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Acquiring a Latvian Citizenship in case of a Beneficiary of Complimentary Protection: the Compatibility of Latvian Law with the European and International Standards

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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SUMMARY

The paper concentrates on the problem of refugee definition under international law. The main legal instrument in international law has definition that does not cover all those who need an international protection. In particular, this paper is motivated by the ongoing Latvian Case of the Afghan de facto refugee. The Afghan was given a supplementary international protection status. It appeared, that under Latvian law the naturalization provision treats differently refugees and persons with supplementary status: in contrast, the supplementary protection status is obliged to renounce his or her former citizenship. According to Afghanistan law, to achieve renunciation one needs to travel back to Afghanistan, and thus to lose his or her international protection. This seems unreasonable. The Afghan made a claim in Administrative Court of Riga; the latter rendered its final decision in March of 2018, declining the claim. The crucial question that is addressed in this paper is: whether the renunciation condition in the naturalization provision for persons with subsidiary status can be justified and does it comply with European and Intentional Standards. The paper has two main parts dealing with this question: the chapter two is discussing legal framework relevant to this case, and the Chapter 3 analysis the courts decisions. The major insides was triggered by the following three sources: the travaux préparatoires of the Latvian Citizenship Law amendments, the United Nations High Commissioner's position, and the European Union's Qualitative Directive.

The upper Legal Commission, while discussing Latvian Citizenship Law amendments that lead to above mentioned different treatment, was considering granting to persons with subsidiary status the same exemption from citizenship renunciation. Moreover, it used as an argument to grant exception to the "refugees" a description of undesirable situation in which the "refugee" could find himself/herself that is, in fact, identical to the Afghan's situation. Nevertheless, the Commission decided to follow different approach for the reason that shown in the paper to be unreasonable.

In addition, the United Nations High Commissioner for refugees expressed support to the Afghan in this case. Contrary to the international law definition of the refugee (so called the convention refugee), the United Nations' definition of refugee was developing trough time by expending the scope of the definition. For instance, in the light of latter framework the Afghan is regarded as refugee under international law.

Main regional legal instrument for refugee law in the European Union, the Qualitative Directive only provide minimum standards a member state should provide to beneficiaries of international protection, leaving to a state's discretion an option to treat refugees and persons with subsidiary status similar rights.

The author comes to conclusion that Latvian definitions of the refugee and subsidiary status comply with international and European standards. Moreover, the renunciation of the State of origin citizenship exception for refugees and lack of the exception for persons with subsidiary status comply with state's obligation rendered by existence of refugee class and persons with subsidiary status class in international and European law. Nevertheless, the right to equality test showed, that the Afghan has been treated unequally. Moreover, accidently, there was discovered a gap in Latvian law: a lack of deadline extension in the article 11 of the Transitional provisions of the Latvian Citizenship law.

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1 INTRODUCTION

About 40 years of combat in Afghanistan made millions of her citizens to flee the state. In 2008 a new phase of the Afghan War was initiated. The foreign military presence has been increased since then. In that year of high tension, violence, uncertainty, and instability one Afghanistan citizen, a minor, fled to Europe. The asylum seeker arrived at Latvia in 2008. The Office of Citizenship and Migration Affairs (hereafter, PMLP) granted to the Afghan an international protection status, "alternatīvais statuss"[1] (hereafter subsidiary status or complementary status), to confirm that there is a risk of receiving a sever harm if the beneficiary of international protection returns to the original state. The Afghan has finished Latvian school with Latvian as the instruction language, and therefore became eligible to acquire Latvian citizenship fulfilling conditions of article 11 of the Transitional Provisions (in original: "Pārejas noteikumi") of the Latvian Citizenship law.

In 2015, the Afghan applied for Latvian citizenship. The PMLP agreed that he/she has fulfilled all conditions but one: to renounce original nationality. Moreover, according to Afghanistan law, the Afghan had to return to Afghanistan to fulfil the last condition of Latvian citizenship acquisition and thus to lose international protection and to risk life, health and integrity. It seems the created situation contradicts the International and European standards of treating fairly beneficiaries of international protection; for example, it is possible that article 3 of the European Convention on Human Rights[2] that prohibits torture has been violated. Moreover, Latvian law treats differently holders of refugee status in contrast to persons who were granted a complementary status: former are exempt from renunciation of the original citizenship requirements of naturalization process. The beneficiary of international protection has challenged the PMLP's decision in the Administrative Court in Riga. The court has rejected the Afghan's claim in its final decision on the 19th of March 2018.

This work concentrates on revealing Latvian legal framework for treating beneficiaries of international protection and comparing it with European and International standards in light of the Afghan's case. The author presumes that the requirement for Latvian citizenship acquisition to renounce the citizenship of the state of origin in case of the Afghan is not justifiable and violates European and International standards.

The paper first analyses the texts of the main legal provisions in Latvian Law related to the Afghan case (Section 2.1) and discusses the development of relevant terms and provisions in International and European Law (Section 2.2) and, finally, compares provisions of the first two sections (Section 2.3). It then explores Afghanistan's policy fluctuation of recent years regarding renounce of citizenship (Section 3.1) and summarises all relevant facts and dates of the case (Section 3.2). In the end, it critically analyses the recent court's decision about the Afghan's case (Section 3.3) and applies right to equality test on the situation (Section 3.4 and 3.5 – results of the decision analysis and test application). Chapter 4 – conclusion.

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[1] From Latvian language: "alternative status"; the latter is a Latvian term for a subsidiary status of international protection status.

[2] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5,available at: http://www.refworld.org/docid/3ae6b3b04.html. Accessed 2 April 2018.

2 LEGAL FRAMEWORK

The main goal of this chapter is to answer the following question: whether the different treatment of refugees and persons with subsidiary status in the process of Latvian citizenship acquisition comply with European and International standards? Therefore, the chapter is divided into two parts. The first part is devoted to Latvian law. It textually analyses definitions of a "refugee" and a person with subsidiary status under Latvian law, their difference, discusses possible methods of naturalization, and reveals the legislature motivation behind different treatment.

The second section of this chapter provides development of the "refugee" and "subsidiary status" concept development in International and European law, discusses the scope of the rights of beneficiaries of international protection, in particular: non-refoulment and right to citizenship. In the end, the distinctive position of United Nations High Commissioner for Refugee's (hereafter UNHCR) position is outlined. Finally, conclusion with the answer to the question of the chapter is provided in the end.

2.1 Latvian legal framework

The Citizenship law of the Republic of Latvia (hereafter Citizenship Law)[3] and the Asylum Law of the Republic of Latvia (hereafter Asylum Law)[4] governs Latvian citizenship acquisition for a beneficiary of international protection. Scholar Kristīne Krūma proposed to classify modes of nationality acquisition into five categories: birth, naturalization, reintegration, annexation, and cession[5]. The paper focuses on naturalisation mode. Before analysis of two methods of naturalization provided in Latvian Law, the textual difference in provisions of statuses of beneficiaries of international protection is analysed.

2.1.1 Refugees vs persons who are granted complementary protection: textual difference

Under Latvian law, there are two statuses of international protection: the refugee status and subsidiary status; an abstract from the Asylum Law:

> final decision – a decision to grant refugee or alternative status (hereinafter also – international protection) or to refuse to grant it, by which the administrative proceedings have ended[6]

From this provision, one can conclude that according to Latvian Law the following statuses can be granted to asylum seekers: a refugee status and a complementary status; moreover, it is clearly indicated that the term "international protection" is related to both statuses. In this section both those terms are compared. Thus, the "refugee" is defined as:

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3 Citizenship Law of the Republic of Latvia (Pilsonības likums), edition: from 01.10.2013, available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

4 Asylum Law of the Republic of Latvia (Patēruma likums), available on: https://likumi.lv/ta/id/278986-patveruma-likums. Accessed March 5, 2018.

5 Krūma, Kristine. EU Citizenship, Nationality and Migrant Status. Leiden and Boston: Martinus Nijhoff Publishers, 2014.

6 Asylum Law of the Republic of Latvia (Patēruma likums), Section 1, Para 4, available on: https://likumi.lv/ta/id/278986-patveruma-likums. Accessed March 5, 2018.

> A third-country national who on the basis of justified fear from persecution due to his or her race, religion, nationality, membership of a specific social group or his or her political views is located outside the country where he or she is a national, and is unable or due to such fear does not wish to accept the protection of the country where he or she is a national, … may apply for refugee status[7].

A person who is eligible for complementary protection is:

> A third-country national … who cannot be granted refugee status in accordance with Section 37, Paragraph one of this Law … may apply for alternative status if there is a reason to believe that he or she may be exposed to serious harm after return to the country of origin thereof and due to this reason is unable or does not wish to accept the protection of the abovementioned country[8].

To reveal the difference (and similarities) between two statuses of international protection the author applies several iterations of parallel ordering and simplification (without losing essence) on the above-mentioned definitions; the last two iterations are summarised below:

Nr.	A refugee is	A person eligible for complementary status is
The first iteration	A third-country national who on the basis of justified fear from persecution due to his or her race, religion, nationality, membership of a specific social group or his or her political views is located outside the country where he or she is a national, and is unable or due to such fear does not wish to accept the protection of the country where he or she is a national	A third-country national if there is a reason to believe that he or she may be exposed to serious harm after return to the country of origin thereof and due to this reason is unable or does not wish to accept the protection of the abovementioned country.
In other words, the above definitions state:		

[7] Based on section 37 (1) of Latvian Asylum Law.
[8] Based on section 40 (1) of Latvian Asylum Law.

The second iteration	A third-country national can qualify for refugee status if: 1) There is a justified fear from persecution due to his or her race, religion, nationality, membership of a specific social group or his or her political views 2) And due to the above-mentioned reason, the third-country national: a) is located outside his former country, b) he is not wishing to accept protection from the former country c) And unable or unwilling to return.	A third-country national can qualify for complementary status if: 1) There is a reason to believe that he or she may be exposed to serious harm after return to the country of origin thereof 2) And due to the above-mentioned reason, the third country national is: a) unable or does not wish to accept the protection of the above-mentioned country.

Both definitions can be restructured into two information blocks: a description of a circumstance a person found himself/herself in, and the outcome the circumstances led to. From the first sight, it seems that the refugee definition provides extra information in outcomes block: a national is located outside his/her state, and is not willing to return; whereas, the complementary status definition has only one consequence, which is also a shared with the first definition: a third-country national do not "wish to accept the protection of the abovementioned country". Nevertheless, though implicitly, the outcomes of the both circumstances are identical. Two "lacking" outcomes in the complementary status definition can be derived from the description of the circumstance.

Firstly, the circumstances of complementary status definition contain following phrase: "after return to the country of origin"; the latter imply that the third-country national is "located outside the country where he or she is a national" at the moment of inquiry. Secondly, the fact of the complementary status holder's circumstances that after return he or she is going to be "exposed to serious harm" can be interpreted as he or she is "unable or unwilling to return". Thus, the outcome block of both definition is identical. In contrast, the circumstances provided in the definitions are different in the form and meaning.

