons’ from being full citizens.

A similar situation prevails in the context of *national membership*. This is clearly shown by the restoration of the 1919 citizenship law in 1990. Even after liberalization in 1998, the naturalization procedure emphasizes Latvian national culture. Fear of *Überfremdung*, which has grown during the time of occupation due to large Russian migration influxes, could be considered an explanation of this emphasis.

Moreover, the norm of *uniqueness of citizenship* prevailed in non-citizenship legislation; people could only register for non-citizenship when they possessed “neither citizenship of Latvia nor that of any other state” (Republic of Latvia, 2005). *Social consequence* as a norm is also given, as only citizens of Latvia enjoy the right to vote and to work in civil service and therewith enjoy “important privileges” (Brubaker, 1998: 133) compared to non-citizens.

Taking into account this examination, Latvia strongly emphasizes the norms of sacred, national and unique membership. Consequently, according to Brubaker’s theory, Latvia can be regarded an ethnocultural nation state. Brubaker further characterizes ethnocultural nation states as “particularist, organic, differentialist, and *Volk*-centered” (emphasis by the author, Brubaker, 1998: 139). It is questionable, if these characteristics are also applicable to Latvia.

The Concise Oxford English Dictionary defines *particularist* as being “exclusive[ly] attach[ed] to one’s own group, nation, etc.” (2008) and *organic* is defined as “denoting a harmonious relationship between the elements of a whole” (Concise Oxford English Dictionary, 2008”).

²⁶ for criticism of Brubaker see for example Laubinger, 2009: 91ff

²⁷ for more information on the different perception of history in Latvia during occupation and after independence see for example Wezel, 2008

Differentialist is not specifically defined in this dictionary. However, it can be derived from 'differential', which is defined as "constituting or depending on a difference"(ibid.). Taking these definitions as a basis, the notion of Latvia as an ethno-cultural nation state seems justified. There are a number of reasons for this notion. Most importantly, a majority of Latvians is evaluated as being attached to their country (Dowley & Silver, 2000: 368). Furthermore trying to unite the Latvians as cultural nation is on the agenda of Latvian officials²⁸ and finally the Latvian state is built on the assumption of Latvians being an independent and inevitably other nation than the Russian speaking occupiers. Furthermore, the notion of being *Volk-centered* is true for the case of Latvia, as most discussions on integration of minorities are governed by references to Latvian language, history and culture²⁹. Consequently, Latvia corresponds in many ways with the notion of an ethno-cultural nation.

However, there remain some points concerning Brubaker's notion of citizenship in ethnocultural nations, which do not match Latvian citizenship practice, namely the creation of a legal status for non-citizens. Firstly, Brubaker developed his model based on observations of differences in citizenship legislation for long-term resident immigrants in France and Germany. Even though Latvia can, according to his model be equated with Germany in many ways, Russian immigrants in Latvia cannot be compared to German *Gastarbeiter*. Whereas the latter were actively recruited by Germany, the former immigrated (or better migrated during the U.S.S.R., as Latvia was simply another part of Soviet Union) without being wanted. Furthermore the percentage of *Gastarbeiter* of the total population in Germany has been a lot smaller than the one of Russian immigrants in Latvia.

Secondly, Brubaker only analyzes the history of becoming a nation state itself, but does not consider the common history of immigrants and this nation state. Russian immigrants are in the minds of most Latvians connected to the occupation of Latvia by the Soviet Union. This fact clearly influences membership legislation and is an essential part of Latvian self-understanding as a nation.

Thirdly, Brubaker only takes into account the role of the nation state itself in defining citizenship legislation. However, particularly in Latvia, international organizations had much impact on membership legislation. So although Latvia clearly acted according to the notion of an ethnocultural nation, the non-citizenship legislation was developed under international pressure (see case study) and does not only entail national characteristics.

Fourthly, and most importantly, Brubaker states that most long-term resident immigrants in Europe are in an intermediate status between full membership and no defined membership (cf. Brubaker, 1998: 135). Latvia, on the contrary legally defined this intermediate status by

²⁸ e.g. by singing of folk songs, which is seen as the common, uniting event in Latvia

²⁹ to get an impression of this, it is useful to randomly read the *Integration Monitor*, provided on a daily basis by the Latvia Centre for Human rights at <http://www.humanrights.org.lv/html/25501.html>

creating a status of partly-membership. This fact is not covered by the model of nationalist citizenship.

In conclusion, the concept of nationalist citizenship has much, but nonetheless limited explanatory power concerning Latvian non-citizenship.

3.2. Multicultural citizenship (Kymlicka)

Multicultural citizenship seems to be well known since states as Germany, France and others tried to adopt it in their political agenda. However, it is important to note, that two different kinds of multicultural citizenship exist; one established by Will Kymlicka, the other by Iris Marion Young. The models “differ in their relationship to [liberal] universal citizenship” (Joppke, 2002: 246). While Young seeks to substitute universal citizenship, Kymlicka strives after adding additional rights to universal citizenship (ibid.). I will focus on the liberal version of multicultural citizenship, as this theory is further elaborated than Young’s theory (Joppke, 2002: 247).

