FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN LATVIA IN 2003

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Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

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The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (The Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxembourg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by Olivier De Schutter, with the assistance of Valérie Verbruggen.
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PRELIMINARY REMARKS

In the Preliminary Report on the implementation of some fundamental rights in Latvia in 2003 submitted to the Network on 15 September 2003 a few general issues concerning the Latvian legal system and the overall situation were presented. It is considered necessary that current Report restates these issues, especially since the Report will receive a wide distribution.

The relationship between national and international human rights law[1]

Following the restoration of Latvia's independence in 1990-91 and as a result of the adoption of the State continuity doctrine,[2] Latvia re-effected the 1921 *Satversme* (the Constitution) which contained very limited references to international law in general and human rights in particular. At the same time, the emerging new legal thinking argued that the principle of democracy, as contained in Article 1 of the *Satversme*,[3] together with the legal principles on the basis of which the independence of the country was restored, including the respect for international human rights standards, provided that international human rights norms and principles, when ratified by the Parliament, become national law and be applied directly.[4] Moreover, in situations of conflict of norms the international norms prevail. No other parliamentary act transforming international norms into domestic legal system is required. The same or very similar conclusions were reached through another line of arguments. The 4 May 1990 *Declaration of the Supreme Soviet of the Latvian SSR on the Renewal of the Independence of the Republic of Latvia* as well as the *Declaration on the Accession of the Republic of Latvia to International Instruments relating to Human Rights* had already stated the primary importance of human rights rules and principles in Latvia. The question that remained concerned the determination of the exact hierarchical status of each human rights provision and thus its legal power with respect to relevant domestic provisions in each specific case.[5]

Any possible conflict of opinions concerning the place of international human rights law in Latvian domestic legal system was finally settled when the *Satversme* was amended with a Bill of Rights in 1998.[6] As showed by the practice of the Constitutional Court, the application of these constitutional provisions has to be in line with the international human rights norms binding on Latvia.[7] Even if in the domestic hierarchy of legal norms, the *Satversme* clearly has the higher legal rank followed by international treaties, in legal practice the tradition is emerging that attempts to ensure the compatibility of the application of *the Satversme* with

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[1] The Report clarifies specifically the issue of the legal status of international human rights rules and principles in Latvian legal system. Some of the points raised may equally apply to international law at large, but this broader question is beyond the scope of the Report.

[2] Volume 1of the *Baltic Yearbook of International Law* is devoted to the issue of the legal status of the Baltic States in international law. See I. Ziemele (ed.), *Baltic Yearbook of International Law*, Kluwer Law International, volume 1, 2001.

[3] Article 1. Latvia is an independent democratic republic.

[4] See E. Levits, "Interpretation of Legal Norms and the Notion of "Democracy" in Article 1 of Satversme", *Latvian Human Rights Quarterly*, no. 1, 1997, pp. 55 – 78.

[5] See I. Ziemele, 'Incorporation and Implementation of Human Rights in Latvia' in M. Scheinin (ed.), *International Human Rights Norms in the Nordic and Baltic Countries*, Martinus Nijhoff Publishers, 1996, pp. 73 – 110.

[6] Published in *Latvijas Vēstnesis* [Official Gazette], no. 308/312, 23.10.1998. Detailed analyses of the work on Chapter 8 of the *Satversme* and its substance are to be found in *Cilvēktiesību Žurnāls* [Latvian Human Rights Quarterly], no. 9 – 12, 1999 (available in English in *Latvian Human Rights Quarterly*, no. 7-10, 1999).

[7] E.g. Satversmes tiesas spriedums Lietā nr. 2001-17-1016, 20.07.2002, available at http://www.satv.tiesa.gov.lv. The Court points out that in order to establish the scope and content of Article 92 in the Constitution on the right to a fair trial it has to examine the scope of this right in the *European Convention on Human Rights*.

international human rights norms and principles binding on Latvia.[8] The position of the government at the moment is best identified by its views presented to the UN treaty-monitoring bodies. In the latest report to the UN Human Rights Committee, it is explained that:

> "The legal system of Latvia follows the doctrine of monism: acts of international law if they have passed under a respective procedure, are recognised to be elements of the national system of law. Besides, norms and principles of international law have priority over the norms of national law. It was already stipulated in the Declaration of 4 May 1990 "On Restoration of the Independence of the Republic of Latvia" where Article 1 prescribed the dominance of fundamental principles of international law over national laws. Under Article 13 of the Law of 13 January 1994 "On International Agreements of the Republic of Latvia", provisions of an international agreement apply if the international agreement that has been approved by the *Saeima* (Parliament) prescribes provisions different from those prescribed by legislative acts of Latvia".[9]

It should be noted that the Constitutional Court goes further on the question of the relationship of international human rights norms and the *Satversme*.

With the exception of the Council of Europe's *Framework Convention for the Protection of National Minorities*, Latvia has acceded to or ratified the absolute majority of human rights treaties.[10] Among individual complaint's mechanisms in addition to the European Court of Human Rights, Latvia has also accepted the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Latvia has not made a reservation preventing individuals from applying to the Human Rights Committee (HRC) after they have been unsuccessfully in lodging a complaint with the European Court of Human Rights (EctHR).

The theoretical clarification of these issues in Latvian constitutional law as well as the emergence of an important practice of the Latvian Constitutional Court is not, however, accompanied by equally swift changes in the practice of courts of general jurisdiction and, even less so, in public administration and the legislature.[11]

Main human rights concerns

Latvia, since the restoration of its independence, along with Estonia, has caught the attention of international organisations on two main issues: citizenship and minority rights.[12] Several

[8] It remains uncertain whether this approach extends to international custom and general principles. It has been argued by the Latvian legal thought that international custom and general principles are to be applied in the same way as international treaties in the Latvian domestic legal system. The norms having a *jus cogens* character cannot however be overridden even by the Constitution. See further I. Ziemele, "Application of International Law in the Baltic States", *German Yearbook of International Law*, volume 40, 1997, pp. 243 – 279, at 254 – 266. Over time, the legislator seems to have adopted this principle. For example, *Immigration Law*, which entered into force on 1 May 2003, explains that 'norms of international law' refers to international treaties, international custom and general principles (Article 1).

[9] Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Second period report. Latvia*, CCPR/C/LVA/2002/2, 29 November 2002, p. 3, para 5.

[10] E.g. 4 May 1990 *Declaration on the Accession of the Republic of Latvia to International Instruments relating to Human Rights*. These included the *Universal Declaration of Human Rights*, the *Helsinki Final Act*, etc. On the legal consequences of this Declaration, see I. Ziemele, 'Incorporation and Implementation of Human Rights in Latvia' in M. Scheinin (ed.), *International Human Rights Norms in the Nordic and Baltic Countries*, Martinus Nijhoff Publishers, 1996, pp. 73 – 110, at 86 – 87.

[11] During the Soviet occupation, there were no laws or other possibilities to challenge the decisions of civil servants in courts. Latvia adopted its first *Administrative Procedure Law* in 2001. It was meant to come into effect in 2003 but it has been now postponed until February 2004. The tradition of challenging the actions of civil service is only emerging.

[12] The following reports of fact-finding missions can be listed as an example: J. De Meyer and Ch. Rozakis, *Report on Human Rights in the Republic of Latvia*, PACE Doc. AS/Ad hoc.-Bur-EE (43) 4, 20 January 1992, reproduced in *Human Rights Law Journal*, volume 13, 1992, pp. 244-249; A. Eide, *Human Rights Aspects of the Citizenship*

questions remain in this context, such as the education and participation of minorities, the spelling of their personal names. The UN treaty-monitoring bodies have identified that the presence of numerous non-citizens in the country may violate their human rights such as equal rights in Article 26 of the ICCPR or the right to a legal status that grants them protection.[13] The calls to speed up the naturalization process seem to become stronger.

One should however first of all mention the corruption allegedly existing in different forms and at different levels in State institutions which has impeded the implementation of human rights on a wider scale.[14] Mismanagement of privatisation processes and a week

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Issues in Estonia and Latvia. Progress report conducted upon the request of the European Bank for Reconstruction and Development, 11 March 1992.O. Espersen, *Report on the application by Latvia for membership of the Council of Europe*, PACE Doc. 7169, 6 October 1994; I. Fall, *Allegations of Discriminatory Practices Against Minorities in Latvia*. Report on a Fact-Finding Mission to Latvia, 27 – 30 October 1992; T. Davis and G. Jansson, *Report on honouring of obligations and commitments by Latvia*, PACE Doc. 8924, 10 January 2001.

[13] Some of these concerns were expressed in deliberations of the fourth and fifth periodic reports of Latvia to the Committee on the Elimination of Racial Discrimination in August 2003. See UN Press Release, CERD, 63rd session, 22.08.2003; UN Press Release, CERD, 63rd session, 21.08.2003 (mentioning the language legislation and slow naturalisation process), available at http://www.unhchr.ch/huricane/huricane.nsf/newsroom For the views of the Human Rights Committee, see *Concluding Observations of the Human Rights Committee: Latvia*, CCPR/CO/79/LVA, November 2003, paras. 16 – 18. For the view of the Committee against Torture, see *Conclusions and recommendations of the Committee against Torture: Latvia*, CAT/C/CR/31/3, 20 November 2003, 6 (i).

[14] According to Transparency International, Latvia ranks as 52nd among 102 countries that were assessed in 2002 with the score of 3.7 out of 10. It is far below Estonia and Lithuania. Transparency International Corruption Perceptions Index 2002, available at http://www.transparency.org. In 2003, some developments in the fight against corruption seem to have taken place. There are reports on more cases initiated by the Office for the Prevention of Corruption. Several studies have been carried out about the reasons for corruption in Latvia. They note that it is a problem of the system that requires consolidated actions in relation to all institutions essential to ensure democracy and rule of law. E.g. *Valstiskā godaprāta sistēmas izvērtējums Latvijā (Korupcijas novēršanas kritēriju analīze)* [Assessment of the national integrity system in Latvia (Analysis of the criteria for the elimination of corruption], 2003, available in Latvia at http://www.politika.lv. Commission of the European Communities, SEC (2001) 1749

implementation of budgetary and tax laws have created a segregated society with profound problems in important areas of basic State services, such as health and education services or children and elderly care.[15] There are also reports from NGOs promoting women's rights that the changing economic, political and legal framework since the restoration of independence has placed women among vulnerable groups in the society. It has been an important feature over the last years that international organisations together with local NGOs have taken the tasks of considerable importance for building a civil society and strengthening democratic institutions that normally would be largely sponsored by a government. The Report will suggest that more positive actions are required from the State so as to ensure that these individuals and groups can enjoy their minimum human rights.