To conclude, there is only one substantial difference between two definitions of international protection beneficiaries, that are provided in Latvian Law. It lies in the circumstances-reasons that forced an asylum seeker to leave the country of origin. To receive a refugee status the asylum seeker had to prove that he has a "justified fear from persecution due to his or her race, religion, nationality, membership of a specific social group or his or her political views". Both reasons refer to risk of serious harm after return to the country of origin. However, the "refugee" reason is more specific: harm from "persecution due to his race, religion, nationality, membership of specific social group or his or her political views".

Moreover, there is also a deviation in treatment of a holder of refugee status and holder of subsidiary protection status when it comes to Latvian citizenship acquisition. The next subsection provides the requirements for citizenship acquisition, and compares the conditions set for holders for refugee statuses and for beneficiaries of subsidiary status.

2.1.2 The first method of naturalization

Section 12, paragraph (1) of the Citizenship Law outlines conditions for acquiring the Latvian nationality through naturalisation. The main conditions for naturalizations could be grouped followingly:

1) The applicant has a permanent residence for not less than five years and has a legal source of income. In addition, the applicant should not satisfy specific restrictions of general and historical character provided by the law[9].
2) Who has significant knowledge about Latvia, that includes: fluency of Latvian language, knowledge of basic principles of the Latvian Constitution, National anthem, and basics of Latvian culture and history.

The remaining requirements are: to give a solemn pledge to the Republic of Latvia and provide an evidence of previous citizenship renunciation. The latter condition requires a detailed attention.

Subparagraph 6 of the above-mentioned section 12 points out a necessity to renunciate former citizenship; in addition, it frees persons with refugee status from the duty to provide a certificate of renunciation of former citizenship[10]. However, this law does not provide similar exemption to other group of beneficiaries of international protection - persons with complementary status:

> (1) Only the following person may be admitted to Latvian citizenship through naturalisation procedures:
>
> 6) who has submitted a notification regarding the renunciation of his or her former citizenship and has received an expatriation authorisation from the country of his or her former citizenship, if such authorisation is provided for by the laws of that country, or has received a document certifying the loss of citizenship, but a non-citizen or stateless person – a corroboration that he or she does not have citizenship of another country. Such requirements shall not apply to a person to whom a **refugee status** has been granted in Latvia;[11] [emphasis added]

Therefore, there are four steps in Latvian naturalization process, based on the author's grouping of naturalization requirements; the last step is renunciation of the nationality of the state of origin. The only difference in the Latvian citizenship acquisition process for a refugee and a person with subsidiary status lies in the last step: "refugees" are exempt from fulfilling the latter step.

As a matter of fact, there is another naturalization method provided in Latvian law. The next subsection compares treatment of "refugees" and persons with subsidiary status in the second method.

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[9] Section 11, "Restrictions on Naturalization", Citizenship Law of the Republic of Latvia (Pilsonības likums), edition: from 01.10.2013, available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

10 Citizenship Law of the Republic of Latvia (Pilsonības likums), edition: from 01.10.2013, Section 12, Clause 1 (6), available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

[11] Ibid. Translation provided by the State Language Centre, 2013.

2.1.3 The second naturalization method.

The Citizenship law has special provisions for those who has completed basic or secondary education. Article 11 in the Transitional Provisions[12] set out a permission to receive a citizenship for persons who acquired education in Latvian language; the latter privilege lasts only two years after graduation from the respective education establishment:

> A person who in accordance with Section 2, Clause $1.^3$ of this Law in the wording that was in force from 10 November 1998 until 1 October 2013 had started acquisition of basic education or general secondary education in the Latvian language, shall retain the right to register as a citizen of Latvia for two years after acquisition of complete basic education, general secondary education or vocational secondary education programme in the Latvian language.[13]

Above mentioned section 2, clause 1^3 of the previous edition of the Citizenship law[14] sets out conditions for acquiring Latvian nationality through secondary education in Latvian language; a person who satisfies conditions below is a Latvian citizen "automatically":

1) He or she has a permanent residence in Latvia;
2) has completed Latvian secondary education in Latvian language;
3) do not have citizenship of other country or has an expatriation permission from the state of origin[15];

Section 2, clause 1 is no longer present in the current edition of the Citizenship law. However, the legislator introduced article 11 in the Transitional provisions of the new edition and enshrined the essence of section 2 clause 1^3 with some changes: a time limitation (2 years) was introduced for a person to use the right of "automatic" citizenship acquisition. In comparison, the previous edition was granting the latter right for unlimited period. "Automatic" citizenship acquisition right in the context of this research work means a right to register as a citizen of Latvia without any need of fulfilling additional requirements.

Though article 11 of the Transitional provisions are not labelled as a naturalization method, in essence, it is the second naturalization method and thus can be compared with the method defined by section 12 "Provisions for Naturalizations" of the Citizenship Law (and discussed above). The next section compares the content of these two methods.

2.1.4 Comparison of naturalization methods

The following table contains set of essential conditions each naturalization method has:

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[12] in original: "Pārejas noteikumi"; Article 11, Transitional provisions, Citizenship Law of the Republic of Latvia (Pilsonības likums), edition: from 01.10.2013 , available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

[13] Citizenship Law of the Republic of Latvia (Pilsonības likums), Transitional provisions, Article 11, edition: from 01.10.2013 , available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018. Translation by State Language Centre, 2013; original text: "Persona, kura saskaņā ar šā likuma 2.panta 1^3 punkta redakciju, kāda bija spēkā no 1998.gada 10.novembra līdz 2013.gada 1.oktobrim, sākusi pamatizglītības vai vispārējās vidējās izglītības ieguvi latviešu valodā, saglabā tiesības reģistrēties par Latvijas pilsoni divus gadus pēc pilnas pamatizglītības, vispārējās vidējās izglītības vai profesionālās vidējās izglītības programmu apgūšanas latviešu valodā"

[14] Previous edition of the current Citizenship law is the one that was in force from 10 November 1998 until 1 October 2013.

[15] Citizenship Law of the Republic of Latvia (Pilsonības likums), edition form 10.11.1998-30.09.2013, Section 2, clause 1^3. Available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

The first method	The second method
1) The applicant has a permanent residence for not less than five years and has a legal source of income. In addition, the applicant should not satisfy specific restrictions of general and historical character provided by the law[16]. 2) Who has significant knowledge about Latvia, that includes: fluency of Latvian language, knowledge of basic principles of the Latvian Constitution, National anthem, and basics of Latvian culture and history. 3) proof of previous citizenship renunciation	1) He or she has a permanent residence in Latvia; 2) has completed Latvian secondary education in Latvian language; 3) do not have citizenship of other country or has an expatriation permission from the state of origin;

The second method of naturalization is identical in number and character of conditions, but has a simpler content of the conditions. Both methods require: established residence in Latvia, sufficient knowledge about Latvia, and an evidence of the original citizenship renunciation. The essential difference is in the following: the second method does not require a 5-year period of permanent residence prior the citizenship application. Another difference: there is no need in passing a separate test of Latvian language and diverse knowledge about Latvia different from exams and tests provided in the respective education establishment.

Perhaps, the second method is a lighter version of the first one because the person who qualifies to apply for citizenship through the second method is more likely to be more rooted in Latvian society, and be more emotionally and mentally attached to Latvian state; the person was raised in Latvia during his or hers the most intensive period of personality formation. In addition, the methods diverge also in procedural conditions.

The procedural difference between these methods is a time limitation. To acquire Latvian citizenship through the second method, a candidate has to make a complete application, fulfilling all the conditions, within two years after graduation of a respective educational establishment. In contrast, there is no time limitation for the first method: once fulfilled requirements for naturalization of the first method gives a candidate for citizenship a right for "automatic" citizenship for unlimited time. Following reason might explain the motivation for such deviation.

Let assume that the two-year limitation is needed for the following reason: to ensure that the level of Latvian language fluency and knowledge about Latvia is up to the expected requirement of the naturalization process. Then, the 5-year period omission from the requirements is a reward, for example, for more deeper integration into society. Furthermore, it can be expected similar limitations for the first method. However, in fact, the Citizenship law does not provide any limitations on how much time can be passed from the date of testing

[16] Section 11, "Restrictions on Naturalization", Citizenship Law of the Republic of Latvia (Pilsonības likums), edition: from 01.10.2013, available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

of Latvian language and knowledge about Latvia to the date of application to acquire Latvian Citizenship. Therefore, the mentioned reason for deviation in the time condition is likely not correct.

To proceed it is essential to figure out the motivation legislator had for introducing the time limitation in the second method of naturalization. The next subsection analyses the parliaments transcripts of the Citizenship law amendments to reveal the reason for such deviation among the methods.

2.1.5 The legislator motivation for the time requirement and different treatment

The latest amendments to the Citizenship Law have happened during the 11th Saeima[17], mostly in 2013. Among other amendments, legislator formulated second naturalization method in an explicit way and, in addition, introduced a two-year limitation; the latter was achieved through the following steps: firstly, during the second reading, they deleted section 2 clause 1^3 of the Citizenship Law that was in force before the 1st of October 2013[18], secondly, the legislator introduced article 11 in the transitional provisions[19]; the latter article contains the essence of section 2 clause 1^3 and has a 2-year limitation. The transcript of the Parliament debates on the latter amendments showed that the both changes were introduced by the Legal Commission during the second and third readings, respectively. Moreover, the audio recording of the upper Legal Commission meetings revealed reasons for different treatment of refugees and persons with subsidiary status in the section 12 of the Citizenship law.

There were not any debates regarding the above-mentioned amendments during the readings. The chairmen of the debates, Dr I. Lībiņa-Egnere[20] stated in the opening speech of the third reading that the suggested amendments were discussed among experts and involved sides in the Legal Commission meetings; adding, that these discussions were not possible to reiterate during the debates[21]. Two approaches are used to draw conclusion about the legislator motivation: from the wording of the amendments as written in in the transcript of the relevant Parliamentarian debate, and from the audio recording of the debate in the relevant meeting of Legal Commission.

In one motion, the Legal Committee proposed together with article 11 of the transitional provision also article 10 that says[22]:

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[17] Original name of the Latvian Parliament.

[18] The Latvian Republic, the 11th Saeima, Amendments of Citizenship Law, table of suggestions of the second reading, August 30, 2012, Amendments of section 2 ("2.pants Piedarības pie Latvijas pilsonības"). Available at: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/6B0459FE75765193C2257A6A004C7D13?OpenDocument. Accessed on April 7, 2018.

[19] The Latvian Republic, the 11th Saeima, Amendments of Citizenship Law, Nr: 52/Lp11, table of motions of the third reading, May 2, 2013, Amendments of section Transitional Provisions ("Pārejas noteikumi"). Available at: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/28506F53B2934DF8C2257B60001EC427?OpenDocument. Accessed on April 7, 2018.