Will Kymlicka has to be considered the main theorist of multicultural citizenship, who acknowledged the need of minorities and immigrants to be treated differently in order to gain equal chances. Kymlicka developed the concept of multicultural citizenship as a form of differentiated citizenship. He assumes that all members of different cultural/ethnic groups are incorporated into a given political community, but according to their group membership, they obtain different group specific additional rights (cf. Kymlicka, 1995: 26). These can be classified as “group specific poly-ethnic, representation or self-government rights” (Kymlicka, 1995: 174)³⁰. Polyethnic rights are considered as rights allowing open cultural particularity without fear of discrimination. Special representation in political institutions in order to have special influence on politics is also considered an important right, as well as some self-governing rights, e.g. federalism. These differentiated additional rights are assigned according to different cultures. Kymlicka proposed the notion of different societal cultures as discriminating variable. Societal culture is defined as “a culture which provides its members with meaningful ways of life across the full range of human activities [...] encompassing both, public and private spheres. These cultures tend to be territorially concentrated and based on a shared culture.” (Kymlicka, 1995: 76). Kymlicka uses the term societal culture, as for him this culture³¹ does not only encompass “shared memories or values, but also common institutions and practices” (ibid.). Societal culture serves as a “context of meaningful choices” (Kymlicka, 1995: 82) for individuals and helps them to guide their actions. In most culturally diverse states, there is one dominating societal culture, connected to the majority and clearly tied to the state and its institutions (Joppke, 2002: 247). Therefore “special rights recognizing

³⁰ for specific information on each of the claimed rights, see Kymlicka, 1995: 26ff

³¹ for more information about Kymlicka’s understanding of culture see Kymlicka, 2001: 28, footnote n8

and protecting the cultures of minority groups” (ibid.), i.e. multicultural citizenship is necessary to realize fair opportunities.

Moreover, Kymlicka defined the most often occurring kinds of cultural diverse minorities. His concept is applied to: Historical, national minorities in multinational states (Kymlicka, 1995: 11f), culturally different immigrant groups in polyethnic states (Kymlicka, 1995:10), isolationist ethnoreligious groups (such as Amish People in United States), metics³² and African-Americans (Kymlicka, 2001: 37f, 39ff & 45f).

However, it remains questionable if Kymlicka’s model provides explanatory power in the case of Latvian non-citizens. Firstly, according to the theorist multicultural citizenship is applicable to different kinds of minorities. In this respect, it seems reasonable to assess, whether non-citizens can be considered one of these minorities. Regarding the kinds of minorities, Latvian non-citizens do not match with any of them, because the described minorities either hold full or no citizenship rights. Non-citizens may match most closely to ‘metics’ but are surely equipped with more rights. There were attempts to define non-citizens more clearly in regard to kinds of minorities proposed by Kymlicka, e.g. by taking into account the fact that non-citizens are part of the Russian speaking minority. But even this minority is not clearly framed: they identify themselves as a national minority, whereas the Latvian state first portrayed them as ‘metics’ and later on as (illegal) immigrants (Pettai, 2001: 263, respectively 265). To conclude, non-citizens cannot be assigned to one of the types portrayed by Kymlicka.

Secondly, societal culture as discriminating variable of Kymlicka’s model has to be examined. If his definition of societal culture is taken as a basis, societal culture is Latvian dominated (Pettai, 2011: 267). The official language is Latvian and civil services only operate and communicate in this language. This domination can be considered a result of the experience of being ‘minoritized’ during the years of Soviet rule.

Taking these findings into account (no adequate description of minority, but different societal cultures), several points of critique have to be made if applying Kymlicka’s model to the case of Latvian non-citizens. The first and main critique concerns political inclusion: Kymlicka’s model grants additional group specific rights to full members of the political community. Non-citizens in Latvia are not part of the political community. They lack essential rights of full citizens. So, they do not qualify for being granted additional group specific rights. Furthermore, the Latvian state would not accept granting them additional rights, as it still opposes to grant them even any political rights (e.g. in local elections). This means they are not entitled to all kinds of differentiated group rights (representation, polyethnic and self-governing) proposed by Kymlicka.

³² According to the Concise Oxford English Dictionary 2008, metic means ‘a foreigner living in an ancient Greek city who had some of the privileges of citizenship’, but the meaning has narrowed as used by political sociologists. It is now used in the meaning of ‘long-term residents who are nonetheless excluded from the polis’ (Walzer 1983, as cited in Kymlicka, 2001: 39)

Secondly, Kymlicka sees culture as the discriminating variable between the different groups. Latvian non-citizens cannot be considered having just one culture. Culturally, they form part of different cultural minorities, although most of them can be regarded members of the Russian speaking minority (ethnic Russians, Ukrainians, and Belarusians). So, the discriminating variable ceases to exist and an assignment to specific rights according to Kymlicka's model would not be possible.

In conclusion, non-citizenship might be considered at best a twisted form of differentiated citizenship, granting some residents fewer rights. However, multicultural citizenship in the way proposed by Kymlicka has no explanatory power in describing the creation of the "non-citizen" legal status.

