The Issue of Loyalty and The Unfulfilled Promise of Statelessness Prevention: rethinking *Petropavlovskis v. Latvia*

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Abstract

This article aims to re-examine the judgment in *Petropavlovskis v. Latvia* through two underexplored dimensions: the European Court of Human Rights' treatment of "loyalty" in the naturalisation process, and Latvia's compliance with its international obligations to prevent statelessness. While the Court accepted Latvia's characterisation of naturalisation as a discretionary political act, this article argues that the loyalty assessment applied by the Latvian Cabinet of Ministers effectively conflated constitutional loyalty with political conformity, contrary to the Court's own reasoning in *Tănase v. Moldova*. It further contends that the Court overlooked a potential violation of the 1961 Convention on the Reduction of Statelessness, which strictly limits the grounds upon which a State may refuse nationality to an otherwise stateless individual born on its territory. In doing so, this article aims to provide a more comprehensive understanding of the systemic roots of the applicant's exclusion and the broader implications for stateless persons in Latvia.

Keywords

Statelessness, nationality, citizenship, loyalty, freedom of speech, freedom of assembly

Introduction

Questions of nationality, political participation, and the protection of stateless persons sit at the crossroads of international human rights law and State sovereignty. Nowhere is this

tension more visible than in cases where individuals are denied access to citizenship on the basis of their political views or perceived lack of "loyalty" to the State. The judgment in *Petropavlovskis v. Latvia* offers a compelling example of these competing dynamics. Although presented as a routine naturalisation dispute, the case raises wider issues about the limits of State discretion, the protection of democratic pluralism, and the international legal framework governing statelessness.

This article revisits the case with the aim of situating it within a broader legal landscape. It examines how the concept of "loyalty" was applied in the naturalisation process and how international standards on the prevention of statelessness could inform a richer understanding of the applicant's situation. In doing so, the article seeks to illuminate the systemic issues underlying the Court's reasoning and to contribute to ongoing debates about the protection of stateless persons and the boundaries of State discretion in nationality matters.

1. Facts and Context of the Case

In order to clarify the purpose and scope of this Article, it is first essential to briefly outline the factual background and broader context of the case. The following chapter therefore provide a summary of the relevant facts, the legal arguments advanced by both parties, and the final ruling of the Court.

1.1 Factual Background: From Education Reform to Naturalisation Refusal

The case of *Petropavlovskis v. Latvia* emerged against the backdrop of Latvia's post-independence efforts to reshape its education system and regulate naturalisation in a manner aligned with the restoration of statehood. The applicant, Jurijs Petropavlovskis, a permanently resident non-citizen of Latvia born in 1955 and residing in Riga, became a prominent figure in public debates concerning minority education rights. Following the adoption of the 1998 Education Law, Latvia began transitioning all State and municipal schools toward Latvian as the primary language of instruction, with limited exceptions for minority education programmes. The reform entered into force on 1 June 1999 and mandated a gradual expansion of Latvian-language instruction, including a requirement for all pupils to learn the State

language and pass a proficiency examination. The Ministry of Education and the Cabinet of Ministers were entrusted with issuing implementing regulations.[1]

Between 2003 and 2004, Petropavlovskis emerged as one of the leading organisers opposing these changes. As a key figure in the movement "Headquarters for the Protection of Russian Schools", he participated in public meetings, demonstrations, and media engagements advocating for the preservation of Russian-language education in State schools. The Government later submitted to the Court a collection of domestic media reports documenting his active leadership role and public criticism of the education reform. In November 2003, parallel to his activism, the applicant applied for Latvian citizenship through naturalisation. He successfully passed the naturalisation examinations on 1 December 2003, and the Naturalisation Board subsequently confirmed that he met all statutory requirements under Articles 11 and 12 of the Citizenship Law. His name was included among the candidates proposed for approval by the Cabinet of Ministers, the body competent to take the final decision. However, on 16 November 2004, the Cabinet of Ministers struck his name from the list, thereby refusing his naturalisation application. The underlying rationale was not initially detailed to the applicant, who was formally notified on 30 November 2004. He subsequently brought administrative proceedings, arguing that the decision constituted an unlawful and politically motivated interference with his rights, particularly in light of his public criticism of the government's education policies. He contended that naturalisation decisions were administrative in nature and thus subject to full judicial review. During these proceedings, the Government defended the refusal on the basis that naturalisation required demonstrated loyalty to the Republic of Latvia, not merely by oath but through conduct. The Cabinet of Ministers maintained that the applicant's actions and statements during the education reform protests revealed an absence of loyalty incompatible with the pledge of allegiance required under the Citizenship Law. They further argued that his involvement in organising protests had destabilising effects on public order and that certain public remarks suggested readiness to use force or provoke political scandal. These assertions were supported by references to specific media reports and the applicant's interview from December 2004, in which he described the naturalisation controversy as a means of generating international attention. The administrative courts ultimately held that a naturalisation decision by the Cabinet of Ministers constituted a "political decision," not an administrative act, and therefore fell outside the jurisdiction of the