[20] Dr I. Lībiņa-Egnere was a chairman of the parliamentarian debates on the amendments of the Citizenship law; in addition, she was representing the parliament's Legal Commission. The latter commission was responsible for the amendments.

[21] See: the Latvian Republic, the 11th Saeima, Amendments of Citizenship Law, Nr: 52/Lp11, May 9, 2013, transcript of the second reading. Available at: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/380569462A32E3A6C2257B6D0046C22B?OpenDocument. Accessed on April 7, 2018.

[22] See 92nd motion in table of motions. The Latvian Republic, the 11th Saeima, Amendments of Citizenship Law, Nr: 52/Lp11, table of motions of the third reading, May 2, 2013, the 92nd amendment. Available at:

> A person who had the right to register as a citizen of Latvia in accordance with Section 2, Clause 1.3 of this Law in the wording that was in force from 10 November 1998 until 1 October 2013 but who has not registered as a citizen of Latvia, shall retain the right to register as a citizen of Latvia until 1 October 2015.[23]

Both articles are based on Section 2, clause 1^3 and introduced in one motion; it is obvious that the Legal Committee and, as the parliament had supported the amendments, the legislator had one motivation behind the two amendments.

The article 10 is a direct modification of Section 2 Clause 1^3: anyone who had a right to register as a Latvian citizen under Section 2 Clause 1^3 before the 1st of October 2013 had been given a right to register as such until the 1st October 2015. In other words, Section 2 Clause 1^3 became limited; previously the provided right was unlimited in time: anyone, who satisfied conditions of the Clause 1^3 once, had an opportunity to register as Latvian citizen at any time.

Thus, returning to the question of the previous section, the quality of the knowledge is not an issue. For example, a person who finished a Latvian school in 2000 will have the same right to register as a Latvian citizen anytime until 1 October 2015 as another person who finished school in 2013, if both satisfy all other conditions of the Section 2 Clause 1^3. Therefore, they both wave a right to register as a Latvian citizen, but different time had passed for them since the last knowledge check: 5 and 2 years respectively. Therefore, the legislator implemented 2-year restriction on Section 2 Clause 1^3 not because of the quality of the knowledge is concerned (at least not as the root reason).

Moreover, the detailed analysis of the Legal Commission meeting recordings showed, that the actual reason for introduction of two-year limitation is to provide enough time for the beneficiaries of Section 2 Clause 1^3 of the previous edition of the Citizenship Law (i.e. the one that was enforced before October 2013) to exercise the right enshrined in this provision[24], as it is no longer provided in the text of the current edition of the Citizenship Law (the one which is enforced after October 2013). The audio recordings of other meetings were useful in finding the reason behind different treatment of refugees and persons with subsidiary status.

The decision to introduce different naturalization requirements to refugees and persons with subsidiary status was made on the meeting of the upper Legal Commission on the 9th of October, 2012. Section 12 "Naturalization provisions" of the Citizenship law provides an exception for "refugees", freeing the latter group from the naturalization obligation to renounce their former citizenship. As was noted above, a person with subsidiary protection status does not benefit from this exception. The main motivation behind the exception is the concern that the requirement to renounce the citizenship possibly lead to a situation where a person concerned, a refugee, is requested to return to his or her state of origin to complete renunciation obligation[25]; in the latter situation the "refugee" is losing international protection and risking his or her life. Interestingly, there was a divergent opinion during the upper Legal Commission meeting.

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http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/28506F53B2934DF8C2257B60001EC427?OpenDocument.. Accessed on April 7, 2018.

[23] Translation of article 10 of the Transitional provisions of Citizenship law, State Language Centre, 2013. Available at: http://www.mfa.gov.lv/en/policy/society-integration/citizenship-in-latvia/citizenship-law. Accessed on: April 12, 2018.

[24] Saeime's Archive, audio recording of Legal Commission meeting, April 30, 2013.

[25] Saeime's Archive, audio recording of Upper Legal Commission meeting, October 9, 2012.

One of the members of the Committee suggested to extend the scope of the beneficiaries of the exception to cover also persons with subsidiary status. He reasonably noted that there are cases when "refugees", the ones who have "refugee" status under Latvian Law, could ask for nationality renunciation from the country of origin, and, on contrary, persons with subsidiary status might find it impossible to achieve the latter task without risking their lives. Finally, he come up with the following approach to the issue: to grant exception from renunciation obligation in the Section 12 of the Citizenship Law (Naturalization Provision) to both statuses of international protection with condition – to grant this exception when a beneficiary of intranational protection reasonably could not renounce his/her citizenship of the state of origin[26]. Nevertheless, it was disputed and decided otherwise.

The following reasons were provided as counterarguments why persons with subsidiary status are excluded from the scope of the exception: firstly, their status is completely different "ideology" in comparison to "refugee status", and this exception will lead that persons with subsidiary status gain more benefit than refugees[27]; secondly, the persons with subsidiary status could not initiate naturalization process because they could not fulfil the first condition of the naturalization requirements[28]: to have Latvia as a permanent place of residence[29]. The reason for the second argument is the following: a person with subsidiary status could not be granted a permanent residence permit but only temporary residence permit[30].

2.2 European and international legal framework

The 1951 Refugee Convention with its Protocol (1967) are fundamental sources of international law regarding refugees. The authors of the Refugee Convention drafted the latter convention in a crisis of rising number of refugee rights protection challenges; and thus, the Convention had a goal to insure the "widest possible exercise of [refugee's] fundamental rights and freedoms"[31]. The 1951 convention has a very strict geographical and time limitations: it covers events happened in Europe before 1951. The following Protocol of 1967 has removed the latter limitations, making the 1951 Refugee Convention's "refugee" definition applicable to all parts of the world and to all time periods. Moreover, there are many regional legal instruments further complementing the Convention.

2.2.1 The scope of the "refugee definition" of the 1951 Convention

The 1951 Convention provides a refugee definition. As a matter of fact, the respective definition given in Latvian law[32] coincides in essence with the convention definition[33]. In the same manner, the 1951 Convention covers not all persons who needs international

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[26] Saeime's Archive, audio recording of Upper Legal Commission meeting, October 9, 2012.
[27] Ibid.
[28] ibid
[29] Citizenship Law of the Republic of Latvia (Pilsonības likums), Section 12 (1) 1 available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.
[30] Saeime's Archive, audio recording of Upper Legal Commission meeting, October 9, 2012.
[31] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Preamble, para 2. Available at: http://www.refworld.org/docid/3be01b964.html. Accessed 9 April 2018.
[32] The Latvian Asylum Law, Article 37(1).
[33] Article 1, the 1951 Refugee Convention, UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html. Accessed 7 April 2018.

protection[34], only those asylum seekers who face persecution "for reasons of race, religion, nationality, membership of a particular social group or political opinion[35]". As was pointed out on the UN conference, convened to negotiate the Refugee Convention, the text of the refugee definition does not cover refugees from natural disaster nor war[36]. Likewise, the Final act of this conference contained words of hope that the contracting states should apply this convention beyond the definition provided, i.e. to provide protection to persons who are not covered by the convention[37], reflecting the fact that the scope of the definition is not satisfactory wide. Nevertheless, there is a common practice not only to disregard the latter hope and follow the exact meaning of the "refugee"[38] but also there are cases of narrowing down the meaning of the Convention's definition of "refugee" even further.

The 1951 Convention define "refugee" followingly:

> [a person that] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country[39].

There are various interpretations of the above definition. Key words that rises debates are: "persecution" and "well-founded fear". The word "refugee" itself has a wider meaning in everyday language: "a person who has been forced to leave their country in order to escape war, persecution, or natural disaster.[40]". It is clearly, that the definition of the 1951 Convention is narrower than the dictionary definition and in no way the former could be interpreted as wide as the latter. The typical understanding of the "refugee" term of the 1951 Convention among states is the following: an asylum seeker that is fleeing from a civil war and there is a good reason to believe that if they return they would be persecuted due to his/hers "race, religion, nationality, membership of particular social group or political opinion"[41]. Scholar Joanne van Selm-Thorburn concretizes that those fleeing civil war are not covered by the Convention's definition in its restrictive interpretation[42]. That also is supported

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[34] Guy S. Goodwin-Gill and Jane McAdam. *The Refugee in International Law* (Oxford and New York: Oxford University Press, 2007), p. 36.

[35] Article 1, the 1951 Refugee Convention, UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html. Accessed 7 April 2018.

[36] Remark by Israel representative on the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-second Meeting*, 26 November 1951, A/CONF.2/SR.22, section III, point (3); available at: http://www.refworld.org/docid/3ae68cde10.html. Accessed 7 April 2018

[37] UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, Recommendation E. Available at: http://www.refworld.org/docid/40a8a7394.html. Accessed 7 April 2018.

[38] Guy S. Goodwin-Gill and Jane McAdam. *The Refugee in International Law* (Oxford and New York: Oxford University Press, 2007), p. 16. And see UN General Assembly, Note on International Protection, 7 September 1994, A/AC.96/830, para 22, available at: http://www.refworld.org/docid/3f0a935f2.html [accessed 7 April 2018].

[39] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 1, A (2). Available at: http://www.refworld.org/docid/3be01b964.html [accessed 9 April 2018]

[40] "refugee" in online Oxford Dictionary, 2018 Oxford University Press. Available at: https://en.oxforddictionaries.com/definition/refugee. Accessed on April 9, 2018.

[41] UN General Assembly, Note on International Protection, 7 September 1994, A/AC.96/830, para 22, available at: http://www.refworld.org/docid/3f0a935f2.html [accessed 7 April 2018].

[42] Joanne van Selm-Thorburn, *Refugee Protection in Europe: Lessons of the Yugoslav Crsis* (The Hague, Boston, and London: Martinus Nijhoff Publishers, 1998), p. 39.

by scholar Goodwin-Gill and Jane McAdam[43]. However, some states after detailed scrutiny of the text of the definition conclude that the "refugee" in the 1951 Convention can be and should be interpreted even more narrower than commonly accepted.

The term "persecution" rises debates among states. There are states that interpret "well-founded fear of being persecuted" exclusively meaning that persecution must come from the official government of the respective state or at least when there is an intentional rejection of protection by the government[44], i.e. the state is responsible for the persecution of a fleeing person. Thus, for example, a person fleeing from the persecution by non-governmental organization is not regarded as "refugee" by the latter states. However, scholar Lehmann disagrees with the latter interpretation suggesting that the persecution by non-state actors must be covered by the Convention[45]. Another restrictive interpretation is based on personal discrimination requirement.

Some states assert that the definition of the "refugee" should be interpreted even more narrower: the candidate for refugee inter alia should satisfy the condition of personal discrimination[46]. According to the latter interpretation, the "refugee" is individually picked from the members of his community and discriminately persecuted; for example, a person is affiliated to religious community, he or she is picked for persecution based on his or her affiliation, the remaining members of the community are not persecuted (at least not massively). Thereby, two conclusions can be drawn.