3.3. 'Denizenship' (Hammar)

The denizenship model is one of the earliest models of transnational citizenship. It was proposed by Tomas Hammar in 1990 in the context of examining the area of conflict between democratic rights and the nation state, namely the fact that the population of a nation state (all residents) is not longer congruent with the people of a state (all formal members of the state) (Hammar, 2003:36). By introducing the term 'denizen', he was the first to precisely name a new status for long-term resident immigrants enjoying basic civil rights (Hammar, 2003: 34)

According to Hammar, a new term for long-term residents was necessary because the term 'citizen' covers only the formal aspects of citizenship. The word 'alien', which was often used before to describe these persons, seems to fall short of covering the substantial aspects of citizenship (e.g. identity, loyalty etc.), which can be achieved without formal citizenship (Hammar, 2003: 39)³³. As Benton has put it, Hammar sought for a term describing "the idea of something like citizenship but not citizenship" (2010: 47). 'Denizen' is an ancient English word describing "privileged aliens, who were not full citizens" (Hammar, 1990: 14). Nowadays, as proposed by the theorist, the term is used for "persons who are foreign citizens with a legal and permanent resident status" (Hammar, 1990: 15).

Deriving from this notion, Hammar developed a model of denizenship. This model can be characterized in terms of preconditions, conferred legal status and obtained rights. The most important preconditions for denizenship are a long³⁴ period of residence in the host country (Hammar, 1990: 13f and Hammar, 2003: 41), strong ties to the country of residence (e.g. through family or societal position) (ibid.) and most importantly citizenship of another state (ibid.). Therefore stateless people cannot be considered denizens. Denizenship can only be obtained as additional status, not as compensation for citizenship.

³³ for a discussion of formal vs. substantial citizenship see Hammar 1990, 3f

³⁴ Hammar proposes 15-20 years or more

Furthermore, denizenship needs a legal status of permanent residence (Hammar, 1990: 15), but less than full citizenship (Hammar, 2003:36). The legal status is usually obtained after having passed two entrance gates³⁵ into the host country; immigration regulations and regulation of domicile and residential status (Hammar, 1990: 16f). He considers full citizenship as consisting of both the status of external and internal membership. As described above, external membership defines the persons eligible to receive diplomatic help in foreign countries (cf. Hammar, 1990: 33f), while “internal state-membership is [every] legally defined status within the state.” (Hammar, 1990: 34). Hence, denizens might be regarded as holding an internal membership status of their host country, but not an external one.

Concerning the most common rights of denizens, Hammar describes them along empirically observed membership in the most important societal subsystems: labour market, residency, cultural life, economy and politics (Hammar, 1990: 34ff). As Hammar has put it, denizens enjoy the right to work, permanent resident rights, cultural rights, economic rights, but no political rights, such as the right to vote (ibid).

Prima facie, the model seems to match with most features of the legal status of Latvian non-citizens. However, again there remain some critical points. At first sight, examining the preconditions a person must fulfill in order to become a denizen these seem to be the same as for non-citizenship: both statuses require a long period of residence in the host country (respectively Latvia) and strong ties to this country. However, denizenship requires citizenship of another state than the host state. In this point, the models differ enormously: Latvian non-citizens do not hold citizenship of “any other state”, which is also an explicit precondition of being granted non-citizen status (Republic of Latvia, 2005).

Both statuses are characterized as a legal status of permanent residence. In Hammar’s model denizens have passed two entrance gates. In case of non-citizens there have been no entrance gates this does not apply as Latvia was part of the U.S.S.R. at the time of them taking residence. Furthermore denizens are regarded as holding only internal, but no external membership of their country of residence. Contrastingly, non-citizens enjoy the right of diplomatic help by Latvia. Consequently, non-citizens status comprises internal and external membership of Latvia, although they are not full citizens of Latvia. Furthermore, Latvian non-citizens hold a non-citizen passport of Latvia, distinguishing them from denizens who are not granted such a certificate.

Taking into account Hammar’s analysis of the most important societal rights of denizens, non-citizens rights can be considered entitled to equal rights as denizens. Most importantly, both are deprived from political rights.

³⁵ There exist three entrance gates for immigrants: immigration regulation, regulation of domicile and residential status and naturalization into full citizenship.

In conclusion, denizenship has strong, but nonetheless limited power in explaining the legal status of Latvian non-citizens, as the most important characteristic of non-citizenship (i.e. no citizenship of any state) does not fit into Hammar's model.

3.4. Postnational membership (Soysal)

The concept of postnational membership was mainly put forward by Yasemin Soysal. She developed the concept in the context of guestworker rights, based on the assumption "that individual rights, historically defined on the basis of nationality, are increasingly codified into a different scheme that emphasizes universal personhood" (Soysal, 1998: 189). She uses the term membership in contrast to citizenship, because in her opinion foreigners (mainly guestworkers) are enjoying important privileges, formerly limited to citizens, "contest[ing] the foundational logic of national citizenship" (Soysal, 1995: 2). However, putting an emphasis on transcending the boundaries of the nation state, postnational membership is not based on "an expansion of scope on a *territorial* basis"³⁶ (emphasis by the author, Soysal, 1998: 191), but on one of the legitimization of membership. This expansion should be considered her key concept.

Soysal uses seven dimensions to distinguish postnational from national membership³⁷. These dimensions are *time period*, *territorial*, *congruence between membership and territory*, *rights and privileges*, *basis of membership*, *organization of membership* and *source of legitimacy*. Every dimension will be shortly outlined in the following.

Postnational membership evolved *after WWII* (cf. Soysal, 1998: 192) and was facilitated by globalization of politics and economics, as well as the creation of international and supranational organizations. Moreover, large labor migration flows, in particular in 1960s, had an impact on this development. Although postnational membership has been achieved earlier in Western world, it is also applicable to current post-soviet states (cf. Soysal, 1998: 206).