(*2001 Regular Report on Latvia's Progress Towards Accession*) Brussels, 13.11.2001, pp. 19 - 20 ("While it is difficult to quantify the level of corruption in any country, the perceived level of corruption in Latvia continues to be relatively high."). The Commission Report 2002 notes the efforts undertaken by Latvia but continues to express its concerns on the problem.

[15] According to the Working Life Barometer, the proportion of hidden income in Latvia is double that of hidden income in Estonia and Lithuania. Cited in UNDP Latvia, *Human Development Report 2002/2003: Human Security*, Riga: 2003, p. 37. The Report concludes that considering the minimum required subsistence income in 2002 was 88.70 LVL per person per month, 83 % of the Latvian population lived below the subsistence level. Ibid., p. 36.

CHAPTER I: DIGNITY

Article 1. Human dignity

National legislation, regulation and case law

There may be a first civil case under way concerning the mistake of doctors while assisting a woman in giving birth to a child that has resulted in a child being handicapped for life. In accordance with Article 36 of the *Law on Medical Treatment* the medical personnel bears the responsibility for their professional decisions and the consequences thereof.[16] The problem is that the provision is quite imprecise. The case law is very scarce in civil law or criminal law, even though Chapter XIII in the *Criminal Code* fairly comprehensively determines criminal conduct in the field of medical treatment.

The women concerned has claimed high damages since she will have to take care of her child, including the use of an expensive medicine, for the rest of their lives. The doctors have refused all allegations. It remains to be seen what exactly she claims and how the case progresses.

Practice of national authorities

In accordance with the information provided by the National Human Rights Office (NHRO), the complaints about violations of human dignity, as understood by the applicants, continue to be numerous. Two main situations emerge in which individuals consider that their human dignity is violated by State authorities. First of all, the complaints concern the difficulties with housing. In 2003, the NHRO received numerous complaints about the violations of the right to housing. There is lack of social housing, but many people are served the eviction orders due to lack of payments. There is also a lack of housing for convicts who are released from prisons or mentally ill persons who may be detained in hospitals briefly, but that is sufficient for loosing their home.[17] Secondly, the complaints about the unlawful behaviour of the police continue.[18]

The NHRO has received a complaint about an unauthorised removal of organs from a body in the hospital where the young person died.[19] This was a violation of the law in force and raises the issue of whether the control mechanisms are sufficient in this area. The NHRO prepared an opinion about the *Law on the Protection of the Humane Body and Use of Human Organs and Tissue in Medicine* with human rights.

The NHRO has been an important mechanism dealing with complaints about problems that individuals saw as undermining their human dignity while, for example, as a matter of law these individuals may not have stood a chance. The Office's functions of conciliation and negotiations with relevant State authorities seem to be of particular relevance in cases possibly involving issues of human dignity.

Reasons for concern

More specifically the existing legislative framework and practice with respect to the above reported and any number of other issues that may be seen as touching upon human dignity

[16] *Ārstniecības likums*, 12. 06. 1997., *Latvijas Vēstnesis*, No. 167, 01.07.1997.
[17] Last year, the increase in homeless people dying in Latvia was about 150 per cent. The State does not have the date on how many homeless people are there in Latvia. Report on the News Programme of the Latvian Television, 10.01.2004.
[18] Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 2. ceturksnī*, at 5 – 6.
[19] Ibid.

(trafficking in human beings, rights of women, rights of non-citizens, etc.) will be further addressed below under applicable rights. It can be noted here that there are considerable problems in the field of housing, especially as concerns vulnerable social groups. The legislative framework is not strong enough to prevent abuses in this respect. It is the opinion of the author, the primary problem in the framework of the right to human dignity lies outside the legislative framework. It has to do with the attitude of those entrusted with different State powers and functions towards the others. It takes time for the culture of decision-making that respects human dignity to establish itself.

Article 2. Right to life

International case law and concluding observation of international organs

The HRC has commended the adoption of the new *Asylum Law*, but has expressed the concern that the time limits for the appeal of the decisions within the asylum procedure are too short. They may result in violation of the right to life where a person is sent back to the country where it faces a death penalty.[20]

The HRC expressed concerns about the problem of domestic violence. The State party did not submit any detailed information as concerns the latter issue.[21]

National legislation, regulation and case law

The *Satversme* stipulates that "the right of everyone to life shall be protected by law" (Article 93). The death penalty in times of peace was abolished in Latvia in 1999 after its ratification of Protocol 6 to the ECHR.

Domestic violence:

There are no special provisions in the *Criminal Law* or the *Criminal Procedure Law* addressing the problem of domestic violence. General provisions of these laws concerning physical abuse of persons would apply, including possibly some victim protection programmes. At the same time, the *Criminal Law* does not provide for provisions dealing with psychological domestic violence.

Practice of national authorities

Use of arms:

The use of arms is regulated in the *Law on Police* (Article 14).[22] In accordance with the information of the State police, there were 32 instances of the use of arms during the first nine months of 2003. In 15 cases, the arm was used when the police was trying to stop cars which did not follow the sign of the police officer. In 6 instances that was linked to the arrest of offenders and in 11 cases it was used against dogs or wild animals. The State police registers all cases and investigates them as to the reasons for the use of the arms.[23]

[20] CCPR/CO/79/LVA, November 2003, point 9.
[21] CCPR/CO/79/LVA, November 2003, point 13.
[22] *Likums par policiju* [Law on Police], published in *Ziņotājs* [Reporter], no 31, 15.08.1991. (Last amended on 13 June 2003).
[23] Reply of the State police to the author on 24.12.2003.

Domestic violence:

In accordance with some statistics, every year some 35 women are killed as a result of domestic violence. 120 women are heavily beaten. These are instances that have been registered with the police. Last year about 530 women sought refuge in the crises center 'Skalbes'.[24] There have not been concerted efforts to deal with domestic violence in Latvia at a governmental level. In Riga with 800.000 inhabitants there is not a single State supported 24-hour crises centre for women with the necessary medical and social workers.[25] The NHRO has been receiving some complaints from victims of domestic violence, but they are not numerous. Women prefer to apply to crises centres, social workers or the police. Most of the time, however, they remain silent. There are several problems in practice with such complaints. First of all, the police most of the time considers that this is a family matter unless the physical injuries reach medium or serious size. The police can only arrest the assailant for 3 h up to 3 days. After that he returns home. Most of the time the police would not do that.

Abortion:

In November, some politicians, members of the Parliament, revived a debate concerning the need to prohibit abortion in Latvia in view of, *inter alia*, a rapidly declining size of the population. The *Law on Reproductive Health* regulates the right of a woman to have an abortion.[26] The proposals of these politicians received a lot of criticism from various NGOs, doctors, sociologists and lawyers. This debate did not clarify, however, whether there might be an emerging opinion among some that there is a right to life for foetus beyond what the law provides today.

Reasons for concern

There are gaps in the legislative framework concerning lawful use of arms by the police. In practice there is no guarantee that the resort to force is carefully considered and well planned. Much more training is required for the police and prosecutors on the proportionality and absolute necessity of use of arms.

The problem of the decline in the size of the population is addressed from the wrong end. The current debate showed among other things that the understanding of equality between men and women in practice might still be problematic. Solutions to the problem of low birth rates lie with the development of appropriate social, economic and tax policies that are aimed at dealing with poverty and various uncertainties that the population has encountered over the last decade which has affected the demographic situation. Vulnerability of women in Latvia is further confirmed by the lack of appropriate legislative, administrative, financial, etc., mechanisms to fight domestic violence. The development of a special criminal procedure could be considered to deal with domestic violence. Criminal law also needs to be amended. Most importantly, there is a need to train law enforcement officials dealing with such cases.

Article 3. Right to the integrity of the person

International case law and concluding observation of international organs

Latvia has signed the Council of Europe *Convention for the Protection of Human Rights and Dignity of the Human Being* and the *Protocol to the Convention on Human Rights and*

[24] I. Paparde, K. Langenfelde, «Vardarbība pret sievieti nav tikai ģimenes lieta.» *Neatkarīgā Rīta Avīze*, 28. 11. 2003.
[25] Ibid.
[26] *Seksuālās un reproduktīvās veselības likums*, 31.01.2002., *Latvijas Vēstnesis*, No. 27., 19.02.2002.

Biomedicine on the Prohibition of Cloning Human Beings. Both instruments have been awaiting their ratification in the Parliament since 2002.

National legislation, regulation and case law

The *Law on Human Genome Research* was adopted in 2002. It will enter into force on 1 January 2004. It provides for the prohibition of discrimination on the grounds of person's DNA structure or on the basis of the person being or not being a gene donor. It also aims at protecting the data collected in the context of genome research.[27] The Central Committee on Medical Ethics is the body entrusted, *inter alia*, to oversee the developments in this area and to receive complaints from individuals. On the latter, the Committee provides its opinions. There is also a complaints procedure. The first instance for complaints from individuals is the State Data Inspection (Datu valsts inspekcija) followed by a court procedure. In accordance with the *Law on Reproductive Health*, cloning is prohibited in Latvia (Article 16).

The *Law on Medical Treatment* and *Criminal Law* regulate several aspects of medical practice (see above under Article 1). The *Criminal Law* imposes criminal responsibility for the illegal removal of tissue or organs from a human body (Article 139). In accordance with the *Law on Medical Treatment*, the Committee of Medical Ethics is entrusted to deal with questions of ethics in the light of fast-developing medical science and research.[28]

The Bureau for the Protection of the Rights of Patients (Pacientu tiesību aizsardzības birojs), an NGO, has prepared a draft law *On the Protection of the Rights of Patients* which was presented for public debate in October 2003.[29] In the view of the Bureau, the legal protection of the rights of patients continued to be extremely insufficient especially in the circumstances of the quite poor healthcare system. Patients were left entirely at the discretion of the doctors. The situation is not helped by the fact that until today the mandatory insurance within the health system or medical risk insurance does not exist.[30]

The draft law deals with the key issues with respect to the rights of patients: the obligation to provide medical treatment to everyone without any discrimination within the availability of the resources, the right to privacy and the protection of personal data, the right to a dignified treatment until the very end of a person's life, responsibility and liability of medical personnel and rights of children. The draft clearly goes into a right direction. Some details in provisions could still be further discussed. At this stage the most important thing is to submit the draft law to relevant State authorities so that its adoption process would not be delayed.