Firstly, the most restrictive interpretation of the "refugee" definition of the 1951 Convention is the following: an asylum seeker who is fleeing from the state of origin and there is a good reason to believe that if he/she returned to the state of origin he/she would be singled out and discriminately persecuted due to his/hers "race, religion, nationality, membership of particular social group or political opinion" by actions or deliberated inactions of the legal government while treating differently (not persecuting) the most of the members of his/her respective affiliation group.

Secondly, one of the intentions of the drafters is not reflected in the resultant definition. That is why it is still possible to apply the Convention in cases when a person not fully comply with the definition terms[47]. Moreover, recognizing the difference between the hope drafter of the Refugee Convention expressed in the Final Act[48] and States' practices, some states implemented steps to bridge the gap, mainly in two directions: new regional conventions, that expanded the scope of the "refugee" definition, or creating a supplementary status of persons

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[43] Guy S. Goodwin-Gill and Jane McAdam. *The Refugee in International Law* (Oxford and New York: Oxford University Press, 2007), p. 126.

[44] UN General Assembly, Note on International Protection, 7 September 1994, A/AC.96/830, para 22 -23, available at: http://www.refworld.org/docid/3f0a935f2.html [accessed 7 April 2018]

[45] Julian M. Lehmann, "Availability of Protection in the Country of Origin: An Analysis under the EU Qualification Directive", in Seeking Asylum in the European Union, ed. Celine Bauloz et al. (Leiden and Boston: Brill Nijhoff, 2014)

[46] Ibid.

[47] Guy S. Goodwin-Gill and Jane McAdam. *The Refugee in International Law* (Oxford and New York: Oxford University Press, 2007), p. 36.

[48] "Expressing the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides." UN General Assembly, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Held at Geneva from 2 July 1951 to 25 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Recommendation E. Available at: http://www.refworld.org/docid/3be01b964.html. Accessed 9 April 2018.

in need for international protection. The most successful work for the latter aim was done by the Organization of African Union under the UNHCR's supervision.

In 1969 the Organization of African Union adopted a convention that extends the scope of the refugee definition to cover persons who migrate "owing to external aggression, occupation, foreign domination or events seriously disturbing public order[49]". Similarly, the Cartagena Declaration, that was adopted by Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama in 1984, broaden the definition to include refugees migrating their state of origin because:

> their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.[50]

However, the latter two examples have regional limitations and do not affect the European Union. The Union followed an alternative approach - to create a subsidiary to "refugee" status of international protection. There are two forms of subsidiary protection: complementary and temporary protection. The next section discuses both in detail.

2.2.2 Defining subsidiary status of international protection

The subsidiary protection status was firstly implemented in the mid-1980s. The refugee fleeing from the collapse of Yugoslavia had been protected under alternative to the 1951 Convention form of protection; they were granted so called "temporary protection"[51]. From that point diverse forms of complementary protection were developed in the European Union law and in the law of its MS (as well as in international law); all these forms can be divided into two categories: complementary and temporary protection[52]. In contrast, there is only one category of subsidiary protection in Latvian Asylum law: "alternative status". This subsection discusses the content and difference of these protections. Firstly, the author analyses "temporary protection" status.

The "temporary protection" is used when the determination of the status is not required, because there are many asylum seekers, that the respective governmental institutions are not capable to formally check, or/and it is assumed that the protection granted is temporary. For example, the migration crisis during the collapse of Yugoslavia was an example of temporary protection usage by states. The scope of the 1951 Convention was extended to those persons who might not qualify as refugees and to those who might without determining exactly[53]. In the EU law, the temporary protection status was codified in the 2001 EU Temporary Protection Directive.

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[49] Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, Article 1 (2); available at: http://www.refworld.org/docid/3ae6b36018.html. Accessed 7 April 2018.

[50] Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, available at: http://www.refworld.org/docid/3ae6b36ec.html. Accessed 7 April 2018.

[51] Hemme Battjes, "Subsidiary Protection and other alternative forms of protection", in *Research Handbook on International Law and Migration*, ed, Vincent Chetail and Céline Bauloz. (Glos:Edward Elgar Publishing Limited, 2014), p.541-542

[52] Ibid, p. 542.

[53] Hemme Battjes, "Subsidiary Protection and other alternative forms of protection", in *Research Handbook on International Law and Migration*, ed, Vincent Chetail and Céline Bauloz. (Glos:Edward Elgar Publishing Limited, 2014), p.542.

The latter legal instrument grants temporary protection in exceptional cases when there is a significant and sudden number of persons that are displaced and are seeking asylum in short period of time.[54] Persons fleeing armed conflict are covered by the directive as the ones who are eligible for temporary protection[55]. However, the Temporary Directive has to be activated to be applicable: the Council of EU has to decide by qualitative majority the existence of extreme situation of sudden and large inflow of displaced persons[56]. In addition, it has never been implemented so far, because, inter alia, it is practically difficult to get qualified majority when refugee crises are predominantly affect only few MS[57]. Therefore, those who qualify to be protected by Temporary protection, are left to be dealt by EU Qualification Directive, under the status of complementary protection.

As scholar Battjes suggests there is no definition of complementary protection in international law[58]. Therefore, the scope of the definition varies among the states. In general, "complementary protection" refers to asylum seekers that are out of the scope of the "refugee" definition under the 1951 Convention. The important regional instrument, the EU Qualification directive, defines the subsidiary status followingly:

> a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.[59]

"Serious harm" does not have definitions in the international law[60]. Articl 15 of the Directive defines "serious harm" followingly:

> (a) the death penalty or execution; or

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[54] European Union: Council of the European Union, Council Directive 20 01/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001, OJ L.212/12-212/23; 7.8.2001, 2001/55/EC, Article 2, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF. Accessed on April 17, 2018.

[55] Celine Bauloz, and Meltem Ineli-Ciger, Sarah Singer, and Vladislava Stoyanova, *Seeking Asylum in the European Union* (Leiden and Boston: Brill Nijhoff, 2015), p. 227.

[56] European Union: Council of the European Union, Council Directive 20 01/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001, OJ L.212/12-212/23; 7.8.2001, 2001/55/EC, Article 5(1), available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF. Accessed on April 17, 2018.

[57] Celine Bauloz, and Meltem Ineli-Ciger, Sarah Singer, and Vladislava Stoyanova, *Seeking Asylum in the European Union* (Leiden and Boston: Brill Nijhoff, 2015), p. 233.

[58] Hemme Battjes, "Subsidiary Protection and other alternative forms of protection", in *Research Handbook on International Law and Migration*, ed, Vincent Chetail and Céline Bauloz. (Glos:Edward Elgar Publishing Limited, 2014), p.542.

[59] European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, Article 2 (e), available at: http://www.refworld.org/docid/4f197df02.html [accessed 9 April 2018]

[60] Guy S. Goodwin-Gill and Jane McAdam. *The Refugee in International Law* (Oxford and New York: Oxford University Press, 2007), p. 326.

> (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
>
> (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

The first two points, (a) and (b), are rephrase certain provisions of the European Convention of Human Rights[61]. The points (c) represent practice of European States to providing complementary to the Convention protection[62]. The term "individual" should be interpreted as generous as possible, i.e. to interpret in such way that the requirement that a person is singled out is not influential, because, firstly, it is obscure term it can be interpreted in both ways, and, secondly, opposite interpretation leads to decrease in the Directive usefulness[63].

Moreover, the Qualitative directive assigns minimum rights that must be granted to persons with subsidiary status. Those are just some part of the rights that are granted to "refugees" through the 1951 Convention. Whether the subsidiary protection status beneficiaries are granted all rights as "refugees" have or receive the minimum set provided in the directive, it is left upon the respective EU Member States discretion. Some MS provide identical rights to all types of beneficiaries of international protection, and some differentiate statuses and permit an unequal treatment.

Nevertheless, the minim set of rights that is provided to persons who are granted a subsidiary status and thus the rights of "refugees" include rights related to non-refoulment principle and access to citizenship. The latter rights are discussed in the consecutive sections.

2.2.3 Non-refoulment principle

Article 33 of the Refugee Convention prohibits the Contracting States to expel the holders of "refugee" status back to the state of the origin, "to the frontiers of territories, where his or her life or freedom would be threatened[64]". It is shown above that the "refugee" definition has limited scope and thus not all in need of international protection can benefit from Article 33. Nevertheless, scholar Selm-Thorburn claims that non-refoulment principle for de facto refugees is a part of customary international law[65]. Moreover, there are other legal instruments that guarantees non-refoulment to all in need of international protection, for example, article 3 of the European Convention on Human Rights (hereafter ECHR).

The European Court of Human Rights (hereafter ECtHR) has interpreted article 3[66] of the ECHR as prohibiting the refoulment of inter alia holders of international protection (both statuses)[67]. This is a sufficient legal instrument to oblige a state party to the convention not to force a person who is granted complementary protection status to return to the state of origin. However, in contrast to the Refugee Convention, article 3 of the ECHR does not outline rights

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[61] Ibid, p. 326.
[62] Ibid, p. 326.
[63] Ibid, p. 328.
[64] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 33 available at: http://www.refworld.org/docid/3be01b964.html [accessed 11 April 2018]
[65] Joanne van Selm-Thorburn, *Refugee Protection in Europe: Lessons of the Yugoslav Cirsis* (The Hague, Boston, and London: Martinus Nijhoff Publishers, 1998), p. 38.
[66] Article 3 on prohibition of torture. See at: Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: http://www.refworld.org/docid/3ae6b3b04.html. Accessed 17 April 2018.
[67] Elspeth Guild, Security and Migration in the 21st century, p. 83.

a beneficiary of international protection should possess while residing in a host state. In addition, certain restricting conditions apply.

As it was noted by the ECtHR in Na. v. United Kingdom judgment, the "general violence" could be counted as a condition in a state of origin that is sufficient to invoke article 3 of the ECHR and thus to prohibit refoulment of a person concerned; nevertheless, the Court insists that the latter approach must be used in quite specific cases:

> extreme cases of general violence where there was a real risk of ill-treatment simply by an individual being exposed to such violence on return[68].

Therefore, the principle of non-refoulment applies to "refugees" and to persons who are granted complementary status. However, it is not fully absolute principle, there is a chance that the state could justify refoulment in certain cases for example when the mere fact itself of crossing the border of the state of origin does not endanger a beneficiary of international protection.

2.2.4 Citizenship

The right to citizenship is not a fundamental human right; for example, it is not included in the ECHR's set of human rights. Nevertheless, there are several legal instruments related to the Refugee law that provide some guidance on this matter. Firstly, the Refugee Convention rules out that it is a Contracting State's obligation to ease and expedite naturalization process for "refugees"[69]. Secondly, the Qualitative Directive addresses the naturalization process for persons who are granted subsidiary status:

> In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.[70]

The term integration in the Directive's provision above can be interpreted as including naturalization: "the access to citizenship can be viewed as an important factor in the process of integration of immigrants in the destination country[71]." Moreover, UNHCR links words "assimilation", that is used in the Convention with word "integration", in that sense that these words represent the same notion[72]; and further notes that assimilation are essential condition for naturalization. Thereby, the Directive oblige states to follow at least one of the following two directions in the integration facilitation:

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[68] ECtHR, Na v. United Kingdom (Judgement) (2008) Appl. No. 25904/07, para. 115.