[1] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶¶1-7.

administrative courts. Both the Administrative District Court (December 2005) and the Administrative Regional Court (February 2006) upheld this interpretation.[2]

On 11 April 2006, the Senate of the Supreme Court confirmed that the Cabinet possessed unrestricted discretion in deciding whether to grant or refuse citizenship to candidates who had satisfied the statutory criteria, and that judicial oversight extended only to the preparatory administrative phase conducted by the Naturalisation Board. A refusal by the Cabinet could therefore not be challenged as an administrative act. Petropavlovskis did not reapply for naturalisation after the conclusion of the domestic proceedings, and the dispute ultimately culminated in his application before the European Court of Human Rights (*hereinafter referred to as "ECtHR*). His case before the ECtHR concerned whether Latvia's refusal to grant him citizenship, following his public criticism of government education reforms, constituted a punitive measure in violation of his rights to freedom of expression and freedom of assembly under Articles 10 and 11 of the European Convention on Human Rights (*hereinafter referred to as "ECHR"*).[3]

1.2 Legal Arguments Advanced by the Applicant

The applicant maintained that, although States traditionally enjoy broad discretion in regulating nationality, this discretion is not unlimited where human rights norms are implicated. He submitted that developments in international law demonstrate a growing consensus that nationality laws and related practices must conform to general principles of international human rights law. Relying on Article 15 of the Universal Declaration of Human Rights and jurisprudence of the Inter-American Court of Human Rights, he contended that nationality cannot be treated as an exclusively domestic matter when its denial has punitive or discriminatory effects.[4]

He also stressed that, as a permanently resident non-citizen with no genuine ties to any other State, he should be considered a "privileged stateless person", making the protection of his rights particularly crucial. Drawing on the Nottebohm principle, he emphasised that his social, familial, and economic life was entirely rooted in Latvia.[5]

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[2] *Idem*. ¶¶8-19.
[3] *Idem*. ¶¶20-21.
[4] *Idem*. ¶48.
[5] *Idem*. ¶¶48-49.

While acknowledging that the ECHR does not guarantee a right to acquire any particular nationality, the applicant argued that an arbitrary denial of citizenship may nonetheless fall within the ambit of Articles 10 and 11 when it constitutes retaliation for political expression. He referred to the Court's recognition that arbitrary deprivation or denial of nationality can impact private life under Article 8, suggesting that similar reasoning should apply where the denial is used to suppress political participation or dissent.[6]

He contended that the causal link between his activism against the education reforms and the subsequent refusal of his naturalisation application demonstrated that the State acted with punitive intent, not with the aim of pursuing legitimate public interests. According to him, the authorities sought to restrict his ability to participate fully in political life, particularly given his intention to stand in local elections.[7]

The applicant asserted that the refusal had tangible adverse consequences for his civic and political rights. Because he could not reapply for citizenship for one year, he was excluded from participating as a candidate in the 2005 municipal elections. More broadly, the refusal entrenched his position as a non-citizen - a status that excludes individuals from voting and from standing for election at any level. Even if the refusal did not prevent him from speaking publicly, he argued that it produced a significant chilling effect, signalling that political criticism of the government could result in loss of civic opportunities and retaliation via the naturalisation process. He characterised this as a form of indirect censorship likely to discourage similarly situated individuals from engaging in public debate. [8]

The applicant rejected the Government's suggestion that he lacked loyalty to the Latvian State. He distinguished between loyalty to the State and loyalty to the government, arguing that the latter cannot be required in a democratic society. In his view, the State's reliance on his political opinions and participation in lawful demonstrations as evidence of disloyalty was incompatible with pluralism and the rights guaranteed under Articles 10 and 11.

He further argued that the Government's accusations - that he advocated violence or sought to destabilise the State - were unsubstantiated and based solely on subjective interpretations of media reports. He noted that he had faced no criminal charges or sanctions for any public statements or conduct, and that even the security police had provided a positive assessment of his suitability for naturalisation.[9]

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[6] *Idem*. ¶¶49-50.
[7] *Idem*. ¶¶50-51.
[8] *Idem*. ¶52.
[9] *Ibidem*.