Practice of national authorities

In 2003, media reported that the security police is investigating allegations of illegal sales of human bones

The NHRO has reported a case involving the patient who has refused the blood transfusion because she belonged to Jehovah Witnesses. The doctor had to resort to rather unusual method inviting the media and through the pressure of such an attention the patient submitted to the advised treatment. Subsequently, the patient complained about the violation of her right to privacy. Currently, there are negotiations between the NHRO and the Association of Doctors, a professional organisation entrusted with some control functions over medical personnel. The Association has assessed the situation and has to come to the conclusion that

[27] *Cilvēka genoma izpētes likums*, 13.06.2002., *Latvijas Vēstnesis*, No. 99, 03.07.2002. See also: P. Zilgalvis, «The Regulation of Research on the new Biomedical Technologies: Standard Setting in Europe and its Baltic Region.» *Baltic Yearbook of International Law*, Volume 2, 2002, 21 – 49, at 25 – 26.
[28] *Supra*, note 16.
[29] The draft law is available at http://www.politika.lv/index.php?id=107304&lang=lv
[30] S. Dauškane, «Pacientu tiesības - ārā no bedres!», ibid.

the doctor did not violate the Code of Conduct.[31] In this situation the legal issues had not been dealt with. It remains unclear whether the life of the patient was dependent upon the chosen method of medical treatment.

Reasons for concern

There are several reasons for concern. First of all, the protection of the rights of patients is closely linked to the quality of the health system. Despite constant attempts to reform the system, Latvia has not succeeded to do that (see further under Article 35). There are conflicting opinions about the remuneration principles that should be at the basis of the system. This affects any attempts to develop a comprehensive system for responsibility of medical personnel. The latter relates to claims for damages in civil law that is not well developed. The main venue available is to have a prosecution investigate the medical practice within the criminal law and in this context an individual concerned may claim the status of a victim which entitles the person to claim damages. As for the developments in the field of humane genome research, the authorities have to urgently start training the judges on these issues (see further under Article 47).

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

International case law and concluding observation of international organs

The Human Rights Committee (HRC) and the Committee against Torture (CAT) considered reports of Latvia in 2003. The following issues were listed as reasons for concern in relation to the prohibition of torture and inhuman or degrading treatment or punishment: (1) allegations of ill-treatment of persons by the police, (2) conditions in detention places, especially the police stations and (3) the overcrowding of prisons and other places of detention.[32] The last visit of the Council of Europe's CPT took place between 25 September and 4 October 2002 and the report is not yet available.

The HRC has expressed its concern about continuous "allegations of ill-treatment of persons by police officers, as well as the lack of statistical data on the number, details and outcome of cases of ill-treatment by police officers."[33] The same was noted by the CAT.[34] The HRC noted that as of 2003 such statistics is being systematised. The HRC also was of the opinion that there is no independent oversight mechanism to investigate complaints of criminal conduct against members of the police.[35] More specifically, the CAT considered that the Internal Security Office of the State Police lacked independence and impartiality when investigating complaints against the police.[36]

National legislation, regulation and case law

Ill-treatment as crime in domestic law:

The Latvian *Criminal Law* entered into force on 1 April 1999 replacing the previous *Criminal Code* that, even if amended substantially, dated back to the Soviet era. The *Criminal Law*

[31] Information provided to the author by the NHRO on 10.12.2003.
[32] Latvia is taking over the English system of progressive serving of sentences which is considered helpful in addressing this problem. According to Latvian law, each convict should have 2.5 square meters of space, while each female convict – 3 square meters. CCPR/C/LVA/2002/2, para. 167.
[33] CCPR/CO/79/LVA, November 2003, point 7.
[34] CAT/C/CR/31/3, 20 November 2003, point 6 (a).
[35] CCPR/CO/79/LVA, point 8.
[36] CAT/C/CR/31/3, point 6 (b).

does not contain a single article prohibiting torture and inhumane or degrading treatment.[37] Instead one may refer to several articles. Article 78 defines the intentional violation of individual economic, social or political rights by State officials as a crime bearing criminal responsibility. Chapter XIII contains a set of provisions that determine that causing harm to the health of a person intentionally may give rise to criminal responsibility. Articles 317 and 318 provide for criminal responsibility of State officials, including the police, in case they abuse their powers intentionally.

The *Law on Police* is more specific in providing that the police may not commit or support acts of torture or inhumane or degrading treatment. The law envisages disciplinary, administrative or criminal responsibility in cases where the police has violated the law.[38] Moreover, it is prohibited to admit to the police detention isolator persons with visible bodily injuries without a medical examination carried out by a medical practitioner of the isolator. There is a duty to inquire about the health of individuals and record it in the admission report. Despite these rules, reports about the police abuse continue.[39]

Available complaint avenues:

According to the 1994 *Law on Prosecutors' Office*, the prosecutor is the main law enforcement official entrusted with overseeing the detention places and the behaviour of the police and the prison administration.[40] For obvious historical reasons, the tradition to challenge ill-treatment directly in courts has not existed in Latvia. Individuals were only allowed to complain about their problems to the prosecutor. The *Criminal Procedure Law*, as amended in the 1990s, opens up the possibility for individuals to apply to courts directly. In such a case, the court either investigates the case itself or refers it to the prosecution. In case the court declares the application inadmissible, the individual or the prosecutor may appeal such a decision. At the same time, the law seems to prevent the individual from appealing the decision of the Prosecutor-General dismissing any charges and preventing the case from entering the courts.[41]

In accordance with Article 101, everyone who has suffered pecuniary damages linked to the crime under investigation may bring a civil claim of damages in the criminal case concerned. In case, the suspect is acquitted or a victim failed to bring a claim within criminal prosecution, a victim may still bring a claim in civil proceedings. Article 1635 of the *Civil Law* does not provide for the possibility to claim moral damages related to criminal cases or, at least, Latvian courts have differed in their interpretation of this article. An application is currently pending in the European Court of Human Rights which may clarify the issue of an effective remedy.[42] These remedies apply to victims in criminal cases or, when a civil remedy is used,

[37] In 1993, the Supreme Court using its competence at the time to summarise and explain the exiting court practice, provided the explanation to the term 'torture'. These explanations then become binding on all courts. This was the legal institution preserved from the Soviet times which has recently been abolished. According to the explanation, "torment must be understood to mean actions that, committed by the guilty person, being aware of it, cause particularly strong pain to another person, physical or moral suffering (for example, leaving a person without food, drink, warmth for extended periods of time as well as placing or leaving a person in other conditions that are hazardous for health), while torture must be understood to mean actions that, committed by the guilty person, being fully aware of it, are characterised by multiple or prolonged acts, causing particular pain or suffering to victims …". Cited in the *Initial Report of Latvia to the Committee against Torture*, CAT/C/21/Add.4, 30 August 2002, p. 4, para 6.

[38] *Likums par policiju*, published in *Ziņotājs* [Reporter], no 31, 15.08.1991. (Last amended on 13 June 2003).

[39] Recent cases in Liepāja and Cēsis reported by the NHRO. Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 1. ceturksnī*, available at http://www.vcb.lv

[40] Article 2. See *Prokuratūras likums*, 19.05.1994, published in *Vēstnesis* [*Official Gazette*], No. 65, 02.07.1994.

[41] See Articles 107, 112, 113, 114, 115, Chapter 38. See *Latvijas kriminālprocesa kodekss* [Latvian Criminal Procedure Code], as amended by 1 November 2002, Rīga: TNA, 2002.

[42] See Décision sur la recevabilité de la requête no. 58447/00 présentée par Nadežda Zavoloka contre la Lettonie, 29.04.2003.

to anyone whose rights have been violated.[43] A civil remedy is an option to victims of ill-treatment in criminal proceedings. The question remains whether it is adequate.[44] The *Law on Compensation of Damages incurred as a result of unlawful or unsubstantiated behaviour of the police, prosecution or the judiciary* does not deal with ill-treatment damages specifically. It lists three legal bases for the right to compensation. These are: (1) acquittal by the court irrespective of the reasons, (2) closing of criminal investigation for reasons of rehabilitation of the accused and (3) unlawfulness of the arrest.[45]

In accordance with Article 2 of the *Law on National Human Rights Office*, the Office has the mandate to receive individual complaints about human rights violations, to initiate fact-finding on the basis of the complaints or on its own initiative.[46]

Statistics:

According to the National Human Rights Office, complaints from detention places concerning ill-treatment are numerous. During the first six months of 2003, 74 written complaints were received from, and an advise given in 113 cases to, prisoners, detainees, arrested individuals as well as persons in closed medical or educational establishments. There was also a complaint from the Illegal Immigrant Temporary Accommodation Institution 'Olaine' which concerned the minimum rights of the persons concerned.[47]

According to the Office of the Prosecutor General, in the first half of 2003 the office received 294 complaints about violations of the rights of detainees. In 5 cases the prosecutors found violations of domestic laws, although no criminal case was initiated.[48]

Practice of national authorities

Conditions in detention:

The NHRO has identified two main categories of complaints that it receives from detainees or prisoners. The first concerns the conditions in prisons and the restrictions imposed by prison administrations on the delivery of parcels by relatives containing food. The Human Rights Office is engaged in the discussion and monitoring of the situation together with the State Administration overseeing prisons. The second problem concerns the police which often resorts to the abuse of their powers. Generally, when the HRO points out the problem to the higher police officers the disciplinary reprimand follows. While there is a question whether the disciplinary punishment in ill-treatment cases is adequate, there is also a more general problem concerning the mindset of the policemen which still requires a change. In this respect, it would be advisable to improve the human rights training of the police with a

[43] Article 1635. *Civillikums* [Civil Law], 28.01.1937.
[44] It appears that the European Court of Human Rights would consider that in relation to Articles 2 and 3, a civil remedy is not sufficient in cases of ill-treatment. For a comment on a civil remedy, see Eur. Ct. H.R, *McKerr v United Kingdom* judgment, Rep. 2001-III, para. 156.
[45] Article 2. *Likums par izziņas, prokuratūras vai tiesas nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu* [Law on Compensation of Damages incurred as a result of unlawful or unsubstantiated behaviour of the police, prosecution or the judiciary], 01.09.1998, published in *Vēstnesis* [Official Gazette], no. 176/178, 16.06.1998.
[46] The Office was established in 1996 and was one of the few tangible results of the adoption by Latvia of the National Human Rights Programme and Plan of Action in 1995. See *Likums par Valsts cilvēktiesību biroju* [Law on National Human Rights Office], 05.12.1996, published in *Vēstnesis* [Official Gazette], No. 221, 17.12.1996.
[47] Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 1. ceturksnī*, available at http://www.vcb.lv. Further see report under Article 6.
[48] Reply of the Office of Prosecutor-General to the author of the Report, No. 1/1-9-443-03, 18 September 2003, point 2.

special focus on issues of ill-treatment.[49] The transfer of prisons under the surveillance of trained professional guards as of November 2003 may bring improvements concerning problems of ill-treatment in prisons, but the situation will have to be monitored.