[69] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 37. Available at: http://www.refworld.org/docid/3be01b964.html. Accessed 17 April 2018.

[70] European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, Article 34. Available at: http://www.refworld.org/docid/4f197df02.html. Accessed 11 April 2018.

[71] Maarten Peter Vink, Immigrant Integration and Access to Citizenship in the European Union: The Role of Origin Countries, INTERACT RR 2013/05, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2013. Available at: http://interact-project.eu/docs/publications/Research%20Report/INTERACT-RR-2013-05.pdf. Accessed on April 11, 2018.

[72] Amicus curiae submission of the United National High Commissioner for Refugees in the case number A420304317, December 21, 2017, Stockholm, Para 18.

1) The integration program has to be appropriate taking into account the needs of beneficiaries of intranational protection.
2) To create relevant circumstances for a beneficiary of international protection that warrant access to the programmes.

2.2.5 UN position

The UN's body, the UNHCR has been intrusted with duty to handle protection on behalf of refugees[73]. The issue is in the definition of the refuges; the UNHCR's definition is not static and differs from the Convention's definition. Moreover, the discrepancy between the definition provided in the Refugee Convention and the definition used by the UNHCR occurred from the inception of the convention. The UNHCR statue was adopted few months earlier than the Refugee Convention. The former had very similar definition of "refugee" but it did not contain the time and geographical limitation that was placed in the Convention's definition[74]. In 1967 with the adoption of the Protocol, the formal difference was lifted off. However, the essential difference remained.

The UNCHR claim that the definition provided in the 1951 Convention does not have intention to be restrictive; oppositely, it has an aim to cover all possible unprotected persons in need of international protection[75]. However, the latter refugee definition interpterion does not coincide with popular practice among the contracting states[76] and also not coincides with the drafters' intentions.

If indeed the drafters had an intention to cover all possible refugees with the "refugee" definition, why in this case the drafters explicitly expressed a hope that the definition in the convention should be applied broader then the interpretation allows[77]. This recommendation section in the Final act of the Conference expressed two messages: firstly, the drafters accepted that the definition that is set out in the 1951 Convention has a narrower scope then it should be, in other words, the created definition does not cover all persons who need an international protection; secondly, application of the Convention on refugees who are not covered by the scope of the "refugee" definition is left out on the respective state's discretion. If the latter was a part of the states' obligations it would be formulated in more obliging terms and not in the "recommendation section", formulating it as a hope.

Moreover, the states managed to include time and optional geographical limitation in the 1951 Convention, because they were reluctant to accept responsibility of future possible uncontrollable number of refugees[78]. The latter shows that there was a tendency among the

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[73] Guy S. Goodwin-Gill and Jane McAdam. *The Refugee in International Law* (Oxford and New York: Oxford University Press, 2007), p. 1.
[74] For example, the Refugee Convention was covering only events occurred before 1 January 1951.
[75] UN General Assembly, Note on International Protection, 7 September 1994, A/AC.96/830, para 24, available at: http://www.refworld.org/docid/3f0a935f2.html [accessed 7 April 2018]. Joanne van Selm-Thorburn, *Refugee Protection in Europe: Lessons of the Yugoslav Cirsis* (The Hague, Boston, and London: Martinus Nijhoff Publishers, 1998), p. 41.
[76] Guy S. Goodwin-Gill and Jane McAdam. *The Refugee in International Law* (Oxford and New York: Oxford University Press, 2007), p. 15.
[77] UN General Assembly, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Held at Geneva from 2 July 1951 to 25 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Recommendation E. Available at: http://www.refworld.org/docid/3be01b964.html. Accessed 9 April 2018.
[78] UN General Assembly, Note on International Protection, 7 September 1994, A/AC.96/830, para 24, available at: http://www.refworld.org/docid/3f0a935f2.html [accessed 7 April 2018]

states to value state interests and concerns higher than the desire to provide protection to refugees. Without judging the latter tendency, the following conclusion should be made: as there was such tendency to limit the refugee definition with time and geographical scope, then the assumption that the drafters meant to limit the scope of the content of the definition to single out a particular class of refuges seems highly plausible. Nevertheless, at least in part, one of motivations of the drafters was defiantly to provide humanitarian help to fled persons whose lives are endangered in the state of origin[79].

Moreover, the UNHCR has a clear stance regarding renunciation of nationality of the state of origin as a naturalization condition for refugees:

> For States that do not accept dual or multiple nationalities, citizenship legislation must ensure that the requirement to renounce another nationality as a precondition for acquiring or retaining nationality is lifted when such renunciation is not possible. For example, refugees should not be expected to return to or to contact the authorities of their country of origin to renounce their citizenship.[80]

Furthermore, UNHCR has been advocating all states to award similar rights (as similar as possible) to "refugees" and to persons who are granted complementary protection[81].

2.3 Latvian law compatibility with the standards

Indeed, the "refugee" definition that is set in the Convention is narrower than it is used in everyday life. The UNHCR asserts that the scope of the definition should interpreted according to the spirit of the Convention, and claim that the spirit of the Convention is to include all possible refugees that rapture relations with their state of origin due to political circumstances there. The author disagrees with the latter assumptions. It is more likely that the drafters of the Convention intended to write a such narrow definition expressing state concerns of uncontrollable inflow of refugees.

Thus, indeed the main legal instrument for refugees, the 1951 Convention, provides definition of refugee that in no way of interpretation could improve Latvian definition, to make it more favourable and cover also other persons in need of international protection. As a matter of fact, Latvian definition of the refugee status is in line with the "refugee" definition of the 1951 Convention.

The Qualitative Directive improved the situation for persons who needs international protection but are not covered by the Convention's definition by introducing a subsidiary status of international protection and regulating their acquired rights. Moreover, a Latvian definition of subsidiary status is in line with the Directive at least in essential elements. However, in practice this legal instrument is not sufficient to make MS to treat all beneficiaries of international protection equally, to grant them similar rights, as it sets only

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[79] Joanne van Selm-Thorburn, *Refugee Protection in Europe: Lessons of the Yugoslav Cirsis* (The Hague, Boston, and London: Martinus Nijhoff Publishers, 1998), p. 39.

[80] UNCHR, Nationality and Statelessness,: Handbook for Parlamentarians No. 22, July 2014, available at http://www.refworld.org/docid/53d0a0974.html. Accessed on 22 March 2018.

[81] UNHCR, UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009), 29 July 2010, available at: http://www.refworld.org/docid/4c503db52.html [accessed 23 March 2018]

minimal treatment for MS to follow regarding subsidiary status holders, and the exact treatment is left upon MS discretion.

In the next section is going to shed a light on question: whether the different treatment of refugees and persons with subsidiary protection complies with International and European Standards is going to be analysed. At this stage, the court's opinion on this case is required to make the conclusion.

3 LATVIAN INCIDENCE: THE AFGHAN CASE

The international conflict was started on the territory of Afghanistan in 2001. The conflict seized Afghanistan in the middle of two-decade war that was triggered by the Soviet troops invasion in 1979[82]. Thus, by the time the new phase of the international conflict had been initiated in 2009, the citizens of Afghanistan had been living in conditions of 40-year conflict. In 2009, the military presence was increased[83]. Exactly that year in November, an Afghan minor[84] fled to Latvia. There he has been granted an international protection with complementary status and started and completed secondary education. Later he faced a new challenge: a requirement to renounce former nationality for Latvian nationality acquisition. According to Afghanistan law to accomplish the latter one needs to return to Afghanistan (to renew the ID card) and thus lose the international protection he or she has been enjoying on the territory of Latvia.

At present, the Afghan has been suing respective Latvian naturalization institutions already for 3 years. This section is devoted to analysis of the final decision of the court on this matter. The analysis of the case starts with Afghanistan policy analysis, proceeds with a summary of relevant dates and facts, and then finally by the analysis of the Courts decision. In the end the author applies right to equality test to reveal possible unequal treatment of the Afghan.

3.1 Afghanistan policy regarding renounce of citizenship

On the 11th June 2000, the previous Citizenship law was replaced by Citizenship Law of the Islamic Emirate of Afghanistan[85]. The latter is the current law. To abandon the Afghanistan citizenship, the citizen must complete following steps:

> He or she must submit a written application for renunciation, fill out a renunciation of citizenship form, provide fingerprints, present his or her tazkira, document a lack of criminal responsibility, and pay an amount equivalent to €25[86]

There is also a provision in case the applicant is abroad: the candidate should apply to an Afghan embassy, presenting the application, Afghan identity (tazkira), and documents from the new host country. Therefore, it is possible to renounce Afghan citizenship outside Afghansitan. However, with a condition the that applicant should have a tazkira. From the interview with the Afghan, it was revealed that he no longer possesses tazkira, it was lost.

According to research of Canada's Immigration and Refugee Board it was not possible to acquire tazkira, the main identity document of a citizen of Afghanistan, outside the

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[82] Witte Griff, Afghanistan War, "Prelude To The September 11 Attacks", Encyclopædia Britannica, Encyclopædia Britannica Inc., February 21, 2018. Available at: https://www.britannica.com/event/Afghanistan-War. Accessed on: March 26, 2018.
[83] Ibid, para 1.
[84] Term minor is used in accordance the definition in the Civil Law of Latvia, Article 219. Available at https://likumi.lv/doc.php?id=225418. Accessed on March 26, 2018.
[85] The Afghanistan Parliament, Law on Citizenship of Islamic Emirate of Afghanistan (English Translation). Available at: http://www.refworld.org/pdfid/404c988d4.pdf. Accessed on April 4, 2018.
[86] European University Institute, Report on Citizenship Law: Afghanistan, March 2017

Afghanistan[87]. Moreover, the identity document is issued only to the applicant[88]. Therefore, the Afghan has found himself in a deadlock: it is indeed possible to renounce Afghanistan citizenship outside Afghanistan, however to do that he was lacking a tazkira; and to acquire the latter document the beneficiary of international protection must return to Afghanistan. Nevertheless, the situation has changed approximately in 2017, and the new law permitted tazkira acquisition aboard through the Embassies as well. The following section shows why the Afghan has not been granted Latvian citizenship, despite the positive change in Afghanistan Citizenship law regarding tazkira acquisition.