Its boundaries are considered to be *fluid* (cf. Soysal, 1998: 193), i.e. it is possible to obtain membership in one state while holding citizenship of another (cf. *ibid.*). However, "fluid boundaries of membership do not necessarily mean, that the boundaries of the nation state are fluid" (*ibid.*). Rather, nation states still continue to act mainly according to the traditional model of national citizenship (*ibid.*). Unfortunately, Soysal's elaboration on the dimension of *congruence between membership and territory* is limited. She only states, that membership and territory are distinct, whereas in the national citizenship model both are identical (cf. Soysal, 1998: 192). Still, Soysal states that membership is derived from transnational fundamental rights. Thus, the proposed distinctiveness means that membership is not longer tied to membership of a certain territory, but to membership in a certain community, which is able to transcend territorial boundaries.

³⁶ unlike Hammar's model

Clearer elaborated is the dimension about *Rights and privileges*, which are assumed to be no longer allocated according the traditional model of citizenship as a single and uniform status. Instead, there is a multiplicity of memberships, i.e. no uniform set of rights and privileges for every member, but a plurality of memberships to claim rights (Soysal, 1998: 194). Soysal compares this with the traditional organization of membership in ancient empires and city states (Soysal, 1998: 193). The *basis and legitimization of membership* present the most innovative approach in Soysal's model, claiming that legitimacy is not longer located in the nation state, because "universal personhood replaces nationhood" (Soysal, 1998: 194) and the "individual transcends the citizen" (ibid.). This means citizenship is grounded in the institutions and ideologies of a transnational community. Those transnational influences essentially shape the way membership rights are granted by nation states.

However, even if civil and social rights have to be given according to international conventions, political rights are still more referential to national citizenship (ibid.). The overall "responsibility of providing and implementing individual rights lies with the national states" (Soysal, 1998: 195), so the organization of membership still is up to nation states. Residency in a nation state still defines the scope and form of rights. The nation state is seen as "immediate guarantor and provider, [...] for "every person" living within his borders" (ibid.).

Although organizationally grounded within the nation state, the sources of legitimization of postnational membership are transnational. Such sources are provided by two different dynamics. On the one hand, there has been transformation of the international state system leading to "an increasing interdependence and connectedness" (Soysal, 1998: 195) and a shift of sovereignty to transnational organizations (ibid.). And on the other hand there has been an emergence of universalistic rules and conceptions regarding the right of the individual, i.e. mainly basic Human rights. These do not only bind the nation states, but "also directly influence nation-state policy and action" (Soysal, 1998: 201f). They are formalized in international codes and laws and explicitly "oblige nation states *not* to make distinctions on the grounds of nationality in granting civil, social, and political rights" (Soysal, 1998: 196).

Additionally, Soysal elaborated on the dialectics of post-national membership and the nation-state. This is important to consider, as her model was mainly criticized for its utopian sketching of nation state action. She identified human rights vs. national sovereignty (Soysal, 1998: 206) as one major problem and adjacent to this a duality and incongruence of identity and rights (ibid.: 208). Although these dynamics seem apparently incompatible, they are capable of explaining the dual coexistence of transnationally provided rights and nation states.

Human rights are universal, whereas the principle of sovereignty strengthens national boundaries. Both principles are laid down in international conventions and treaties and both shape the model of postnational membership. Soysal dissolves this apparent antagonism by pointing to the fact, that "postnational rights remain organized at the national level" (1998:

207). So the principle of sovereignty of nation states remains intact, though membership rights are derived from transnational universalistic sources.

Duality and incongruence of identity and rights relates to this dynamic, as rights tend increasingly to transcend national boundaries, while identity is still particularistic (Soysal, 1998: 208). However, “the universalistic status of personhood and postnational membership coexist with assertive national identities” (ibid.). Hence, postnational membership rights can be granted without considering the national identity of the claimer, they are not bound to nationality, which seems increasingly irrelevant (ibid.).

In the following, Latvian non-citizens will be analyzed against Soysal’s model to determine its explanatory power for this specific case. In general, basic assumptions of postnational membership based on transnational rights instead of national citizenship, seem to match the evolvement of Latvian non-citizen status. Indeed, international organizations and conventions had great impact that Latvian non-citizens have not been rendered stateless. However, there remain several points, which are in conflict to Soysal’s model or remain unexplained.

Firstly, the model neglects the emotional part of citizenship. Equal rights do not imply feeling coequal to national citizens. Residents who were granted postnational membership rights nevertheless perceived their status as ‘second-class-citizenship’. Although non-citizens obtained some of the proposed postnational membership rights, they will never observe themselves as being coequal to citizens.

Related to this, Soysal’s model also disregards national characteristics such as history. Even though transnational conventions urge nation states to equip residents with certain membership rights, these states may hold important historically grounded caveats doing this, e.g. concerns about loyalty and national security concerns. Hence, the postnational model cannot explain why the former nationality of most non-citizens hinders them to obtain full membership rights.

Thirdly, membership rights are not always to be equated to citizenship rights. Soysal proposes that national citizenship loses importance because of the evolvement of postnational membership rights. However, when citizenship is defined as holding the full range of civic, social and political rights, non-citizens of Latvia only hold some transnationally legitimated rights such as civic and social rights, but their status lacks essential features compared to citizenship (such as the right to vote and stand for office).