The NHRO in its visits to the short-term police detention isolators, especially outside the capital, has noted attitudes that are degrading for the arrested and detained persons and that could be remedied with no special financial implications.[50]

The 2002 Report of the Prison Administration of the Ministry of Justice reports on considerable investments in the reconstruction of the old and run-down buildings. This work continues in 2003.[51]

Reasons for concern

The size of cells in Latvia falls below international standards. It has to be admitted that problems of detention conditions are not very well publicised, although given the attention of the NHRO and the CPT as well as the Soros Foundation – Latvia prison project the improvements have taken place.[52] More debates on this problem would however be helpful, also in raising general public awareness on issues of ill-treatment and conditions in detention.

The legislation and the practice in the field of the prohibition of torture and inhumane or degrading treatment or punishment need to be revisited once again. Despite considerable improvements in criminal law, criminal procedure law and other relevant laws, more clarity and streamlining is necessary to ensure that complaints about ill-treatment in different detention and arrest places are effectively investigated with the guaranteed access to courts. There has to be a single article in the *Criminal Law* prohibiting torture and giving the courts the possibility to draw a distinction between crime of torture, on the one hand, and crimes of a lesser severity, on the other hand. It is true that the UN conventions and the ECHR apply directly and thus the prohibition of torture is already part of Latvian domestic law. At the same time, it is clear that the relevant institutions are more confident in applying domestic law provisions and thus the *Criminal Law* needs amendments. The mechanism of provision of remedy in these cases remains highly unclear and weak, as confirmed by the statistics presented above.

However, the *draft Criminal Procedure Law* is currently under deliberation in the 2nd reading in the Parliament. The draft contains very important improvements in the criminal procedure. The right to submit a private complaint directly to the court for several crimes in the *Criminal Law* is now firmly established (Article 6). These articles include a Chapter on Crimes against Personal Health. There is the right to complain about or appeal decisions and actions of officials during all stages of criminal procedure (Chapter 24). Article 13 prohibits torture or inhumane or degrading treatment and states that evidence acquired through torture and ill-treatment is not admissible. What remains unclear is whether in practice, if there are complaints from detained suspects or accused about ill-treatment, the authorities will be ready to initiate a case even if there is an on-going separate investigation or trial of the person concerned. This is even more important since the right to compensation in criminal proceedings remains dependent on the status of a victim (Chapter 26).

[49] For information, see e.g. Responses of the Latvian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Latvia, CPT/Inf (2001) 28, 22.11.2001, pp. 4 – 5.

[50] The cells are not provided with good reading light, relatives are not allowed to bring the blankets, even in winter.

[51] The State has invested 1 490 000 LVL in 2002. The budget of 2003 has envisaged 1 063 495 LVL State investment. Ieslodzījumu vietu pārvaldes 2002. gada publiskais pārskats, available at http://www.tm.gov.lv Also: *Likums par valsts budžetu 2003. gadam* [Law on State Budget in 2003], published in *Vēstnesis,* no. 39, 12.03.2003.

[52] Some information on the project is available at http://www.sodi.lv.

Article 5. Prohibition of slavery and forced labor

International case law and concluding observation of international organs

The HRC remains concerned with a slow progress made in fighting trafficking in human beings.[53]

National legislation, regulation and case law

Several articles in the 1999 *Criminal Law* deal with the problem of forced prostitution, sexual abuse of children, trafficking in human beings, etc. Article 163 provides for criminal responsibility if a person has violated rules regulating prostitution. This may refer also to prostitutes.[54] Article 160 considers homosexual and lesbian activities carried out with the use of force or threat of use of force as crime. Child pornography is a crime under Article 166 (3). New Articles 165.1 and 165.2 prohibit specifically trafficking in human beings.[55] One could also apply Article 153 prohibiting the kidnapping of a person and Article 78 which envisages criminal responsibility for intentional restrictions of individual human rights.

Practice of national authorities

In accordance with the Office of the Prosecutor-General, in the first six months of 2003 criminal charges have been brought against 32 persons on the basis of Articles 163 – 166, 16 criminal cases have been submitted for trial, while in 2 cases proceedings have terminated.[56] No case has been submitted during the given time based on Articles 165.1 and 165.2. In 2002, 13 such cases were registered.[57]

NGOs working with the problems of prostitution, forced prostitution and child prostitution acknowledge that despite a better legislative framework[58] it still lacks the implementing mechanisms. That especially concerns child prostitution. The work of the police has been ineffective lacking in resources and adequate training.[59] Despite the fact that existing legislative framework provides for certain social and health guarantees to prostitutes only a few use the rights guaranteed. This is largely because of the lack of information and systematic work with these persons, i.e., the lack of implementing mechanisms.[60]

It is commendable that in 2002 the Ministry of Welfare has taken a responsibility for better organisation and co-ordination of the work of various governmental institutions that are important for fighting trafficking in human beings. The proposal of the joint governmental and non-governmental working group have been publicised. This work has, however, dealt with trafficking in human beings specifically. One of the proposals concerns further amendments in the *Criminal Law* prohibiting trafficking in human beings within the territory of Latvia.

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[53] CCPR/CO/79/LVA, November 2003, point 12.
[54] With the introduction of obligatory communal work as a new form of punishment in the Criminal Law, persons who have been found in violation of Article 163 are more and more often sentenced to such works. See *Alternatīva. Cietumu un policijas reformu programmas apkārtraksts* [Newsletter on Reform of the Police and Prisons], no. 1 (3), 2003, p.8, available at http://www.sodi.lv.
[55] These were inserted into the Criminal Law on 18.05.2000.
[56] Reply of the Office of Prosecutor-General to the author of the Report, No. 1/1-9-443-03, 18 September 2003, point 3.
[57] Report of the Ministry of Welfare *On Problems in Trafficking of Human Beings, especially Women and Children*, *in Latvia* of 28.07.2003., available at http://www.politika.lv/index.php?id=107296&lang=lv
[58] In the aftermath of investigations into alleged organised paedophilia in Latvia, the Cabinet of Ministers adopted *Regulations on Limitations on Prostitution* on 2 April 2001.
[59] See T. Kurova and I. Zarina, «A survey about prostitution in Latvia.», unpublished, provided to the author by the Latvian Gender Problem Center 'Genders' in November 2003.
[60] Report by the Latvian Gender Problem Center 'Genders' provided to the author in November 2003.

Reasons for concern

There are serious problems in all of the areas mentioned above. They concern both the legislative framework and the implementation mechanisms. The latter includes the lack of relevant training within the law enforcement institutions as well as the inadequate administrative and financial attention on the part of the government. Women and children remain vulnerable in Latvia against different kind of violence and abuse. Special measures would need to be adopted by the government to tackle these problems.

CHAPTER II: FREEDOMS

Article 6. Right to liberty and security

International case law and concluding observation of international organs

The first and the main decision of the European Court of Human Rights challenging the existing criminal procedure law and practice was adopted by the Court in *Lavents v Latvia* case on 28 November 2002.[61] It tackled the issue of the application of detention on remand and pre-trial detention as dominant restrictive measures in practice of criminal prosecution. It found that there has been a violation of Article 5 (3) in that the reasons for continuing detention have not met the threshold required by the Convention. Moreover, the arguments of the national courts for continuing detention were unclear and unsubstantiated with the evidence.[62]

National legislation, regulation and case law

Alternative restrictive measures are provided for in the *Criminal Procedure Law*. In 1999, the right to have the detention measure reviewed by courts was introduced in Latvia. In 2003, the work on new *Draft Criminal Procedure Law* was finalised and the draft was submitted to the *Saeima*. The working group of the Ministry of Justice made serious efforts to incorporate the principles of Article 5 of the ECHR into the new draft.[63]

The *Law on Entry and Stay of Foreigners and Stateless Persons in Latvia* was replaced with the *Immigration Law* as of 1 May 2003.[64] The new law details more clearly the grounds on the basis of which foreigners may be refused the entry into Latvia. It stipulates that individuals who are illegally in Latvia are to be expelled from Latvia. They may be detained if they disobey the expulsion order. The new law does not provide for the possibility to challenge the expulsion order but it does provide for the possibility to challenge the detention which can only take place on the orders of a judge.

Recently, the court ruled that the detention of a person in the Illegal Temporary Accommodation Institution 'Olaine' was unlawful. When the person concerned requested a compensation from the Ministry of Justice for his unlawful detention, the Ministry turned down the request arguing that the detention did not take place in the framework of criminal procedure and thus no requested remedy applied.[65] The uncertainty concerning the legal status

[61] Eur. Ct.H.R., *Lavents c. Lettonie*, 28.11.2002.
[62] Ibid. paras. 73 – 75.
[63] Likumprojekta "Kriminālprocesa likums" anotācija [Explanatory note to the Draft Criminal Procedure Law], 20.04.2003, available at http://www.politika.lv
[64] *Imigrācijas likums*, 31.10.2002., *Latvijas Vēstnesis*, No. 169, 20.11.2002.
[65] *Likums par izziņas iestādes, prokuratūras vai tiesas nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu* [On compensation for unlawful or arbitrary actions of law enforcement institutions], published in *Vēstnesis*, no. 176/178, 16.06.1998.

of the temporary detention centers for immigrants seems to prevail.[66] The Ministry appears to be of the opinion that guarantees of Article 5 of the ECHR do not apply. The *Immigration Law* does not specifically provide for the right to a compensation in instances of unlawful detention on the basis of this law. It is to be hoped that the practice of the court in the given case will have a more general application.