3.2 Relevant facts and dates.

Fleeing from the hazardous military conditions, the Afghani arrived in Latvia on the 23rd of November 2009. The Office of Citizenship and Migration Affairs[89] (hereafter PMLP) registered the asylum seeker as an Afghan citizen and granted him a complementary status. In three years, in 2012 on the 3rd of September, the Afghan had started a Latvian evening secondary school in Riga. In the last year of studies, on the 28th of January 2015, the beneficiary of subsidiary international protection received a permanent residence permit in Latvia[90]. Slightly later, in 2015 on the 1st of July the he had finished the secondary school; the instruction language of the school was Latvian. The latter fact made the Afghan eligible for Latvian citizenship acquisition. The Afghan had an opportunity to acquire Latvian citizenship (until the 1st of July 2017) just due to fulfilling the conditions of article 11 of the Transitional Provisions[91].

The Afghan sent an application for Latvian citizenship acquisition to the PMLP on the 6th of July 2015. In the following month (4th of August 2015), the PMLP issued a decision: the Afghan has fulfilled all the conditions for the citizenship acquisition except one: submission of evidence of Afghan citizenship renunciation; the PMLP would grant a Latvian citizenship to the beneficiary of international protection if he submitted a proof of former citizenship renunciation until the 21st of June 2016.

Then the Afghan was trying to extend the deadline of renunciation evidence submission. Firstly, he approached the PMLP; on the 6th of August 2015 the PMLP issued a decision not to grant an extension of the deadline. After that, secondly, the Afghan issued a claim to Ministry of Foreign Affairs on the 10th of September 2015 to contest PMLP's decision not to grant an extension. Following month on the 12th of October 2015, the Ministry of Foreign Affairs issued a decision against the claim. Then, thirdly, the Afghan directed his claim to the Administrative Regional Court on the 12th of November 2015 to contest Ministry of Foreign Affairs' previous decision. On the 21st of December 2015 the court has issued its decision to refuse the claim of the applicant to extend the deadline.

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[87] Canada: Immigration and Refugee Board of Canada, *Afghanistan: The issuance of tazkira certificates; whether individuals can obtain tazkiras while abroad*, 16 December 2011, AFG103918.E, available at: http://www.refworld.org/docid/4f1512ec2.html [accessed 5 April 2018

[88] Ibid.

[89] In the original language: "Pilsonības un Migrācijas Lietu Parvalde"

[90] A420304317, 19.03.2018, Administrative Regional Court, Riga, Para 1. Available at: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. Accessed on April 5, 2018.

[91] Citizenship Law of the Republic of Latvia (Pilsonības likums), available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

As the Afghan had not send the evidence until the 21 of June 2016 (deadline required by the PMLP to receive automatically the citizenship), the PMLP issued decision to refuse to grant the citizenship to the beneficiary of international protection on the 5th of July 2016. Next year, the Afghan attempted the second application for Latvian citizenship acquisition.

On the 15th of May 2017, the beneficiary of international protection received a letter from the Afghanistan Embassy in Warsaw confirming the identity of the receiver, and that the receiver had sent all the documents required for Afghanistan ID card application. On the 6th of June 2017 the Embassy send a letter confirming that the person with subsidiary status had sent all the documents needed to renounce the Afghanistan citizenship. With those crucial documents the Afghan approached the PMLP.

On the 16th of June 2017, the beneficiary of international protection sent a claim to the PMLP asking to extend the deadline of Latvian Citizenship application which was 1st of July 2017[92] to get sufficient time for the procedure of Afghanistan citizenship renounce accomplishment and time for the confirmation letter to arrive to Latvia. As an argument why it is important, the Afghan mentioned that otherwise there is a risk to become a stateless person.

On the 18th of July 2017 the PMLP issued a document refusing the claim of the Afghan. Immediately the beneficiary of international protection contested the decision. On the 11th of September 2017, the PMLP declared its decision: to keep the same decision that was set out on the 18th of July 2017, i.e. not to extend the deadline. Then, the Afghan wrote a claim to the Administrative Regional Court on the 13th of October 2017 to contest recent PMLP's decision. The first hearing happened on the 20th of October 2017. One of Court's decision was to write a clarification request to the UNHCR. After received the latter clarification, the court proceeded. The final decision upon this case was issued on the 19th of March 2018 declining the Afghan's claim.

Thus, the beneficiary of international protection lost the right of "automatic" acquisition of citizenship of the second naturalization method[93]. Moreover, any day he could receive a confirmation of Afghanistan citizenship renunciation, i.e. a confirmation that he becomes a stateless person. To satisfy the residence condition of the first naturalization method, the Afghan must wait until 2020.

3.3 Court decision analysis

On the 13th of October 2017, the Afghan requested to initiate an administrative case in Riga's Administrative Regional Court[94]. The applicant asked to resolve issue with PMLP's decision, and order the latter to grant Latvian citizenship to the applicant. The court dismissed the claim, basing its decision on seven arguments. Evaluation of the Court's argumentation is introduced below.

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[92] The latter follows from the Atrticle 11, Trasnitional provision of the Latvian Citizenship Law; avaliable at: https://likumi.lv/doc.php?id=57512; accessed on March 29, 2018.

[93] Based on Article 11 in Transitional Provisions of the Latvian Citizenship Law, and by analogy on PMLP's decision of the 4th of August,

[94] A420304317, 19.03.2018, Administrative Regional Court, Riga. Available at: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. Accessed on April 5, 2018.

3.3.1 Application of the Transitional Provisions' Article 11

At first, the court assessed how correctly the PMLP applied Article 11 of the Transitional provisions[95]. The court concluded that the article requires the PMLP to check fulfilment of two conditions; and that the applicant has satisfied one of them – the Afghan finished the secondary school in Latvian language. The remaining condition has not been completed; it had the following wording:

> this person does not have other states citizenship or he/she has received former citizenship state's expatriation note, if the latter is allowed by the law of the respective state[96].

Indeed, the beneficiary of international protection failed to submit a documentary evidence of Afghanistan citizenship renunciation. However, it was done everything that could be done from the applicant's side to renounce the citizenship, as the defender of the Afghan claimed. In support of the latter, the claimant provided a letter form the Afghanistan Embassy in Warsaw confirming that the renounce process has been initiated. Nevertheless, the Court decided that the remaining condition was not satisfied. Based on that, the Court decided that the PMLP has correctly applied article 11 of the Transitional Provision[97] and thus the Afghan should not be granted a Latvian citizenship relying only on the latter provision. After that, the Court directed its attention towards UNHCR's opinion about the case.

3.3.2 UNHCR's arguments

The UNHCR was basing its argument on the EU Qualification Directive, that is on standards inter alia for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted[98]. The Court interpreted this argument as: the EU legislator has created a single status for beneficiaries of international protection; and provided a counterargument citing Article 24 of the Directive[99]. The latter article clearly expresses different treatment of refugees and persons who are granted complementary protection.

A residence permit issue (Article 24)

According to Article 24[100], the refugee shall be given a residence permit for at least three years and it should be renewable. As for persons who are granted complementary protection, a renewable residence permit shall be granted for at least 1 year, and in case of renewal – two years. Thus, the court concluded that the European Union legislature through the Directive[101]

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[95] Atrticle 11, Trasnitional provision ("Pārejas noteikumi") of the Latvian Citizenship Law; avaliable at: https://likumi.lv/doc.php?id=57512; accessed on March 29, 2018.
[96] Section 2, 1^3 of the Latvian Citizenship Law of previous edition that was in force from November 11, 1998 to September 30, 2013. Translation provided by the State Language Center, 2013. Original text: "šīm personām nav citas valsts pilsonības (pavalstniecības) vai tās ir saņēmušas iepriekšējās pilsonības (pavalstniecības) valsts ekspatriācijas atļauju, ja tādu paredz šīs valsts likumi".
[97] Latvian Citizenship Law of the current edition (from September 30, 2013)
[98] European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: http://www.refworld.org/docid/4f197df02.html. Accessed March 30, 2018.
[99] Ibid.
[100] Ibid.
[101] Ibid.

permitted different treatment of refugees and persons who are granted complementary protection.[102]

The Court asserts that the refugee status is given to a person when there is a threat caused by affiliation to a certain group: religious, political, racial, etc.[103] The latter groups are formed based on intrinsic characteristic of a person, the quality that can be claimed is unchangeable. Therefore, the Court points out that refugee status is given to a person in a situation where the threat to him or her in the former state exists just because who he or she is. In other words, unless a situation in the former state significantly changes, the threat refugee is fleeing from is a lifelong from the definition. Whereas, the complementary status of subsidiary international protection does not depend on intrinsic values of a person.

The Court proclaim that complementary status is given to a person when there is a threat of receiving substantial harm upon return to the former state. However, the Court continues that this threat is not directly against the person or against specific group of people, for example the war in the former state. The latter reason is sufficient to grant a complementary status to a fleeing person. In contrast to refugee status, the court asserts that it can presumed that reasons used to grant a complementary status are likely to end relatively fast. Therefore, it is meaningful to distinguish two statuses, and treat them differently. The author respectfully disagrees with Court's argumentation regarding article 24 interpretation.

Firstly, the causes of both circumstances, that are used respectively to grant either a refugee status or a complementary status, do not depend on a beneficiary of international protection. The both circumstances can last lifelong or can be ended relatively soon. For example, the British and US invasion of Afghanistan started in 2001, but before that Afghanistan experienced a war on its territory initiated by the Soviet Union in 1979. Thus, the military conflict in Afghanistan has been lasting for almost 40 years. A reasonable person would never regard 40 years as a short period of time in a human life or characterise this event that long as "likely to end fast". In other words, the Court suggests to use the approach to distinguish persons who are granted complementary protection status and to allow am unequal treatment of the latter holders based on the fact that the conflict the persons are fleeing from is "likely to end fast". The latter approach is clearly not working satisfactory in practice at least for the Afghan's case.

Secondly, article 24 of the Directive[104] does not have any discriminative treatment of subsidiary international protection status, in fact; though different to refugee status treatment, but, indeed not discriminative:

> … Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 years and *renewable*, … Member States shall issue to beneficiaries of subsidiary protection status … a *renewable* residence permit which

[102] Nr A420304317, 19.03.2018, Administrative Regional Court, Riga, section [7], para 6. Available at: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. Accessed on April 5, 2018.
[103] Ibid.
[104] European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: http://www.refworld.org/docid/4f197df02.html. Accessed March 30, 2018.

> must be valid for at least 1 year and, in case of renewal, for at least 2 years …[105] [emphasis added]

From the text of article 24, it is clear, that both beneficiaries of refugee status and persons who are granted complementary protection shall receive a *renewable* residence permit. The only difference is the minimum period for one consecutive residence permit cycle. From the Court's assumptions one can conclude there are situations when the conflict from which an asylum seeker is fleeing might be resolved in a relatively short amount of time. If there is a strong believe that the assessed situation is likely to follow the latter scenario, then it is wise to grant a renewable residence permit with a shorter duration; just in case the situation is resolved soon, and thus the international protection is lifted off and there is no longer a need in the residence permit. In the end, both statuses of beneficiaries of international protection receive similar right – a residence permit as long as it is needed. Therefore, the duration difference of a renewable residence permit is a mere practical matter and it is not in any way a measure of treating persons who are granted complementary protection less favourably than holders of refugee status.