Moreover, the model assumes that transnational, theoretically assigned rights are still conferred on nation states, because these are obliged to do so by international conventions. But such behaviour cannot be observed in reality. Latvia for instance ratified the *International convention on civil and political rights*, which states in Article 2, Section 1: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion,

national or social origin, property, birth or other status.” Anyhow, Latvia does not obey this convention by the very creation of non-citizen as a legal status. Because there is no possibility of hard sanctions obliging member states to obey and no institutions to claim rights in case of non-compliance, this situation will continue to exist. Furthermore there is no incentive for states to grant foreign residents the same rights as citizens because this would render national citizenship somehow worthless.

Fifthly, in her model Soysal does not account for the possibility of evolvement of different forms of postnational membership. She neglects that states might reach different levels in granting rights to resident members. They range from nearly no rights to ones equal to citizenship rights. Therefore, the model of postnational membership cannot be seen as an equivalent to national citizenship.

But most importantly, Soysal's model assumes that residents of one state hold at least citizenship of any other state. Citizenship is an important prerequisite for postnational membership, as the model assumes only additional rights granted in another state. As the legal status of non-citizens defines these persons explicitly as being no citizens of Latvia, the model of postnational membership is unable to explain this legal status³⁸.

In conclusion, the approach of postnational membership matches some features leading to the creation of non-citizenship in Latvia, e.g. international conventions and organizations, which urged Latvia to constitute a legal status for long-term residents not eligible for Latvian citizenship. But several points constrain this notion. The explanatory power of postnational membership model for the purpose of Latvian non-citizenship remains strongly limited.

3.5. EU citizenship (Bauböck and Faist)

EU citizenship is conferred to “any person who holds the nationality of an EU country” (European Commission, 2011) and is laid down in European treaties. Even if non-citizens are not citizens of Latvia, they meanwhile enjoy important rights in the context of European Union (such as freedom of movement) putting them on a similar level as EU citizens. Therefore it seems questionable, if Latvian non-citizens can be considered in a certain way enjoying EU citizenship. To examine this question, two theories of multilevel EU citizenship will be examined; whereas Bauböck argues strictly normative in proposing his model of multilevel citizenship, Faist aims to find an adequate descriptive model of current EU citizenship by developing the model of nested membership.

Rainer Bauböck proposed three models for future shaping of supranational EU citizenship (Bauböck, 2007: 455). These models are the statist, the unionist and the pluralist model (ibid.: 466f). He evaluates them against the benchmark of three core questions of European citizenship: how to manage unequal statuses of citizenship, allocate voting rights and regulate loss and acquisition of citizenship (ibid.: 466)?

³⁸ Furthermore, stateless people are also not accounted for in Soysal's model.

To provide an overview, these different models will be outlined shortly. “The *statist* approach regards the Union as a federal state-in-the-making” (Bauböck, 2007: 466). Its citizenship model reflects the rules and principles of granting citizenship in federal state, i.e. the federal state grants citizenship, but citizens need to be also members of the sub-states of the federation³⁹. The unionist approach in contrast seeks to “strengthen[...] citizenship of the Union by making it more important for its individual bearers and more inclusionary for the Union’s residents” (Bauböck, 2007: 467). It “emancipate[s] Union citizenship from member-state-citizenship” (ibid.). Thirdly, the pluralist citizenship approach seeks to balance member state citizenship and Union citizenship, no strengthening of one at the expense of another (ibid.). Because *prima facie* the unionist approach seems to be most promising for Latvian non-citizens in order to obtain formal citizenship, the three core questions will only be considered in regard to this model.

Bauböck defines different statuses of citizenship in the European Union according to citizenship of and residence in a member state. Consequently, he is able to describe four kinds of citizenship statuses: First Country nationals (FCNs), Second country nationals (SCNs), long-term resident Third Country Nationals (TCNs) and External EU citizens (Bauböck, 2007: 468). A Unionist approach most importantly strengthens EU citizenship by enhancing privileges of SCNs (ibid.: 470) and “deprive[s] member states of their control over access to Union citizenship” (ibid.: 472), meaning “automatic citizenship for TCNs” (Bauböck, 2007: 474).

As “political participation is the core of democratic citizenship” (ibid.), Bauböck further considers the allocation of voting rights. According to the Unionist approach, EU citizens should vote only in their country of residence. (ibid.: 476f). Hence, franchise in European and national elections will be solely granted to SCNs and FCNs. However, TCNs will be included into local and European elections, because of their “direct access to EU citizenship” (Bauböck, 2007: 480).

Rules governing acquisition and loss of citizenship can be defined by considering linkage, derivation and access (Bauböck, 2007: 482). All those refer to the relationship between supranational and member state citizenship, and namely question the simultaneity of Union- and member state citizenship, the source of citizenship and the admission to citizenship (ibid.). A Unionist approach “disconnect[s] [the linkage] for TCNs” (ibid.: 487), the source of citizenship would be bottom-up for FCNs and SCNs, but top-down for TCNs (cf. ibid.). Furthermore, access to citizenship would still be organized by member states, despite a obligation by EU to give TCNs direct access to citizenship (ibid.: 483).