Practice of national authorities

As shown by the *Lavents* case, the right to a periodical review of a detention is still not effectively applied or, when applied, the requirements for a proper review are not followed. One of the main reasons, as explained by the judges, is that the courts are overcrowded. In accordance with the data provided by the Office of the Prosecutor – General, during the first 7 months of 2003, there were still 3372 persons in detention. At the same time, the Office submits that in 2003 in 70 – 75 per cent of the situations a ban to change domicile as a restrictive measure is applied to suspects and accused.[67] The ECtHR decision led to release on parole pending their trial of Lavents and Freimanis, a co-accused in the same case.[68]

Pretrial detention of minors:

In 2003, the number of offences committed by minors has increased in Latvia by 184 cases compare to the same period in 2002. In total, minors have committed already 1915 criminal offences by August 2003. According to the law and practice, detention on remand and pre-trial detention are the restraining measures adopted in cases where a person has committed a serious offence. The statistical data show that about 75 % of minors are put in detention while awaiting the trial.[69] In accordance with the 2002 data, of the total number of prisoners 2.8% were minors and of all the detainees 6.7% were minors.[70] In the first seven month of 2003, among 4765 prisoners 100 were minors.[71]

The facilities for minors are very poor. Of all the persons sentenced to prisons 325 or 7 % are enrolled in general education programmes. These are not recognised as part of the education system in the country since the education programmes are still seen as rehabilitation rather than education and they are dependent on foreign financial assistance.[72] There is no separate information on what happens to detained minors. The 2002 report of the Ministry of Justice on crime in Latvia proposes that the State "should think how to punish the minors for their offences in way that they truly realise that what they have done is wrong and not that they should simply spend x-number of year in prison".[73]

[66] See CPT/Inf (2001) 27 and CPT/Inf (2001) 28, p. 6.
[67] Furthermore, during this period the following other preventive measures were applied: home arrest (1), bail (3) and parole (958). The prosecution has asked for a review of detention in 514 cases, including 8 against minors. In 61 cases, the case was closed. In 411 instances, the detention measure was not changed. 40 decisions were changed. Reply of the Office of the Prosecutor-General to the author, No. 1/1-9-443-03, 18.09.2003., points 1 and 5.
[68] See 2003. gada 27. janvāra Augstākās tiesas Senāta lēmums *Par drošības līdzekļa grozīšanu A. Laventa un T. Freimaņa apsūdzības lietā* [The decision of the Senate of the Supreme Court on the Change of the Security Measure in criminal cases against Lavents and Freimanis], available at http://www.tiesas.lv.
[69] See Egle Klekere, "Pēc fizikas stundas – uz kameru" Diena, 29.08.2003, p. 3.
[70] On 1 January 2003, there were 4729 persons sentenced to prisons and 3576 detained individuals. Ieslodzījumu vietu pārvaldes 2002. gada publiskais pārskats, available at http://www.tm.gov.lv
[71] Reply of the Office of the Prosecutor-General to the author, No. 1/1-9-443-03, 18.09.2003., point 1.
[72] On 1 January 2003, there were 4729 persons sentenced to prisons and 3576 detained individuals. Ieslodzījumu vietu pārvaldes 2002. gada publiskais pārskats, available at http://www.tm.gov.lv
[73] See Report of the Ministry of Justice Criminological Research Center in 2002, available at http://www.tm.gov.lv

Detention of mentally ill persons:

The 1997 *Law on Medical Assistance* regulates the confinement of persons to psychiatric institutions.[74] Article 155 of the *Criminal Law* determines an unlawful confinement to a psychiatric institution as crime. No criminal case has been reported under the relevant article of the Criminal Law in recent years. The Office of the Prosecutor – General does not have an information about the number of individuals in such establishments.[75] The Law provides that all human rights have to be guaranteed to persons in such establishments without any discrimination.[76]

Reasons for concern

In addition to some concerns already noted earlier, I consider that there is a very serious problem with the administration of juvenile justice in Latvia. It does not appear that the law and the practice distinguishes particularly between adult-offenders and minors and thus the detention and prison terms are the typical outcomes in both cases. In a country which may not have sufficient financial means to adopt prisons to the needs of minors, this is a particularly worrying situation. It is doubtful that minors should be spending years in pre-trial detention. In any event, this is contrary to Article 5 of the *European Convention on Human Rights*. In 2002, the UNDP with the support of the UK and Swedish governments funded a study *On the Application of Alternative Punishments to Juvenile Offenders in Latvia*. The study recognised that there are very important developments in Latvia but that there is a need for a revision of the entire system of administration of juvenile justice and the development of a better co-ordination of all the institutions involved.[77]

After the elections in October 2002, the new government established a post of the Minister for Children and Family Affairs. In relation to issues under Articles 4 – 6 of the EU Charter as well as other articles reported below, children are particularly vulnerable and the new legal provisions and practices are only being developed. Considerable work is done in several ministries (Interior, Justice, Welfare, Education), in municipalities, the NHRO and by some NGOs. It would appear that there is an urgent need for one governmental institution overseeing and coordinating all these activities and investing the State funds into the relevant developments. The Minister for Children could be this institution.

It is difficult for the prosecution and the judiciary in practice to depart from a long-standing tradition of detention as the main security measure in criminal prosecution. Learning the individual or case by case approach which underlines Article 5 of the ECHR will continue to be a challenge to the law enforcement. The *Draft Criminal Procedure Law* contains the individual-oriented approach as one of the elements to be taken into consideration but the gravity of the crime still appears to be a particularly important criterion.[78] An important guarantee against lengthy periods of detention is incorporated in the draft law. The courts will be able to determine the priority order for the cases to be tried. The criteria for this determination is the restrictive measure applied (detention cases) and if minors are involved (Article 14). It is the opinion of the author of this report that the solution to the problem lies at the start of the proceedings when a decision on the restrictive measure is adopted. At this

[74] *Supra*, note 16.
[75] Reply of the Office of the Prosecutor-General to the author, No. 1/1-9-443-03, 18.09.2003., point 1.
[76] It can be point out that during its first visit to Latvia in January/February 1999 the CPT expressed serious concerns about the legislative framework regulating these medical establishments and the behaviour of their staff. See CPT/Inf (2001) 27 and CPT/Inf (2001) 28.
[77] An example of these developments is the obligatory communal work as a new punishment and the beginning of the establishment of the Probation Service in 2003. *Valsts probācijas dienesta likums* [Law on State Probation Service], 18.12.2003., *Latvijas Vēstnesis*, no. 183, 30.12.2003. Also: S Asquith, *Ziņojums par alternatīvo soda mēru piemērošanu nepilngadīgajiem likumpārkāpējiem Latvijā*, UNDP, Rīga, februāris 2002.
[78] This is closely linked to the question how criminal law is taught at the universities.

stage the responsibility lies with the prosecution and the courts as concerns their choice of the measure. Most importantly, the existing backlog of persons in detention in Latvia has to be urgently dealt with.

Article 7. Respect for private and family life

International case law and concluding observation of international organs

In the applications submitted to the European Court of Human Rights from Latvia several concern the expulsion of Soviet time settlers with no or disputed legal status in Latvia.[79] On 9 October 2003, the Court took a decision in a fairly controversial case *Slivenko v Latvia*. This case concerned the expulsion of the family of the Soviet military along with the withdrawal of the ex-Soviet army from Latvia. The Court found a violation of the right to family life, which was seen to be linked to Latvia, in relation to mother and daughter. The first had arrived in Latvia as a little girl, the second had been born in Latvia.[80]

National legislation, regulation and case law

Private and family life of former USSR citizens:

Among this first category of individuals one should distinguish cases involving the withdrawal of the Russian army officers and soldiers. The 1994 bilateral agreement between Latvia and Russia on the withdrawal of the Soviet/Russian army provides that they leave with their families. There is a possibility that they stay if a spouse is a national. The other category of cases which were particularly numerous in the beginning and the middle of the 1990s but which have become fewer recently concern the establishment of a legal status of the Soviet time settlers. In principle, most of them qualified as permanent residents but there were disputes in the process.[81] The available national case law shows that courts very rarely looked at the issue of family life and home in a sense that, if the persons concerned have resided for two generations in Latvia they may have developed a close connection and home there. The dominant approach was rather a formal assessment of the documents and their validity proving that a person concerned lived in Latvia at a given time.[82] The situations that have arisen in the Latvian context present new questions of the interpretation of Article 8 of the ECHR.[83]

Private and family life in detention:

Lavents v Latvia is an example of the problems that detainees may face as concerns their family life.[84] The assessment of proportionality of the restrictions imposed on family visits in detention and prisons has not yet been mastered by the courts, as shown in *Lavents* case. The government had reflected on the issue of the rights of arrested, detained and imprisoned persons following the criticism of the CPT and the other international procedures. The new Cabinet of Ministers Regulations *On the Order in Investigation Prisons* was adopted on 29

[79] For example, Décision finale sur la recevabilité de la requête no. 60654/00 présentée par Svetlana Sisojeva et autres contre la Lettonie, 28.02.2002.
[80] Eur. Ct.H.R., *Slivenko c Lettonie*, 9.10.2003.
[81] Since 1995 there has been a decline of expulsion orders from 1317 that year to 423 in 2002. In 2002, 122 persons were deprived of non-citizens status. In 94 cases, the decision on expulsion was postponed. In 17 cases for lack of evidence the cases were closed and in 198 cases the investigation continued. Information available at http://www.pmlp.gov.lv (accessed on 02.09.2003.).
[82] Ibid.
[83] E.g. *Slivenko v Latvia*.
[84] *Supra* note 61, paras. 141 – 142.

April 2003.[85] Chapter VI, point 26 provides that restrictions on family visits may be imposed only for the protection of the rights of others, if it is necessary in a democratic society, for public safety, morals and welfare and in the interest of the security of the prison and the investigation of the case. There is an explicit demand to motivate any such restriction imposed. It appears that this provision still may fall short of the requirements of Article 8 of the ECHR. Important improvements can however be noted as compared to quite arbitrary procedures formerly in force.[86]

The Regulations continue to provide that the correspondence of the detained is controlled. In cases, when it threatens the rights of the others, public safety, welfare and morals, the democratic society as well as the security of the detention place, it is withheld and the detained is informed about it. There is no special reference to the confidentiality of the correspondence with the Strasbourg institutions or similar. The Regulations contain another point which says that the "communication possibilities" with these institutions, courts and the defence shall not be impaired. In practice, the question may arise whether "correspondence" is included in the term 'communication possibilities'. The Regulations remain ambiguous.

In accordance with the available statistics, restrictions on family visits were used as disciplinary reprimands when prisoners violated the order in the prison.[87] The question arises whether there should be disciplinary punishment of such a nature. In any event, since such decisions may fall within the margin of appreciation of the State, it is important that restrictions are applied with care and proportionally.

Special methods of investigation:

The *Criminal Procedure Code* currently in force provides that the information gathered through a telephone tapping and opening of a correspondence could only be used in criminal proceedings when it has been verified and admitted as evidence. The particular measures of interference with person's right to privacy can only take place on the basis of the decision from a judge. The *Criminal Procedure Code* (Art. 203) requires that the accused be acquainted with the entire criminal case, including protocol concerning telephone tapping, etc., if these actions have taken place on the basis of the Code. As concerns the use of video images from surveillance cameras in criminal proceedings, they are examined as part of operative activities by the special forces entitled to carry out operative activities. For example, after the explosion in the supermarket in the Old Riga a couple of years ago the special forces were investigating the possible act of terrorism. The images from surveillance cameras were analysed, but were not admitted as part of a criminal case in the court. Instead, the court used the videotape of the News Programme on the Latvian Television covering the story. In criminal proceedings a printout is used to show that a person concerned has been at a time concerned in the given place.[88]

The *Criminal Procedure Code* provides that a victim in criminal case is acquainted with the case and thus finds out about telephone tapping (Art. 202). The Code also allows the telephone tapping upon the request of a victim or a witness in case they are receiving threats. These persons can see the relevant material. In criminal cases, the admission of such evidence is limited. In the cases initiated on the basis of the *Law on Special Investigative Activities*, the

[85] *Izmeklēšanas cietumu iekšējās kārtības noteikumi* [Regulations on the Order in Investigative Prisons], 29.04.2003., available at http://www.tm.gov.lv

[86] This was noted by the European Court of Human Rights. *Supra* note 36, para. 140. The Constitutional Court decided that restrictions imposed on family visits to detainees based on internal instructions of the Ministry of Interior or the Ministry of Justice are to be considered as lacking any lawful basis. Satversmes tiesas spriedums Lietā nr. 2001-05-03, 19.12.2001.