Moreover, a more favourable to the claimant interpretation of the UNHCR argument regarding unified refugee status seems more objective than the interpretation used by the court. The Court had understood UNHCR's argument followingly: from the Directive[106] one can conclude that the European legislature granted identical rights to the subsidiary status of beneficiary of international protection, identical to the ones that the holders of refugee status have and, therefore, in the result dismissed the status of subsidiary protection of beneficiaries of international protection.

A unified refugee status issue

First of all, the UNHCR is supporting its argument with the directive that has following part in its title: Directive on standards … for a *uniform status for refugees* or *for persons eligible for subsidiary protection*, and for the content of the protection granted[107]. From the choice of the directive and term used in its argument (single status for refugees) a reasonable person can conclude: the UNHCR is referring to "uniform status for refugees" when referring to "a single status for refugees".

Moreover, in the beginning of the argumentation, the UNHCR states that the definition of the refugee in the 1951 Convention[108] should be extended; the latter organization provided legal instruments that extended the 1951 Convention and in particular, the definition of the refugee status, for example, UNHCR's Guidelines on International protection[109]. Based on the latter instrument, the refugee status can be granted to asylum seekers fleeing from the armed conflict in their state of origin. Therefore, the refugee status that is mentioned in the 1951

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[105] Ibid, Article 24.
[106] Ibid.
[107] Amicus curiae submission of the United National High Commissioner for Refugees in the case number A420304317, December 21, 2017, Stockholm.
[108] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html. Accessed 2 April 2018.
[109] Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, 2 December 2016, HCR/GIP/16/12 ("Conflict and Violence Guidelines"); available at: www.refworld.org/docid/583595ff4.html; accessed: 22 March 2018.

Convention[110], and referred in the Directive[111] in fact refers to the Afghan that has an "alternatīvais statuss[112]" according to Latvian Law. In other words, the Afghan has a refugee status according to International law within the 1951 Convention (interpreted in light of the Guidelines on International Protection) and the directive. Therefore, from the latter perspective, the phrase the European legislature has created a single status for refugees can be interpreted followingly: despite possible variation of definitions and interpretations of refugee status among the MS, there is a single unified refugee status that enshrine all possible terms that are used by MS and analogous in substance.

Possible counter argumentation of the latter line of thoughts is that the directive itself provide definition of refugee status that is exactly copied from the 1951 convention and does not explicitly refer to the extension of the definition that is claimed by the UNHCR. The following provision reconfirm the consultative character of the UNHCR' opinion:

> Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.[113]

Thereby, though it seems the court used interpretation of the UNHCR's opinion that is less objective, the more objective interpretation does not reveal any standards that are binding towards the states.

3.3.3 The lack of implicit renunciation issue.

The author agrees with the court's position that the lack of a provision requiring explicitly renunciation of the former citizenship in the article 11 of the Transition provisions cannot be a strong argument to regard that this requirement is not needed. Article 11 itself directs readers to Clause 2 Section 1^3 that clearly states a necessity to renounce the former citizenship as part of the naturalization procedure. In addition, the Court suggests further that the other parts of the law supplement the gap in the article 11; in particular, sections 9 and 12 of the Citizenship law explicitly forbid double citizenship except with some states.

Nevertheless, the PMLP (and other institutions) has a right not to realize the consequences of the legal acts in untypical cases, the cases where the legal act limit the basic human rights of the person concerned[114]. In the next argumentation the court analysed whether condition of article 11 to renounce citizenship limit the human rights of the Afghan.

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[110] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html [accessed 2 April 2018]

[111] European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: http://www.refworld.org/docid/4f197df02.html. Accessed March 30, 2018.

[112] "alternatīvais statuss" Latvian legal term referring to subsidiary status of beneficiary of international protection.

[113] Ibid.

[114] Nr A420304317, 19.03.2018, Administrative Regional Court, Riga, section [8], para 3. Available at: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. Accessed on April 5, 2018.

3.3.4 Is requirement to renounce the original citizenship just?

The court has come to conclusion that the condition of renunciation of the former state citizenship is reasonable. Though, this decision contradiction the decision of the PMLP to grant complementary status of international protection to the Afghan. To recall, the complementary status is given to those who upon return to their state of origin is risking his or her health and life. The decision of the PMLP has not been contested.

The court has provided reasons and facts that lead to believe that the Afghan will not risk his life nor health upon return. It is not necessary to go in detail and to analyse those reasons and facts to point out the huge discrepancy in the approach. The decision to grant the subsidiary status expresses that there is a chance of risk. The court has not contested the decision, and thus has not contested the fact that there is a chance of risk to life and health but showed that there is a chance that the Afghan does not risk his life. The chances to risk life and chances not to risk life do not contradict each other, they are not mutually exclusive results but in fact complementary as they express a probability spectrum. In other words, the existence of an estimate of the probability that the Afghan will be safe upon return to the state of origin, does not undermine estimation of the probability that the Afghan will risk his life upon return. Moreover, this latter risk (that he will risk his life) was evaluated as sufficient by the PMLP by granting a subsidiary status.

To conclude, as the Afghan's status of international protection was not contested and the latter suggests that there is "a reason to believe that he or she may be exposed to serious harm after return to the country of origin[115]" the requirement that forces the claimant to return to Afghanistan violates at least indirectly the non-refoulment principle. However, it is possible that the latter violation can be rightfully justified[116] and thus permitted.

3.3.5 Communication with the Afghan Embassy in Poland

The court listed all communications between the claimant and the Afghan Embassy in Poland, at least the ones that had a documented evidence and was provided by the claimant. The court raised a question of inconsistency in communications. From the provided list it is possible to make a conclusion that, firstly, the Afghan Embassy does not tend to slow the process of renunciation or in any way to artificially prolong the latter. However, it would be not correct to assume that the claimant is responsible for the delay of the renunciation due to as the Court suggests claimant's inability to communicate it request clearly in that matter. The court missing an important fact of the Afghanistan legal system: the identity card (tazkira) is more valuable than the passport from the Afghanistan law point if view, at least to renounce the citizenship exclusively tazkira is required and a passport is not needed. The explanation of the latter fact is provided below.

Identity card issue.

In a previous Administrative proceeding of the 21st December 2015, the beneficiary of international protection acknowledge that it is possible to renounce Afghanistan citizenship via Afghanistan Embassy in Poland. However, at the same time, he noted that he does not have all the necessary documents: the claimant was lacking an identity card. To acquire the latter the applicant had to personally return to Afghanistan and apply it in person.

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[115] section 40 (1) of Latvian Asylum Law

[116] ECtHR, Na v. United Kingdom (Judgement) (2008) Appl. No. 25904/07, para. 115.

However, the Court confused the passport and identity card, tazkira. The court stated that, it was possible to renew Afghanistan passport without returning to Afghanistan; the passport indeed was possible (at least on the 21st of December 2015) to acquire in the Afghanistan Embassy in Poland. Nevertheless, to renounce citizenship the passport is not needed, exclusively an identity card is requested, which as was showed above was not possible to acquire outside Afghanistan (at least on the 30th of November 2011). The author does not have information when the situation of impossibility to acquire tazkira outside Afghanistan exactly has changed. It has definitely changed, for instance, the Afghan Embassy in Washington accepts Tazkira applications and issues them to successful candidates[117]. It is possible to assume that the change has happened in 2017. That year, the Afghan made a successful application for tazkira certificate in the Afghanistan Embassy in Poland[118].

Therefore, since new changes in procedural law of Tazkira acquisition in 2017, the obstacle of return to Afghanistan has been removed. Moreover, the Afghanistan Embassy accepted the beneficiary of international protection's application for Afghan citizenship renunciation on the 5th of June, 2017[119].

3.3.6 Deadline: application date vs citizenship acquisition date

The court concluded that the requirement of 2-year period in article 11 of the Transitional Provisions is setting deadline for the date of citizenship acquisition and not for the date of application. This statement seems reasonable.

The text of the article has a phrase that is following (after translation): "shall retain the right to register as a citizen of Latvia for two years after the acquisition of complete basic education[120]". The English text above preserves the grammatical and lexical meaning of the original text[121]. This meaning allows to assert: the text imply that the 2-year deadline is intended for citizenship acquisition and not for initiation of the application.

3.3.7 Extension of the deadline issue

The claimant asked to extend the deadline for exercising the right article 11 was promising. The Court regarded this claim from the human rights perspective: whether non-extension would violate the claimant's human rights. The analysis has shown that the non-extension is not violate the rights of the claimant and with that the court has concluded that all potential means to extend the deadline was exhausted.

Nevertheless, there is no any exceptions for situations that does not depend on the claimant in the law. The parliament transcript analysis earlier showed that the legislator does not have objections against longer term for the exercising of the right granted in article 11, as before 2013 the right had unlimited term. Moreover, the reason for the extension was to prompt

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[117] The Embassy of Afghanistan, Washington D.C., "Absentee Tazkira". Available at: https://www.afghanembassy.us/absentee-tazkira/. Accessed on April 5, 2018.

[118] A420304317, 19.03.2018, Administrative Regional Court, Riga; Point [10], para 5. Available at: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. Accessed on April 5, 2018.

[119] Ibid.Point [10], para 6.

[120] Translation by State Language Centre, 2013. Article 11, Citizenship Law of the Republic of Latvia (Pilsonības likums), edition form 01.10.2013, available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

[121] Citizenship Law of the Republic of Latvia (Pilsonības likums), edition form 01.10.2013, article 11, available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018.

persons, who are legally are Latvian citizens but de facto have not registered as such, to declare their position: whether they want to use their right and to become Latvian citizens.

The current situation the claimant found himself is out of ordinary, and in this case the extension of the deadline will match the aims of the legislator more precisely than non-granting the extensions; the first aim: to grant a right to register as Latvian citizen for a qualified candidate; and the second: to receive a solid positive decision to become a Latvian Citizen from the candidate for Latvian citizenship. The Afghan has fulfilled both these requirements.

Moreover, the lack of extension opportunity potentially can lead to breach of some other provision of the Citizenship Law in the following situation: a beneficiary of international protection applies and receives notification from the former state about citizenship renunciation, but the state of residence after reviewing the application decides not to grant citizenship. In result, the person becomes stateless: no citizenship of state of origin, and state of residence declined citizenship acquisition application. To deal with this situation, the Latvian legislator introduced Section 12 paragraph 4 that sets out:

> A person shall submit a notification regarding the renunciation of his or her former citizenship and an expatriation authorisation or a document certifying the loss of citizenship after he or she has been officially notified that there are no other obstacles for his or her admission to Latvian citizenship, and, after he or she has given a pledge of loyalty to the Republic of Latvia, the Cabinet shall decide on his or her admission to Latvian citizenship.[122]

Therefore, the lack of provisions allowing extension in excusable circumstances might lead, in addition, to non-conformity with Section12 paragraph 4.