While this is a normative theory of multilevel supranational citizenship decoupling national and EU citizenship by strengthening EU citizenship, the other theory presented, Faist’s concept of nested membership, is descriptive and multilevel-focused. The model was

³⁹ would be comparable to citizenship e.g. in Germany

developed in context of European social rights (Faist, 2001: 38), but seems transferable to other aspects of supranational European citizenship as well (Faist, 2001:55). He proposed the concept, because he regarded the two most popular models of EU citizenship as not adequate to describe the specific shape of EU citizenship (Kivisto & Faist, 2007: 122 and Faist, 2001: 44ff). To specify the model, Faist named three important characteristics: operating at multiple levels (Faist, 2001: 46), a “form of federative membership” (ibid.: 47) and not “guided by a central political authority” (ibid.: 48). In the following, these will be outlined shortly.

Citizenship of the EU is not simply restricted to Union citizenship (ibid.:46), but is executed by actors at various levels. The politicians and citizens are involved in politics at different levels, which are inextricably interconnected and organized either intergovernmental or supranational (ibid.: 47). The model comprises actors at the sub-state, state and inter- and supra-state levels (ibid.:46).

Moreover, “nested citizenship is a form of federative membership” (ibid: 47). The different levels of this federative policy are interrelated: “European citizenship as a whole is sited in various governance levels” (ibid.). The model therefore should be considered as not only adding to national citizenship, but as being a “cumulative phenomenon” (ibid.) of different parts of citizenship located at different levels. However, Faist emphasizes that the status of national citizenship as an institution is not endangered by nested European citizenship (cf. Faist, 2009: 18). Because of member state sovereignty (Faist, 2001: 48), European citizenship being a certain form of federative membership does not necessarily mean a “smoothly [evolving] into [a] really federative policy”, (ibid.), comparable to federal citizenship systems such as in Germany or Switzerland,

Thirdly, nested citizenship is “not guided by a coherent or even centralized [...] political authority” (ibid.). This means the ‘highest’ level of EU citizenship, the supra-national one, is not defining all rules and regulations of EU citizenship. This missing political authority seems to be the reason for a perceived weakness of European citizenship vis-à-vis member state citizenship.

Regarding the case of Latvian non-citizens, those models of EU citizenship may help to explain their citizen-alike status at the European level. Because the two portrayed models differ, their explanatory and solutionary power in the case of Latvian non-citizens will be examined individually.

Firstly, the normative ‘unionist’ approach of Bauböck will be considered. However, there remain several points of critique. Rainer Bauböck accounts for the existence of different statuses of citizenship in the EU. However, the legal status of non-citizens is not considered⁴⁰ in the model presented. Their status can be regarded located in between the statuses attached to formal citizenship and the legal status of long-term resident TCNs. This can be

⁴⁰ besides this, stateless people are also not considered.

considered the main weakness of the model proposed by Bauböck concerning non-citizens. However, Latvian non-citizens will in the following be regarded as TCNs although they obviously hold more rights than these) because they share most characteristics with those. Concerning statuses, the model would be beneficial for non-citizens, because it would enable non-citizens to obtain European citizenship, without being governed by member state regulations in this field.

Secondly, the allocation of voting rights has to be considered. The unionist model proposed voting rights for TCNs at the local and European level. Voting rights in national elections are according to the model granted only to persons holding formal European and simultaneously citizenship of any member state. However, the model neglects the strong ties of TCNs to their country of residence: if someone has arrived a long time ago and did live in a certain country for a long time, he will be also interested in shaping national politics by being able to vote and stand for office.

Concerning regulations about acquisition and loss of European citizenship, the unionist model disconnects TCNs from national regulations, but the very organization of citizenship is still be carried out by member states. Even if decoupling European citizenship from national citizenship obviously facilitates access of non-citizens to European citizenship, problems concerning granting EU citizenship could still occur, e.g. delaying of procedures or imposing other obstructive measures.

In conclusion, the unionist approach would enable Latvian non-citizens to obtain a formal citizenship of EU without holding national citizenship. However, Bauböck himself states, that in a system of representation at all levels of EU, people who only possess EU citizenship (no national citizenship) cannot be counted as equal citizens (Bauböck, 2007: 485). Furthermore, the Unionist model seems not feasible in near future (ibid.), because EU citizenship according to this concept would need the EU being able to grant such rights directly. Even though today's status of non-citizens within the EU could be considered following the Unionist approach without granting them a formal legal status as EU citizens and voting rights, explanatory and solutionary power of Bauböck's unionist multilevel EU citizenship model is strongly limited by reality.

When examining Latvian non-citizens opportunities to obtain EU citizenship decoupled from Latvian citizenship, it has to be stated, that all three characteristics of nested citizenship specified by Faist deprive non-citizens from EU citizenship. According to him multilevel citizenship is considered located at various levels and therefore it is not possible to rule out one and simultaneously enjoy the others. The overall problem seems the location of actual granting of citizenship in the member state. In conclusion, Faist's model of nested citizenship has no explanatory or solutionary power in regard to Latvian non-citizens

In an overall conclusion of European citizenship theories, one can argue that certain normative approaches hold limited explanatory power for Latvian non-citizen status, but the current form of EU citizenship seems worthless in this respect.