[87] In 2002, this punishment was applied in 8% of the cases. Ieslodzījumu vietu pārvaldes 2002. gada publiskais pārskats [Public Report 2002 of the Prison Administration], available at http://www.tm.gov.lv

[88] Reply of the Office of the Prosecutor-General to the author, No. 1/1-9-443-03, 15. 12 2003., point 2.

information gathered through the mentioned means receives the status of a State secret (Art. 24.1).[89]

Competence of special investigative institutions:

There have been certain legislative developments during the period under scrutiny that may raise some questions in the context of Article 7. After lengthy debates in 2002 the *Law on the Office for the Prevention and Elimination of Corruption* was adopted.[90] In 2003, the Law was amended clarifying that the Office is an investigative institution under the control of the Cabinet of Ministers. In accordance with Article 10.1 (4), the officials of the Office have the right to "request and receive free of charge information, documents and other materials irrespective of their confidentiality from State and municipal authorities, enterprises, organisations, officials and other persons". Point 6 of this article provides the right "to learn freely information, irrespective of its character, from all data basis that are developed in accordance with law". Point 9 provides the right "to visit freely, presenting the ID, State and municipal institutions as well as industries, warehouses, shops and other business premises of legal and physical persons in the territory of Latvia". The Law does not provide any restrictions based on human rights considerations in relation to the mentioned functions of the officials of this Office. It is to be hoped that the general *Law on Special Investigative Activities* adopted in 1993 that provides for the obligation to respect human rights and the principle of proportionality in acquiring secretly personal data for the purposes that are spelled out in an exhaustive manner in this Law will be applied in practice by the Office.

The 1993 Law allows the gathering of data about candidates for important posts in the government or where they have access to State secrets. Article 5 of the Law contains a very important guarantee. A person may address the prosecutor or the court directly, if he/she thinks that his/her rights have been violated by such investigative activities.

Draft Criminal Procedure Law:

The *Draft Criminal Procedure Law* spells out specifically that the principle of proportionality applies within criminal proceedings (Article 12). The proportionality of decisions is to be determined in view of the gravity of the crime and the threats presented to the society. The draft Article 12 specifies that the interference with private and family life of the accused can only take place with the warrant of the investigating judge and that information acquired through such interference can only be used in courts if the evidence has to be clarified. The person may request the deletion of personal information from investigating files if they do not have any relevance for the case. Chapter 11, developed along these principles, regulates special investigation procedures when individuals concerned are not informed about the investigation. Evidence acquired in such a context, can be attached to the case only with the permission of the judge. An accused may appeal an inclusion of any such information that may violate his/her right to privacy.

Restrictions on the occupation of certain posts:

There are laws that restrict the rights of former or current staff employees of the State security, intelligence or counter-intelligence services of the former USSR, Soviet Latvia or foreign countries. For example, the *Law on the Elections to Saeima* and the *Law on the Elections to the City Council* contain a prohibition for these persons to be candidates for elections. The *Law on National Civil Service* and the *Law on Judiciary* take a similar approach. There is however only a law on the KGB archives and co-operation with the

[89] Ibid., point 4.
[90] Korupcijas novēršanas un apkarošanas biroja likums [Law on the Office for the Prevention and Elimination of Corruption], published in *Ziņotājs* [Reporter], no. 10, 2002.

KGB.[91] The restriction clauses in the mentioned laws are broader and cover other foreign intelligence services, the Communist party. No general lustration has taken place and there is no legislation providing for it. The Constitutional Court found that restrictions on former members of the Communist Party and the KGB officers, as they apply in election laws, are compatible with human rights.[92]

There is one national case where a former officer of the Soviet border-guard unit was found to qualify as an employee of the USSR intelligence (KGB) and was not allowed to run for the parliament. The question whether the Soviet border-guards should have been seen as the Soviet intelligence unit has been disputed.[93] The application has been submitted to the European Court of Human Rights.

The former Soviet security service archives are, in principle, closed but there is the possibility to check the information since many governmental posts require this information. State security institutions thus have access to the archives. A person can ask the relevant authority keeping this archive whether he/she is in the files. Upon the reception of the affirmative answer, the person has to submit an application to the prosecutor for the establishment of the fact of co-operation. The prosecutor investigates the case and forwards it to the court for the establishment of this fact. In accordance with the 1994, this procedure was to apply for 10 years. After this period of time, the investigation to establish the fact of co-operation with the KGB was never to be carried out. On 11 December 2003, the Saeima adopted amendments to the 1994 Law in the second reading that would extend the application of this procedure for another 10 years.[94] The question has been raised by some local human rights experts whether such approach to this issue was necessary in a democratic society.[95]

Family union of refugees and asylum seekers:

New *Immigration Law* has incorporated the family union principle as one of the basis for issuing the temporary or permanent residence permits. It is required, however, that spouses have registered their marriage. In case of divorce, a foreigner may lose any status in Latvia. At the same time, a family is treated broadly to include also parents and possibly cousins. Both Latvian citizens and non-citizens permanent residents have the right to family reunion. It is interesting that, for example, a foreigner may receive visa for the entry into Latvia without additional documents if one of the parents is a Latvian citizen. This does not apply in cases where a parent is a Latvian non-citizen permanent resident. This appears to be a discriminatory provision. [96]

New *Asylum Law* also allows for the family union to refugees and those who have received an alternative status. Article 29 defines a married couple with under-aged, unmarried children or disabled children or children-parent relations as a family for the purposes of the family union.[97]

[91] Likums par bijušās Valsts drošības komitejas dokumentu saglabāšanu, izmantošanu un personu sadarbības fakta ar VDK konstatēšanu [Law on Preservation, Utilisation of the KGB Documents and Establishment of the Fact of Co-operation], 03.06.1994, published in *Vēstnesis*, no. 65, 02.06.1994.
[92] See text below accompanying notes 222; 224.
[93] Lieta Nr. C27205302, 20.08.2002. The Constitutional Court found that these restrictions comply with the ECHR and the ICCPR. Satversmes tiesas spriedums 15.08.2000.
[94] Reply of the Office of the Prosecutor-General to the author, No. 1/1-9-443-03, 15. 12 2003., point 3.
[95] See M. Mits, "Demokrātijas deficīta paraugstunda", published on 10.12.2003., available on http://www.politika.lv
[96] *Imigrācijas likums* [Immigration Law], 01.05.2003, published in *Vēstnesis,* no. 169, 20.11.2002. Articles 23 – 32 and Article 12.
[97] *Patvēruma likums* [Asylum Law], 01.09.2002, published in *Vēstnesis*, no. 48, 27.03.2002.

Practice of national authorities

During the first seven months of 2003, 560 telephone tappings and 14 openings of a correspondence were authorised by the judge. The investigations were carried out on the basis of Article 17 of the *Law on Operative Activities*. On the basis of *Criminal Procedure Code* in the first half of 2003, judges authorised 44 telephone tappings and gathering of information from other technical sources.[98] The Office of the Prosecutor did not have an information in how many criminal cases the information gathered through such means has been admitted as evidence.

Reasons for concern

The work of investigative institutions should be monitored carefully in Latvia. The fact that Latvian legislation does not envisage any provision of information to third persons that their names have come up in criminal proceedings or in operative investigations because of telephone tapping or opening the correspondence may lead to problems. Individuals may not even know that their right to privacy has been invaded. They do not have any control over State authorities and they are completely dependent on the diligence of the relevant agencies. The right to privacy, as provided in the *Satversme*, in relation to such persons cannot be guaranteed since there is no procedure. It remains unclear why information gathered as part of operative investigation becomes State secret. Persons concerned should be informed and have access to such information and have a right to claim that the information is deleted from the files. Even if there have been over the years improvements in procedural and institutional guarantees of the right to privacy against arbitrary telephone tapping, etc., the right to access to such information to all concerned is not properly guaranteed and some legislative initiatives would be welcome.[99] The KGB files continue to pose legal, political and social problems in Latvia. The question of the necessity of the above mentioned restrictions will continue to arise more persistently. It is obvious that Latvia has to deal with this problem.

New immigration and asylum legislation is a considerable improvement as compared to the same laws in the 1990s. Again, one has to monitor the practice and the effectiveness of the available remedies.

Article 8. Protection of personal data

National legislation, regulation and case law

During the period under scrutiny, the HRNO has received two types of complaints related to the protection of personal data. The first concerns the doctor – patient relationship and its confidentiality. The second concerns the Ministry of Welfare internal document from 1998 which obliges doctors to inform the newly established State register of mentally ill persons about everyone with temporary or permanent mental disorders.[100] In accordance with the *Law on Protection of Personal Data*, the processing of sensitive data, including data related to health, is prohibited, except when it is necessary to ensure the provision of health services and medication. The conclusion was that the Ministry of Welfare violated *the Satversme* and the Law and that the organised registration was disproportionate and thus contrary to the

[98] Reply of the Office of the Prosecutor-General to the author, No. 1/1-9-443-03, 18.09.2003., point 6.

[99] Article 104 of the *Satversme* provides for the right to receive information from the State and municipal institutions. Technically, everyone could ask whether there are any materials in the relevant files that should not be there. In case, the answer is refused, the person could try to appeal this decision.

[100] Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 1. ceturksnī*; Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 2. ceturksnī*, available at http://www.vcb.lv

protection of personal data. At the moment, the work on draft law on patients' rights is under way led by the Office of the Rights of Patients (Pacientu tiesību birojs).

Latvia has been criticised for having the entry on ethnicity of a person in the passports. The new passports have abolished this entry.[101] The Population Register continues to include data on ethnic origin.[102]

Practice of national authorities

In accordance with the *Law on the Protection of Personal Data*, the State Data Inspection (Valsts datu insepkcija) is the authority supervising the protection of personal data. The Inspection is controlled by the Ministry of Justice.[103] In 2003, the State budget provided for a satisfactory budget for the development and the work of the inspection.[104]

Article 9. Right to marry and right to found a family

National legislation, regulation and case law

The question of freedom to marry is regulated by the 1937 *Civil Law* and the *Law on the Registry of Civil Acts*.[105] The law does not recognise cohabitation as creating legal rights and obligations. Therefore, no legal protection is offered to persons in a relationship, however long-standing, which is not registered in accordance with the law. The only form of registration of such relationship is marriage. Same-sex marriages are expressly forbidden by the *Civil Law* (Article 35).