Finally, the applicant relied on the Court's case-law emphasising that freedom of expression protects not only inoffensive speech but also ideas that "offend, shock or disturb". He invoked jurisprudence recognising that political criticism of government officials lies at the core of Article 10 protection and that peaceful assemblies may legitimately challenge governmental policies, even if they generate discomfort among opposing groups.[10]

1.3 Legal Arguments Advanced by the Government, and the subsequent ruling of the Court

The Government rejected the applicant's claim that the refusal of naturalisation interfered with his rights under Articles 10 and 11 ECHR. They argued that the decision had no impact on his ability to express political opinions, as evidenced by his continued participation in public demonstrations, political activities, and media engagements after the refusal.[11] Since he was never subjected to any sanction, prosecution, or penalty for his speech, the Government contended that there was no interference within the meaning of Articles 10 or 11.[12]

The Government further emphasised that naturalisation is not a right and that Latvia retains broad discretion in determining who may acquire citizenship. According to them, the Citizenship Law creates only a right to apply, not a right to be admitted. The Cabinet of Ministers exercises political discretion, particularly in assessing an applicant's loyalty to the Republic of Latvia, a prerequisite for naturalisation. They maintained that the applicant's actions and public statements indicated disloyalty, an intention to destabilise the State, and even openness to the use of force, as reflected in media reports.[13]

In the end, the Court aligned with the position of the Latvian Government and concluded that the refusal of naturalisation disclosed no violation of Articles 10 or 11, nor of any other provision of the ECHR applicable to the case.[14]

2. Constitutional loyalty or political conformity?

A central tension in *Petropavlovskis v. Latvia* concerns the meaning of "loyalty" within the naturalisation process and the degree to which the State may rely on political behaviour or

[10] *Idem*. ¶54.
[11] *Idem*. ¶56.
[12] *Idem*. ¶57,58.
[13] *Idem*. ¶59-64.
[14] *Idem*. ¶67-90.

opinions to assess whether an applicant meets the statutory criteria. While the Court accepted the Government's argument that Latvia may require loyalty to the State and its Constitution as a legitimate naturalisation criterion,[15] the applicant had forcefully argued that Latvia's assessment in his case confused constitutional loyalty with political conformity, thereby penalising him for lawful dissent. The following chapter examines when a State's interest in ensuring constitutional loyalty risks collapsing into an unlawful expectation of political conformity.

2.1 The Applicant's Argument: Loyalty to the State vs. Loyalty to the Government

The applicant in *Petropavlovskis v. Latvia* expressly invoked the Court's own jurisprudence, particularly *Tănase v. Moldova*,[16] to emphasise the fundamental distinction between loyalty to the State as a constitutional order and loyalty to the government of the day.[17] The Court admits that in *Tănase v. Moldova* it has addressed this issue of loyalty, in a slightly different factual context involving electoral rights, but the underlying rationale, though developed in another setting, is equally applicable to the naturalisation process in the present case. It affirmed that democratic States may legitimately require persons seeking citizenship to uphold the Constitution and basic principles of the State – therefore be loyal to the State.[18] The Court reiterated that "loyalty to the State" must not be conflated with "loyalty to the government in power".[19] In *Tănase v. Moldova*, loyalty to the State, the Court held, requires only respect for the constitutional framework and the pursuit of change through lawful means, not ideological alignment with those currently in power.[20]

In *Petropavlovskis v. Latvia* the Court ultimately treated loyalty as a neutral, non-punitive naturalisation criterion, unrelated to the applicant's political speech. However, it accepted the Government's assertion that the refusal was based on concerns about his actions rather than the content of his political expression. This reasoning is problematic for two principal reasons:

[15] *Idem*. ¶85.
[16] *Tănase v. Moldova*, Judgment, 2010 ECtHR, No. 7/08. ¶166-167.
[17] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶53.
[18] *Ibidem*.
[19] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶85.
[20] *Tănase v. Moldova*, Judgment, 2010 ECtHR, No. 7/08. ¶166-167.

(1) The Court sidestepped the applicant's core argument.

It did not examine whether the Cabinet had any evidence falling within the statutory limits of disloyalty namely, acts "by unconstitutional methods" against the independence or democratic structure of the State as required by Section 11 of the Latvian Citizenship Law.[21] No such actions had been established by any court judgment, as the statute demands.

(2) The Court treated loyalty as apolitical even though it was assessed on expressly political grounds.