3.6. Statelessness and citizenship: Global formal citizenship (Hernandez-Truyol and Hawk)

As Latvian non-citizens are often misleadingly equated with stateless persons, it seems appropriate to at least shortly consider statelessness in the mirror of citizenship debates. Theories about statelessness and citizenship consider statelessness a non-desirable status and try to propose solutions, which do not encounter obtaining citizenship of any state. The most known approach is Formal Global Citizenship put forward by Hernandez-Truyol and Hawk in 2005. They base their model on formerly proposed models of informal transnational citizenship such as postnational membership. Although the proposed model creates a formal legal status, there is no need of a global government in order to grant this (Hernandez-Truyol & Hawk, 2005: 107). Rather, the model has four basic characteristics. Firstly, it “protect[s] trappings of personhood by being grounded in human rights norms” (ibid.: 107), i.e. formal citizenship status as protection of inalienable human rights. Moreover, global formal citizenship should “defer to the nation state as the site of individuals primary citizenship” (ibid.:108), i.e. in case of stateless persons those should be able to use this citizenship only as long as their primary citizenship as they did not achieve citizenship of any nation state (cf. ibid.:111). Thirdly, global formal citizenship should be established by a multilateral treaty between nation states (ibid.:107f). And fourthly, it “require[s] a structure to review petitions for global citizenship” (ibid.:108).

However, the authors themselves state, that this formal global citizenship will be difficult to achieve (ibid.:107) and regard it only as ‘back-up’-status for stateless people not a permanent one. So, this model suffers from the same weakness as most other models of citizenship beyond the nation state: citizenship of a nation state is still seen as preferable to any kind of transnational citizenship. In consequence, this approach coined to stateless people has not only no explanatory power in case of Latvian non-citizens.

4. CONCLUSION: A NEW KIND OF CITIZENSHIP?

This section will provide a synopsis of the critical assessment of existing citizenship theories carried out before. The synopsis is aimed to give a general view of the theories in respect to Latvian non-citizens. It will be designed along the seven main characteristics of Latvian non-citizens outlined in case study. These characteristics were: *ethnic dimension, historic dimension, no political rights, social rights & civic rights, location of the granting authority in nation state, internal and external membership, and non-citizenship as formal legal status.*

In order to generate an overview, all analyzed citizenship theories (national citizenship by Brubaker, multicultural citizenship by Kymlicka, postnational citizenship by Soysal, denizenship by Hammar, EU-citizenship by Bauböck as well as by Faist and global formal citizenship by Hernandez-Truyol & Hawk) were then examined for their explanatory power in each category. The findings are presented in a table (p. 33) and will be shortly outlined in the following.

National citizenship as proposed by Rogers Brubaker is the only theory explaining the *ethnic dimension*. Explanatory power in *historic interwovenness* is not easily to examine. On the one hand, the theory explains quite well the reasons for Latvia becoming a nation state based on ethnic assumptions. On the other hand, it fails to find an explanation for the impact of a different perception of history by either the Latvian state or non-citizens. The rights dimensions are explained well as deriving from an emphasis on exclusionary membership norms (see National citizenship). Exclusion from political rights as well as inclusion into social and civic rights seems therefore consistent. However, this theory is neither able to explain the fact, that non-citizens enjoy not only internal but also external membership rights nor the existence of non-citizen as *formal legal status*.

Whereas the national citizenship theory has at least some explanatory power, multicultural citizenship as proposed by Will Kymlicka fails to provide an explanation in nearly all categories. It is only able to explain the impact of *historic interwovenness* on citizenship legislation and the notion of the Republic of Latvia as granting authority of non-citizenship. This interwovenness is explained by considering different kinds of minorities, mostly sharing a common history with their country of residents, whereas Latvia as granting authority can be only explained by the fact, that Kymlicka regards the nation state as bearer of citizenship rights. However, the theory is not able to provide an explanation for non-citizens obtaining a *formal legal status*, too.

Denizenship as proposed by Tomas Hammar seems to cover non-citizens quite well in rights' dimensions by describing a denizen, which is eligible to social and civic but no political rights. However, the theory fails to explain all other dimensions. *Ethnic dimension* and *historic interwovenness* of non-citizenship are not covered at all. And as both theories examined above, it lacks explanatory power concerning *formal legal status*.

Yasemin Soysal's postnational citizenship even more fails to explain non-citizenship; it is only helpful in understanding in the *social and civic rights* dimension and provides a reason why the *authority of granting non-citizenship* is located in Latvia. The explanation for both characteristics derives from dimensions of postnational citizenship defined by Soysal. The reason why social and civic rights have been granted is regarded as laying in transnationally guaranteed Human Rights. Latvia as granting authority can be explained by the notion, that postnational citizenship is still organized by nation states. However, this theory is also not able to explain the *legal implementation of non-citizen status*.

Both theories about EU citizenship, namely Rainer Bauböck's normative unionist approach and Thomas Faist's descriptive approach provide only a modicum of explanations. However, Bauböck's normative approach is able to explain three characteristics (*Social & civic rights, internal & external membership*) by the notion of membership being organized at supranational EU level, whereas Faist is only able to explain, why the *Latvian state is the authority granting non-citizenship*, because he regards nested membership as organized at the level of member states. Both are not able to explain, why there is a formal legal status 'non-citizen'. And in particular, the normative approach of unionist EU citizenship is strongly limited by reality.

At last, the theory of global formal citizenship, as provided in the context of statelessness had to be examined. It is only able to explain for the *social and civic rights* dimension and provides a limited explanation of the fact, that non-citizens enjoy *internal and external membership of Latvia*. This notion is limited because it is not explicitly stated in the model, but could be explained out of its characteristics. However, this model is not able to explain the creation of a *legal status* too and suffers from one main weakness: it was proposed in the context of stateless people, but Latvian non-citizens are not stateless.