There has been no case law yet, either national or international, challenging the existing prohibition of same-sex marriages. With regard to alternative forms of registration for partnerships or recognition of cohabitation, it has to be noted that there has been no public debate on these issues.

Article 10. Freedom of thought, conscience and religion

International case law and concluding observation of international organs

The HRC has noted the adoption of the new Law on Alternative Service. It has pointed out that alternative service is up to twice longer than military service. It has recommended that "the State party should ensure that the alternative service is not of a discriminatory duration".[106]

National legislation, regulation and case law

The *Law on Religious Organisations* provides that religion is separate from the state.[107] However, some articles of the law make it disputable as to the extent of this separation. First,

[101] See *Fifth periodic report of Latvia*. CERD/C/398/Add.2, 6 June 2002, p. 14, para 63.
[102] *Iedzīvotāju reģistra likums* [Law on Population Register], 24.09.1998, *Vēstnesis*, no. 261/264, 09.10.1998.
[103] *Fizisko personu datu aizsardzības likums* [Law on Protection of Personal Data], 23.03.2000., published in *Vēstnesis*, no. 123/124, 04.06.2000.
[104] It is 370 000 LVL which compared with the 160 449 LVL budget of the National Human Rights Office is quite satisfactory. *Likums par valsts budžetu 2003. gadam* [Law on State Budget in 2003], published in *Vēstnesis* no. 39, 12.03.2003.
[105] *Likums par civilstāvokļa aktiem*, 21.10.1993., *Latvijas Vēstnesis*, No. 97, 28.10.1993.
[106] CCPR/CO/79/LVA, November 2003, point 15.
[107] Article 99 of the *Satvesrme*. *Reliģisko organizāciju likums*, 07.09.1995., *Latvijas Vēstnesis*, No. 146, 26.09.1995.

it is spelled out how many persons may constitute congregation; how many congregations can constitute a religious unity (church); that congregations of one creed may establish only one church; that one person may establish only one congregation.[108] It is not entirely clear what is the motivation for regulation of these questions. It is possible that the number of religious organisations might grow if these provisions of the law were removed. It would create some inconvenience for civil servants who deal with the questions of registration of religious organisations. These requirements seem to run contrary to the right to freedom of religion. The organisational structure of religious unities should be left for these unities to decide for themselves. Secondly, it is provided in the law that religious organisations must be registered in a special registry kept by the Administration of Religious Matters (Reliģisko Lietu Pārvalde) in order to acquire status of a legal person. Additionally, there are a number of rights that belong only to registered religious unities. In fact, unregistered religious communities might have a problem in proving that they are religious at all. Thirdly, the principle of separation of religion from the state is hindered further by Article 6 (5) of the law that provides that Christian creed religious teaching is state-financed.

Practice of national authorities

The *Law on Religious Organisations* provides that there are 5 creeds (Article 6 (3)) of Christian belief only that are allowed to teach at schools, provided that there are enough (10) pupils interested. On 1st January 2002 there were 25 creeds registered in accordance with the law.[109] It is not clear what is the reason for the preferential treatment of Christian belief. In addition, *Civil Law* provides that in addition to these 5 creeds, there are two other creeds (also Christian) that have the right to conduct the ceremony of marriage. The question arises as to why these two additional creeds don't have the right to teach their system of beliefs in schools. In the absence of any explanation of this discriminatory treatment of different religions it should be noted that this treatment may impede upon the exercise of freedom of religion.

The discriminatory attitude towards religions depending on whether they are popular or more unusual is demonstrated further by article 8(4). It stipulates that if an organisation, which does not belong to a religious creed or congregation that already has been registered in Latvia, is registering for the first time, then this organisation is required to re-register every year for the next ten years. The reason provided for this requirement is twofold. First, it is to ensure that the conduct of this new religious organisation is not contrary to the laws of the state. Second, a more peculiar reason is to make sure that this new religious organisation has remained loyal to Latvia. Taking into account that the law deals with religious and not political or governmental organisations, it is not clear why any religious organisation should be loyal to the State in the first place (this is not to confused with national security considerations in view of the activities of organsiations). In light of the fact that other citizens of the Sate are not subjected to yearly demonstration of their loyalty to the State, this discriminatory provision clearly impedes upon free exercise of freedom to religion.

Alternative compulsory service:

In Latvia, military service is compulsory. The length of compulsory military service is 12 months. In year 2002 the Government recognised the right to conscientious objection and passed the *Alternative Service Law*.[110] However, it is not clear why a person, exercizing his right to conscientious objection should serve 24 months instead of 12 for 'normal' military

[108] Articles 7(1), 7(2), 7(3), 7(1), respectively.
[109] Reliģisko lietu pārvaldes 2002.gada publiskais pārskats [Public Report 2002 of the Administration of Religious Matters), available at http://www.tm.gov.lv/str/1003_RLP_2002_PP%20.doc
[110] *Alternatīvā dienesta likums*, 30.05.2002., *Latvijas Vēstnesis*, No. 91., 18.06.2002.

service (this has been reduced to 18 month in case of the person in question having a university degree).

Reasons for concern

Although the State has formally declared the separation of religion from the State, the *Law on Religious Organizations* demonstrates a wish to interfere in internal organizational matters of religious organizations. In addition, it shows preferential treatment of better-known and understood religions and mistrust of newly developed religions. With regard to alternative service, it should be noted that the diffrering length of this alternative service seems to serve no purpose except for penalizing the exercise of the right to freedom of conscience.

Article 11. Freedom of expression and of information

National legislation, regulation and case law

Journalistic freedom and slander:

The right to freedom of expression and information has been subject to an extensive public debate in the context of journalistic freedom v person's honour and dignity. The *Criminal Law* provides that for a slander of a state official a person may be imprisoned for up to two years (Article 271). In 2003, the debate concentrated mainly around the fact that the law distinguishes between the protection of dignity of a state official and everyone else. Journalists argued that politicians should be ready to be subjected to a larger amount of criticism than ordinary individuals. By virtue of holding public office, officials are placed in a better position to protect themselves and to publicly make their views known. *The Satversme*al Court found that the existing norm is contrary to the *Satversme* insofar as the definition of a 'state official' in Article 271 is too wide.[111] It found that the disputed criminal law norm has a legitimate aim but it is not proportionate because the definition of 'state official' is too wide. If the government will not change this article in criminal law, it will become null and void from 1 February 2004.

Until 2002, the legislation stipulated that either the court or the prosecutor was entitled to ask for disclosure of the journalistic sources. On 1 July 2002 the law was changed and now only the court is entitled to ask for a disclosure of journalistic sources in cases where it is necessary to protect essential interests of a person or the society at large. When making the request, the court has to apply the principle of proportionality.[112]

Radio and television and official language:

The *Law on Radio and Television* provided that the broadcasting time for programmes in foreign languages cannot exceed 25 percent of all the broadcasting time in 24 hours. Taking into account the specific situation of Latvian language the Constitutional Court found that this norm had a legitimate aim.[113] However, it found that the disputed article was not necessary in a democratic society and that it was not proportionate.

[111] Satversmes tiesas spriedums *Par Krimināllikuma 271.panta atbilstību Latvijas Republikas Satversmes 91. un 100. pantam*, Lieta nr.2003-05-01, *Latvijas Vēstnesis*, No. 152, 30.10.2003.
[112] *Law on Press and other Mass Media* [Par Presi un citiem masu medijiem], *Latvijas Vēstnesis*, . The Office of the Prosecutor General informs that before the changes in this law they have only once resorted to the right to ask the disclose of journalistic sources. Reply of the Office of Prosecutor-General to the author, No. 1/1-9-443-03, 15.12.2003., point 1.
[113] Lieta nr.2003-02-0106, 05.06.2003., available at http://www.satv.tiesa.gov.lv

Reasons for concern

The civil law avenues for the protection of honour and dignity have to be strengthened over the criminal law venues. This requires amendments in both the *Civil Law* (Article 2352a) and the *Criminal Law*.

Article 12. Freedom of assembly and of association

National legislation, regulation and case law

There has been no international or national case law with regard to freedom of association and of assembly. However, the *Law on Assemblies, Processions and Pickets* contains conflicting norms and thus may hinder the exercise of the right in question. Although there is an explicit statement that no formal permission for organising an assembly, picket or procession has to be obtained from the local council[114], the law requires that the organiser of such event notify in a written form the local council and the local police. Moreover, the council may refuse the holding of the planned event. If the council agrees with the organisation of the event, it issues a written authorisation (*izziņa*) stating that the council does not object to the holding of this event. The organiser of the event may not hold the event without such authorisation (Article 16). It also should be noted that wearing hoods and masks during peaceful assemblies is prohibited.

Prohibition of political parties:

It should be noted here that communist, fascist and nazi parties are prohibited in Latvia. Moreover, the law prohibits using paraphernalia of the above listed ideologies in peaceful assemblies.[115]

Practice of national authorities

The Association for the Protection of Russian schools asked for the permission to organise a meeting in the square in front of the Government building on the day when Latvia was hosting an international Eurovision contest in May 2003. The meeting was aimed at protesting against the introduction of the Latvian language instruction in Russian secondary schools. The first reaction of the Riga municipality was to refuse the meeting or move it elsewhere since it was too close to the contest venue. The formal argument provided by the municipality was that they cannot guarantee the safety of the meeting since the entire police force is summoned to ensure the security of the contest. In the end, democracy prevailed and the meeting was held when and where planned. This event can be seen as an example of a lesson in democracy.

Trade unions:

According to the information of the Association of Latvian Trade Unions (Latvijas Brīvo Arodbiedrību Savienība), the problem has been encountered in establishing trade unions in big chain supermarkets. This has consequently led to difficulties in having a social dialogue between workers and employees.[116]

[114] Article 12 (1). *Likums par sapulcēm, gājieniem un piketiem*, 16.01.1997., *Latvijas Vēstnesis*, No. 31, 30.01.1997. (Last amended in 2003).
[115] See further on the restrictions concerning the right to be elected.
[116] Reply of A. Freibergs, a lawyer with the Association of Trade Unions, to the author on 9.1.2004.

Article 13. Freedom of the arts and sciences

National legislation, regulation and case law

The *Law on Higher Education* requires that those individuals who want to work in Latvian higher education establishments have to have a Latvian degree or have to undergo the procedure of the recognition of the foreign degree by the Latvian doctoral committees.[117] The *Law on Scientific Research* was adopted already in 1992 and had undergone some changes since then.

Practice of national authorities

There is clearly a lack or resources for research and sciences, but that is also partly due to ineffective institutional framework. Recognising that the sciences and research have been for some time experiencing the State neglect, in 2004 the Prime Minister established a working group with a view of supporting the areas where Latvia could develop some modern industries.[118] At the same time, often the media report that the arts is even more neglected in terms of budgetary contributions (e.g. national film industry, etc.,). Artists in Latvia consider that the State should adopt special measures to support this field.