3.4 Right to equality test

The Latvian constitution in article 91 promise to each human being in Latvia an equal treatment before the law and the courts, without any discrimination. Moreover, this right is not restricted as other fundamental human rights: article 116 of the constitution, the one that is responsible for fundamental human rights restriction[123], does not cover article 91. Article 16 states:

> 16. The rights of persons set out in Articles ninety-six, ninety-seven, ninety-eight, one hundred, one hundred and two, one hundred and three, one hundred and six, and one hundred and eight of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs.

That means the following reason inter alia cannot be used to justify an unequal treatment: to protect the rights of other people, the public safety nor welfare.

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[122] Translation by the State Language Centre, 2013, of Section 2 Article 4 of Citizenship Law of the Republic of Latvia (Pilsonības likums), edition: from 01.10.2013, available on: https://likumi.lv/doc.php?id=57512. Accessed March 5, 2018. Original text: "Paziņojumu par atteikšanos no savas iepriekšējās pilsonības un ekspatriācijas atļauju vai pilsonības zaudēšanu apliecinošu dokumentu persona iesniedz pēc tam, kad tai oficiāli paziņots, ka nav citu šķēršļu tās uzņemšanai Latvijas pilsonībā, un pēc tam, kad šī persona devusi solījumu par uzticību Latvijas Republikai, Ministru kabinets lemj par tās uzņemšanu Latvijas pilsonībā."

[123] Egils Levits (Dr), "Par tiesiskās vienlīdzības principu", Latvijas Vēstnes, 08.05.2003., Nr. 68 (2833), Chapter A, Part 3, point b, Para 2. Available at: https://www.vestnesis.lv/ta/id/74628. Accessed on April 14, 2018.

To prove existence or nonexistence of unequal treatment in the current case, test described in Dr. iur. Levits' works[124] is used. Firstly, two situations will be compared: the one the Afghan had found himself and a situation of a typical refugee; the characteristic elements of the situations are going to be revealed, compared to justify a claim that two situations are analogous. Secondly, the results of treatment in both situation are compared to reveal whether there is different treatment. If the first two steps are going to provide affirmative answers then the unequal is established. The final step of the testing is to check whether this unequal treatment can be justified using following indicators: whether the unequal treatment is reasonable, has a legitimate aim, and is proportionate.

3.4.1 Common and different elements of two situations

A refugee and the Afghan are in a similar situation; they both flee their state of origin to escape threats their government not protecting or not willing to protect them from. Also, the duration of the hazardous situation in the states of the origin is not clear when it is going to end. The latter is true for refugees, as the reason to become a refugee is that there is a threat to life due to some intrinsic quality that fair to assume not to be change during the significantly long period of the life time of the refugee. Similarly, the above statement applies for the Afghan, it is not clear when the hazardous situation is going to end in his state. So far it has been lasting for more than 30 years, and it is possible to assume it lasts further; thus, the Afghan is in a situation that potentially can lasts for significant period of time.

The latter is untypical situation for persons with subsidiary protection. The court justified differentiated treatment due to the fact that the circumstance of a person who has been granted a subsidiary status are likely to resolve reasonably soon[125]. The latter is not fulfilled in the practice of the Afghan case. His circumstance already lasted for 30 years that already can be regarded as sufficiently long period; and it is not clear how long it will last further. In other word, the fact that the war in Afghanistan already lasted for 30 years would imply incorrectness to treat the Afghan situation as a typical situation of a persons with complementary protection status. In fact, his situation is analogous to a refugee's situation.

Despite the above fact, a refugee and the Afghan are treated differently, because the Afghan has been given a subsidiary status: a refugee is freed from the requirement to provide evidence of the renunciation of the original citizenship, the Afghan is obliged to do that. Moreover, as the result, the Afghan's application to Latvian citizenship was rejected.

3.4.2 Justification of different treatment

The above research showed that the reason for different treatment is the assumption that a person with subsidiary protection is not able to satisfy the first condition of the naturalization requirements; to fulfil the latter one needs to have a permanent residence permit and allegedly persons with subsidiary status could not be granted this permit (only a temporary one) thus it is not required to consider separately the latter type of beneficiaries of international protection, taking in mind, in addition, that these types are very different. Nevertheless, the facts of this case proved contrary. The Afghan has received the permanent residence permit

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[124] Egils Levits (Dr), "Par tiesiskās vienlīdzības principu", Latvijas Vēstnes, 08.05.2003., Nr. 68 (2833), Chapter A, Part 3, point b, Para 2. Available at: https://www.vestnesis.lv/ta/id/74628. Accessed on April 14, 2018.

[125] Nr A420304317, 19.03.2018, Administrative Regional Court, Riga. Available at: https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi. Accessed on April 5, 2018.

and moreover he referred to other naturalization method that does not require residence permit. Thus, the motivation provided to justify the different treatment is not reasonable. However, there can be suggested other reasons to justify different treatment. The author the best justification that author come up with is loyalty argument.

The circumstances of a person with subsidiary status are highly likely to end relatively soon, and, oppositely, for a "refugee", the circumstance can last even lifelong. Thus, the reason for treating differently persons with subsidiary status is to avoid a situation when a person that is not fully loyal to a Latvian State is given a Latvian citizenship. To explain the latter statement, the difference in motivation of a refugee and a person with subsidiary status is discussed below.

A "refugee" can be assumed to be more loyal to a state of residence. The status implies that the state of origin in some way has betrayed the person due his or her personal qualities or affiliation to certain group; in other words, a state of origin acted significantly negatively and indeed unfairly towards the fleeing person. Moreover, the circumstance the refugee is in is likely to last sufficiently long for the refugee to lose his or her hope to return. In such conditions, it is natural to think that the refugee is more inclined to integrate in the society of a state of refuge and become a loyal to the state member of society. The latter makes, a refugee exemplary candidate for citizenship acquisition. In contrast, circumstances of a person with subsidiary status are different and lead to other motivation.

A beneficiary of international protection with subsidiary status does not have explicit reason to lose affiliation and loyalty to the state of origin. Oppositely, the situation of most of persons with subsidiary status can be summarised in this way: there is a complicated and hazardous environment back at home state, which the official government is failing to deal with. Such situation naturally rises following motivation in a person with subsidiary status: the environment in state of origin is going to improve soon, however until then it is necessary to hind from the hazardous conditions in another state; thus, such person is likely not going to integrate in the state of residence and keep loyalty to the state of origin. In this case, his or her application for acquisition of nationality of state of residence can be treated with suspicion. Thus, it is reasonable to treat a "refugee" and a person with subsidiary status differently in the case of citizenship acquisition.

In contrast, the facts of the case can be reasonably interpreted to indicate Afghan's loyalty to Latvia. The Afghan has finished a Latvian school; his personality formed under influence of Latvian culture, as he moved to Latvia being a minor, when his personality is still flexible and in active process of formation. Moreover, he did everything possible a reasonable person would able to do in his situation to renounce a citizenship, and, in addition, he received an official confirmation that the process of the Afghanistan citizenship is initiated and is not reversible. Thus, it may be concluded that Latvian society does not gain anything from his application rejection, but the Afghan is placed under unreasonable pressure and inconvenience.

To summarize, the right to equality test showed the requirement to renounce citizenship for a person with subsidiary status in the second naturalization method is unreasonable. The author's justification speculation showed to be reasonable with legitimate aim, but not proportionate.

3.5 Results

The provision of article 11 of the transitional provisions contains the requirements of renunciation of the citizenship of the state of origin. The PMLP rightfully stated that the claimant has not fulfilled the latter requirement within the period prescribed by article 11. However, there is strong reason to believe that the court incorrectly stated that the non-fulfilment of the requirement is not justified. In fact, the claimant has an objective reason for not complaining with the requirement on time: firstly, for renunciation of citizenship aboard a candidate should possess an Afghan identity card (tazkira), which the claimant was lacking; secondly, it was possible to renew the identity card before 2017 only in person and within the territory of Afghanistan; thirdly, the requirement to renounce the citizenship in the context of the claimant's circumstances is a breach of the non-refoulment principle; fourthly, there is a strong evidence to suggest that the latter breach can be justified. Thereby, the application of article 11 in current case is justifiable.

Nevertheless, there is a strong evidence that the law should have a provision that permits extension of the deadline of article 11 in circumstances that do not depend from a person concerned. Moreover, the United Nations High Commission for refugees recommends that the claimant fall under the scope of the "refugee" definition of the 1951 Convention and thus should be treated respectively.

In addition, the right to equality test showed that the claimant is treated unequally by the requirement to renounce the citizenship of the state of origin, as a "refugee" is in analogous situation but is exempt from the duty of the renunciation. The latter unequal treatment cannot be justified.

4 CONCLUSION

The main objective of the paper is to answer the question whether the provision in Latvian law to renounce the original citizenship for a person with subsidiary status in the Afghan's case is justifiable and in line with European and International Standards. Thus, the hypothesis was partly supported. The renunciation obligation is in line with restrictive interpretation of European and International standards. However, due to peculiar facts of the Afghan's case the obligation turned to be unjustifiably failing equal treatment principle.

Moreover, a member of the upper Legal committee during the meeting when the different treatment was decided has offered a diverging solution, that in fact would resolve the whole situation in a just manner. He offered to grant the exception from the obligation to renounce the citizenship of the state of origin to both statuses of beneficiaries of international protection upon fulfilment of one condition. The renounce must be practically impossible like it was in the Afghan's case before the relevant change in the Afghanistan Citizenship Law. The analysis has showed that the reason to choose a different approach than mention was unreasonable. The Afghan's case has "caught" this confusion. In addition, the gap in Latvian Law was discovered. The extension of a deadline for the "second naturalization method" in exceptional cases was missing.

During the 3rd and final parliamentarian reading on Citizenship Law amendments in 2013, Dr I. Lībiņa-Egnere, the chairperson, said that the suggested amendments was also prompted by practical situation related to Latvia and concerning Latvian citizenship as advised by Latvians themselves[126]. The latter words inspire the author and makes him believe that this case could serve as positive change facilitator.

On the other hand, the issue is obscure on International and European level. The main legal instruments do not cover all in need of international protection. Since the inception, the Convention refugee definition was stiff and narrowly interpreted. In contrast, the UNHCR's definition of refugee was dynamically evolving and progressively encapsulating more persons in need of international protection. Such discrepancy repeatedly pointed out by scholars. This situation is urging European Union, for instance, to follow the Organization of African Union example, by adopting regional convention covering all persons in need of international protection. Alternatively, to adopt favourable interpretation guidelines of the Convention.

[126] The Latvian Republic, the 11th Saeima, Amendments of Citizenship Law, Nr: 52/Lp11, the transcript of the third reading, May 9, 2013, Amendments of section Transitional Provisions ("Pārejas noteikumi"), the first speech of Dr I.Lībiņa-Egnere, Para 3. Available at: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/28506F53B2934DF8C2257B60001EC427?OpenDocument. Accessed on April 7, 2018.

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