The Government relied heavily on media reports, protest leadership, and criticism of government policy, activities explicitly protected under Articles 10 and 11.[22] By accepting these as indicators of insufficient loyalty, the Court permitted the concept of loyalty to drift toward political conformity, directly contradicting the principles of pluralism enshrined in *Tănase v. Moldova*.

Additionally, the applicant´s activism, directed at an education reform introduced by a particular ruling coalition, could not reasonably be construed as disloyalty to the Latvian State, as:

– he had never called for violence,
– media reports were merely journalists' interpretations,
– the security police had issued a positive assessment,
– he had never been criminally sanctioned.[23]

The statutory framework demonstrates that Latvia's loyalty requirement is constitutional in nature and explicitly limited, not an open-ended political test:

- Section 1 defines citizenship as an "enduring legal bond" between the individual and the State.[24]
- Section 11 permits denial of naturalisation only when the applicant has acted "by unconstitutional methods" against the independence or democratic structure of the State, and only when this has been confirmed by a court judgment.[25]

[21] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶28.
[22] *Idem*. ¶53.
[23] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶53.
[24] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶27.
[25] *Idem*. ¶28.

- Section 12 requires knowledge of the Constitution, the State language, and an oath of allegiance.[26]

Nothing in these provisions authorises refusal based on disagreement with government policy or participation in peaceful demonstrations. The applicant met every statutory requirement. The refusal rested solely on the Cabinet's political assessment of his activism. In effect, the authorities therefore broadened a constitutionally grounded loyalty requirement into a political litmus test, precisely the risk *Tănase v. Moldova* warns against.

2.2 Did the Court Apply Its Own Jurisprudence Consistently?

In *Tănase v. Moldova*, the Court held that political disagreement, does not amount to disloyalty to the State and cannot justify restricting political rights or excluding individuals from political participation. Yet in *Petropavlovskis v. Latvia*, the Court accepted a loyalty assessment resting entirely on:
– protests against government reform,
– public criticism of the ruling coalition,
– unverified media reports,
– statements taken out of context.[27]

No objective evidence demonstrated that the applicant acted against the constitutional foundations of the State. In our view, by framing loyalty as a neutral criterion and declining to scrutinise the Government's reasoning, the Court effectively lowered the evidentiary threshold that *Tănase v. Moldova* sought to uphold. Instead of requiring proof of unconstitutional conduct, it allowed political dissent to be treated as an indicator of disloyalty.

Accordingly, the Court did not apply its own jurisprudence consistently. The reasoning in *Petropavlovskis v. Latvia* blurs (rather than preserves) the distinction between constitutional loyalty and political conformity, placing the judgment in clear tension with the principles articulated in *Tănase v. Moldova*.

[26] *Idem*. ¶29.
[27] *Idem.* ¶53.

3. An Unaddressed Breach? Latvia's Compliance with the 1961 Convention on the Reduction of Statelessness

A further dimension entirely absent from the Court's reasoning concerns Latvia's obligations under the 1961 Convention on the Reduction of Statelessness (*hereinafter referred to as "1961 Convention")*.[28] As a State party,[29] Latvia must ensure that a person born on its territory who would otherwise be stateless acquires its nationality - either automatically or, at minimum, upon application and subject only to limited exceptions. The applicant, born in Riga and *de facto* stateless throughout most of his life, therefore raises the question whether Latvia's refusal of naturalisation was compatible with these obligations.

3.1 Applicability of the 1961 Convention and its Resulting Breach

Latvia acceded to the 1961 Convention in 1992,[30] making it fully applicable at the time of the applicant's naturalisation proceedings. The applicant was born in Latvia, had lived there his entire life, and was formally categorised as a "Latvian non-citizen."[31]

Although Latvian law treats non-citizens as a separate category, international bodies, including UNHCR, and leading scholarship regard them as stateless persons, because they are not considered nationals by any State, and do not enjoy the same rights as nationals.[32] Latvia's domestic exclusion of non-citizens from applying for formal "stateless person status" does not, therefore, in our view alter their international classification. Indeed, the largest stateless population in the EU consists of ethnic Russians in Latvia and Estonia who, despite extensive residence rights, lack citizenship and full political participation.[33]

Accordingly, the applicant must be treated as stateless for the purposes of the 1954 Convention Relating to the Status of Stateless Persons[34] and 1961 Convention.