	National citizenship	Multicultural citizenship	Denizenship	Postnational membership	EU citizenship-Unionist model Bauböck	EU citizenship - Faist	Global formal citizenship
Ethnic dimension	Yes	no	No	no	no	no	No
Historic interwovenness	Yes and no	yes	No	no	No	No	No
No political rights	Yes	No	Yes	No	No	Yes	No
Social rights & Civic rights	Yes	No	Yes	Yes	Yes	No	Yes
Location of granting authority in the nation state	Yes	Yes	Yes	Yes	No	Yes	No
Internal + external membership	No	No	No	No	Yes, in a certain way	no	Yes, in a certain way
Non-citizenship as formal legal status	No	No	no	no	No	no	No

Table 1: Synopsis

All theories share a failure to explain the legal implementation of the status of non-citizen. This is one of the most important characteristics of non-citizenship, showing their strong ties to the Latvian state. Hence, in the opinion of the author of this thesis, Latvian non-citizenship has to be considered a **new kind of citizenship**. This notion will be elaborated in the following.

There are many features which equate non-citizenship in Latvia to regular citizenship. Non-citizens enjoy internal and external membership rights, i.e. civic and social rights inside Latvia as well as consular protection abroad, free return and the prohibition of expulsion. Furthermore citizenship usually is coined to show strong ties of an individual to a certain state and represents a kind of contract between them - a contract granting rights and demanding obligations. Non-citizenship also includes this notion of strong ties to a certain state, mainly symbolized by the non-citizen passport. Furthermore, non-citizenship can be obviously perceived as being a kind of contract between individual and state. Therein, non-citizens are granted a range of rights (cf. case study) but are also obliged, e.g. to pay taxes or to respect laws of Latvia. Usually, holding citizenship of a country carries with it certain identification with this issuing country. According to the interviews the author did in Latvia (e.g. Hanovs, 2011), non-citizens identify with Latvia, in particular if they are born and raised there. Furthermore, non-citizens seem to be treated as a certain kind of citizens also from outside Latvia, e.g. by the EU which grants them by now most rights also granted to regular EU citizens (except for political rights).

What is strikingly different about non-citizens is the deprivation from political rights. It represents an explicitly non-political kind of citizenship. This model of citizenship might be named 'Depolitized citizenship'.

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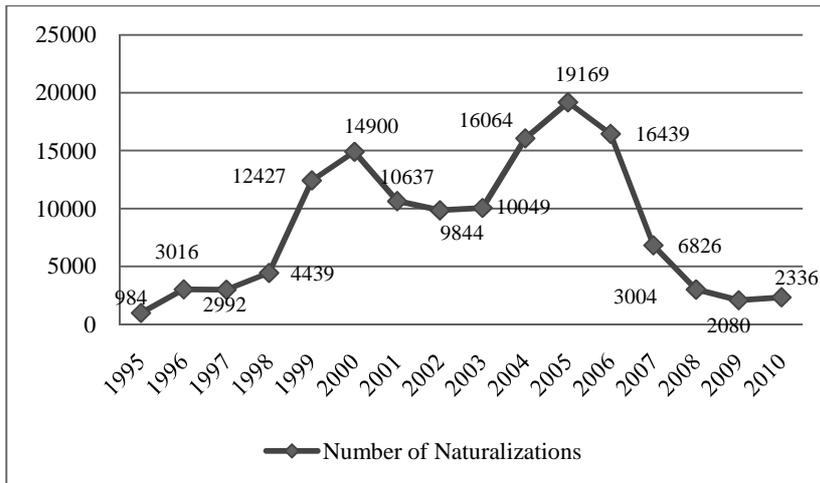
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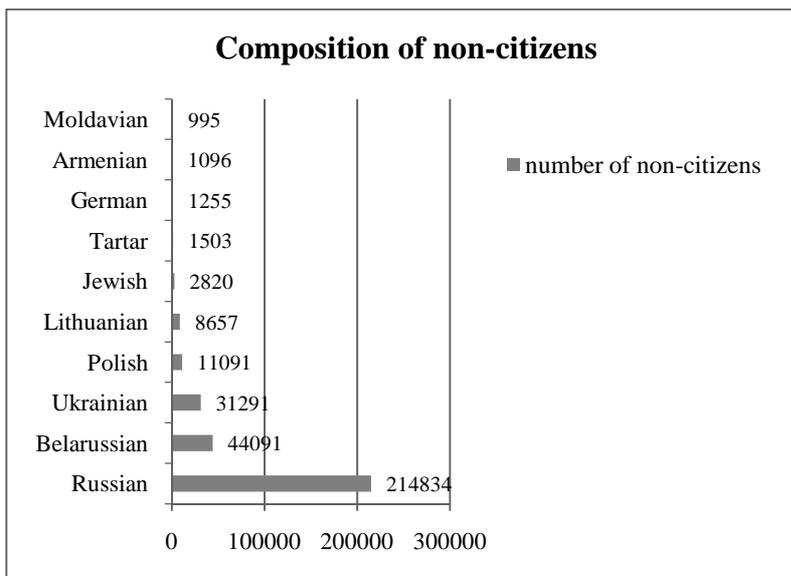
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6. ANNEX



Graph 1: number of naturalization, diagram by author, Source: Office for Citizenship and Migration Affairs, 2011a



Graph 2: Composition of non-citizenry according to ethnicity, Office for citizenship and Migration Affairs, 2011b