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[28] UNGA, Convention on the Reduction of Statelessness, 1961, UN Treaty Series, Vol. 989, p. 175.
[29] UN. Convention on the Reduction of Statelessness. [online]. United Nations Treaty Collection. [cit. 2025-12-06]. Available on the internet: <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5>
[30] *Ibidem*.
[31] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶48.
[32] SWIDER, K.; DEN HEIJER, M. *Why Union Law Can and Should Protect Stateless Persons.* In: European Journal of Migration and Law, vol. 19, no. 2, 2017, pp. 101–135. Brill, p. 114.
[33] *Idem*. p. 116.
[34] UNGA, Convention Relating to the Status of Stateless Persons, 1954, UN Treaty Series, Vol. 360, p. 117.

Article 1(1) of the 1961 Convention obliges a Contracting State to grant its nationality to any person born on its territory who would otherwise be stateless. This obligation may be fulfilled in two ways:

(1) Automatically at birth (Art. 1(1)(a)), or

(2) Upon application, in which case "no such application may be rejected" unless one of the limited exceptions in Article 1(2) applies (Art. 1(1)(b)).

Latvia did not confer nationality on the applicant at birth. Accordingly, Article 1(1)(b) applied. Under this provision, Latvia was required to grant nationality upon application unless a specific exception in Article 1(2) could be invoked. None of the exceptions in Article 1(2) were relevant to the applicant's situation:

(b) Habitual residence requirement

A State may require up to five years' habitual residence immediately preceding the application, or ten years total. The applicant far exceeded this threshold: he was born in Latvia, had resided there continuously, and thus satisfied even the strictest permissible residence condition.[35]

(c) Convictions relating to national security or serious crime

A State may refuse naturalisation if the applicant has been convicted of an offence against national security or sentenced to imprisonment for five years or more. The applicant had no criminal convictions, no security-related findings, and no record of unlawful activity.

Thus, none of the exceptions in Article 1(2) provided a lawful basis for rejecting his application. The 1961 Convention expressly prohibits rejection of applications that do not fall within these exceptions.

Because the applicant met all conditions in Article 1(1)(b) and none of the Article 1(2) grounds applied, Latvia was under an international obligation to grant him its nationality. Importantly, the duty to avoid statelessness is "*a fundamental principle of international law*"[36] and is recognized as a customary international law obligation.[37] States must avoid statelessness

[35] *Petropavlovskis v. Latvia*, Judgment, 2015 ECtHR, No. 44230/06. ¶48.
[36] Human Rights Council. Human rights and arbitrary deprivation of nationality: Report of the Secretary-General, A/HRC/25/28, 19 December 2013, ¶3.
[37] Council of Europe, Explanatory Report to the European Convention on Nationality, 6.XI.1997, ¶33.

through all measures,[38] as reaffirmed by the ECtHR[39] and African Court on Human and People's Rights [40] jurisprudence.

The refusal of naturalisation therefore appears incompatible with Article 1 of the 1961 Convention and the customary duty to avoid statelessness.

Conclusion

The analysis presented in this article demonstrates *that Petropavlovskis v. Latvia* exposes a deeper structural tension within European human rights law: the unresolved relationship between State discretion in nationality matters and the international legal safeguards against political retaliation and statelessness. Although the Court framed the refusal of naturalisation as a neutral, non-punitive exercise of sovereign competence, the facts of the case reveal a loyalty assessment grounded in political dissent rather than demonstrable threats to the constitutional order. This approach stands in tension with the Court's own jurisprudence, particularly its insistence in *Tănase v. Moldova* that political disagreement (however uncomfortable for a government) cannot be equated with disloyalty to the State.

Moreover, the Court's silence on the 1961 Convention on the Reduction of Statelessness obscured a potentially significant breach. Latvia's refusal of nationality to a stateless person born on its territory falls outside the permissible grounds for rejection under Article 1(2), making the denial difficult to reconcile with its treaty obligations.

Ultimately, the judgment represents a missed opportunity for the Court to clarify States' human rights obligations in naturalisation procedures, particularly where political expression and statelessness intersect. As long as loyalty assessments are permitted to blur the line between constitutional commitment and political conformity, individuals who engage in democratic participation may face the risk of punitive exclusion from citizenship. In this sense, *Petropavlovskis v. Latvia* is not merely an individual case but a broader warning: without a principled and consistent application of international standards, the promise of protecting stateless persons from arbitrary exclusion remains unfulfilled.

[38] UN Secretary-General, Guidance Note of the Secretary General: The United Nations and Statelessness (2018), 4.
[39] *Ghoumid and Others v. France*, Judgment, 2020 ECtHR, No. 52285/16.
[40] *Anudo v. Tanzania*, Judgement, 2015 ACtHPR, No. 012/2015, ¶78.

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