Reasons for concern

It is to be hoped that the system for recognition of foreign degrees will be changed with the entry into the EU. It appears that sciences and research should be strengthened considerably in Latvia since it is one of the main resources. This requires a revision of the legislative and institutional framework. A debate is needed between the government and the individuals in the arts to find the basis for their relationship.

Article 14. Right to education

National legislation, regulation and case law

The field of education in Latvia is governed by three main laws: the *Education Law*,[119] the *General Education Law*[120] and the *Professional Education Law*.[121] Education is compulsory for the first 9 years (excluding pre-basic level education, which is to be completed by the age of 6 or 7). The law does not provide for compulsory education for children of illegal immigrants.

Practice of national authorities and reasons for concern

The main problem with regard to the access to education is for children with disabilities. The legislation has provided for the right of people with disabilities to education and their integration in comprehensive schools. However, due to the shortage of financial resources and specially trained teachers this provision has remained largely unenforceable. Schools are not equipped to deal with people with disabilities. There are two professional rehabilitation establishments in Latvia where children with disabilities can acquire trades and professions. However, in order to attend these establishments, children might have to leave their homes

[117] *Augstākās izglītības likums*, 02.11.1995., *Latvijas Vēstnesis*, No. 179, 17.11.1995.
[118] Rīkojums Nr. 1 Par darba grupu zinātnes sasniegumu efektīvas izmantošanas veicināšanai Latvijā, 07.01.2004., *Latvijas Vēstnesis*, No. 3., 08.01.2004.
[119] *Izglītības likums*, 29.10.1998., *Latvijas Vēstnesis*, No. 343/344, 17.11.1998.
[120] *Vispārējās izglītības likums*, 10.06.1999., *Latvijas Vēstnesis*, No. 213/215, 30.06.1999.
[121] *Profesionālās izglītības likums*, 10.06.1999., *Latvijas Vēstnesis*, No. 213/215, 30.06.1999.

and many parents are unwilling to allow this. In addition, it is arguable whether these special establishments help to integrate people with disabilities in the society.

Further problem for people with disabilities is the inability to acquire higher education. Primarily this is due to the fact that establishments of higher education are not adapted for people with disabilities. In addition, these establishments are situated in cities or centres of districts, which makes them inaccessible to disabled people. This must be considered a serious infringement of the right to access to education.[122]

The other main reason for concern for children with disabilities is quality of education. Due to the lack of financial resources and the shortage of professionally trained staff, children with disabilities face further obstacles to receive education on the same footing as children without disabilities.

Another problem in relation to quality of education identified by the NHRO[123] is in situations where children with serious behavioural problems study together with children without such problems thus potentially and actually hindering the right of the latter to receive education. The NHRO is working towards finding workable solutions to this problem.

Article 15. Freedom to choose an occupation and right to engage in work

National legislation, regulation and case law

With regards to the right to work there have been cases in the Constitutional Court challenging an age barrier set in two different laws. The *Law on Civil Service* required civil servants to leave their post upon the attainment of the age of retirement and it was claimed that the disputed norm infringes the right to retain one's work.[124] The Constitutional Court found that the disputed norm had a legitimate aim (it served the purpose of equalling the age in civil service, as well as allowing for younger persons to serve in civil service) and it was proportionate. Despite the finding that the norm in question was gender - discriminatory in character (due to different ages of retirement for men and women), it still found that the disputed norm is not in conflict with the *Satversme*.[125]

The second case challenged the age limit in the *Law on Higher Education* which stipulated that a person can be elected a professor and the work contract can be concluded with her up until the age of 65.[126] The Constitutional Court found that the disputed norm did not have a legitimate aim and was not proportionate.

[122] See further on the problems of persons with disabilities under Article 26.
[123] Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 2. ceturksnī.*
[124] Satversmes tiesas spriedums *Par Valsts civildienesta likuma 41. panta 1. punkta «f» apakšpunkta atbilstību Latvijas Republikas Satversmes 91., 101. un 106. pantam*, 18. 12. 2003., *Latvijas Vēstnesis*, No. 180, 19. 12. 2003.
[125] See further under Article 25.
[126] Satversmes tiesas spriedums *Par Augstskolu likuma 27. panta ceturtās daļas un 28. panta otrās daļas teksta «vai uz laiku līdz 65 gadu vecuma sasniegšanai» un likuma «Par zinātnisko darbību» 29. panta piektās daļas atbilstību Latvijas Republikas Satversmes 91. un 106. pantam*, 20. 05. 2003., *Latvijas Vēstnesis*, No. 75, 21.05.2003.

Article 16. Freedom to conduct a business

National legislation, regulation and case law

There is no case law on the right of freedom to conduct business and no public debate, either. It can, however, be expected that with the joining of EU there might be some cases arising with regard to freedom to conduct business.

Article 17. Right to property

National legislation, regulation and case law

There are two main processes relevant under this rubric. The first concerns the restitution of property and payment of compensations. The second concerns the privatization of State property on vouchers. In the first instance, there have been national cases where individuals challenged the approach of Latvian legislator setting a ceiling on the compensation for the property which was restituted but subsequently expropriated in public interests. The compensation was set at the prices on the day the property was nationalized by the Soviet regime, i.e., in 1940. Such an approach may be contrary to the principle of reasonable compensation under Article 1 of Protocol 1 of the ECHR.[127] Latvia had, however, entered a reservation excluding the application of this provision to the restitution processes in Latvia.

In the second instance, the privatization of apartments in State or municipality owned buildings, especially in Riga, has been taking place since 1996. There are still many buildings that are not registered in the Estate Register and thus individuals are prevented from finalizing their right to an apartment. Often it has remained unclear what are the reasons for the delays. The Riga municipality Privatization Commission (Privatizācijas komisija) has not been providing information on the reasons on its own initiative.[128] This situation would, however, qualify more as bad governance since it does not seem to reach the threshold where individuals would begin experiencing problems en masse when using their property, at least, for the moment.

Article 18. Right to asylum

International case law and concluding observation of international organs

The HRC welcome the new *Asylum Law* (Patvēruma likums), but expressed its concern at the short time limits for appeals procedures. It recommended that "the State party should ensure that the time limits under the accelerated asylum procedure be extended, in particular for the submission of an appeal".[129]

National legislation, regulation and case law

The question of asylum-seekers is regulated by the *Asylum Law*.[130] The law, which was passed in 2002 marked an improvement in following areas. First, it provides for a possibility to grant an alternative status to persons who do not qualify for the status of refugees. This alternative status may be granted in cases where there is a threat that the person may face death penalty, corporal punishment, torture, inhumane or degrading treatment or punishment in the previous

[127] Satversmes tiesas spriedums P*ar nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām*, Lieta nr. 09-02 (98), published in *Vēstnesis*, no. 122, 05.05.1998.
[128] There may also be legitimate reasons such as disputes over land pending in the courts.
[129] CCPR/CO/79/LVA, point 9. *Supra*, text accompanying note 20.
[130] *Supra*, note 97

country of residence. In addition, this status may be granted to persons who cannot return to the country of previous residence because of an armed conflict (Article 35).

Secondly, the law provides for the possibility to grant temporary protection for groups of persons who cannot return to their previous country of residence because of civil war or ethnic conflicts (Article 44).

Thirdly, the law provides for family reunion. However, if a person has been granted an alternative status, he or she has the right to family reunion only if he/she holds permanent residence permit. A person holding a temporary residence permit has been given the right to petition for family reunion, provided that that person has spent more than 3 years in Latvia.

Practice of national authorities

The new *Asylum Law* is a clear example of how the international requirements can be incorporated in national legislation. Latvia does not face requests for asylum on a large scale as it happens in other European countries[131], yet this is not reason for leaving the area of asylum and refugee issues unregulated.

Reasons for concern

It should be noted that there are still some deficiencies in the law. One of them is contained in article 19(3). This article deals with an accelerated procedure and the shortcoming of this procedure is the short time (two working days) allowed for an appeal. The other deficiency, already mentioned previously, is the fact that the *Asylum Law* does not provide for the right to education for minors. The deficiencies in law, especially with regard to education of minors should be corrected, especially in face of the fact that the number of minors is unlikely to be so large as to justify the excuse of lack of financial resources.

Article 19. Protection in the event of removal, expulsion or extradition

National legislation, regulation and case law

The *Asylum Law* provides for a non-extradition principle. A person who has been granted the status of asylum-seeker or who has been granted an alternative status, may not be expelled or extradited to a country where there is a possibility that the person might face death penalty, corporal punishment, torture, inhumane or degrading treatment or punishment.[132] However, the law does not prohibit the extradition in such cases of a person, who has been granted the status of refugee (Article 2 (2)).

Practice of national authorities

Currently, several amendments to the *Satversme* are under consideration with a view of Latvia's implementation of the European Arrest Warrant. The drafts are as follows: "Latvia shall not extradite its citizen unless it is provided for in international treaty" or "Latvian citizen shall not be extradited to a foreign country which is not an EU member", or Latvia shall not extradite its citizens unless this obligation derives from a treaty by virtue of which it has delegated some competencies to international institutions."[133]

[131] According to the data of the Office of Citizenship and Migration Affairs (Pilsonības un migrācijas lietu pārvalde), in the time period of January - October 2003 there were 5 applications for asylum. 3 persons were granted an alternative status. Available at http://www.pmlp.gov.lv/?_p=309&menu__id=15

[132] Articles 2 & 35.

[133] Information provide for by A. Buka, a member of the drafting committee at the Ministry of Justice.

Reasons for concern

The question about non-citizens of Latvia stands very seriously in the context of EU extradition procedures as they will be adopted in Latvia and also in the EU.[134]

CHAPTER III: EQUALITY

Article 20. Equality before the law

International case law and concluding observation of international organs

The HRC has noted that there is a problem of unequal treatment between men and women in Latvia in the framework of Articles 3 and 26 of the ICCPR.[135]

National legislation, regulation and case law

Article 91 of the *Satversme* provides for that "everyone in Latvia shall be equal before the law and court. Human rights shall be exercised without any discrimination". The equal rights principle and non-discrimination rule subsequently is repeated in most major laws such as Criminal Procedure, Administrative Process, Civil Procedure, Labour Law. New *Administrative Process Law*, entering into force on 1 February 2004, requires to take into consideration the equal rights principle when adopting an administrative act. The current version of the Law does not deal with indirect discrimination. It only prohibits different treatment in comparable situations. It does not therefore require different treatment of different situations or any possible consideration of further positive measures if different circumstances may merit them.

In 2003, the Constitutional Court of Latvia has delivered several decisions concerning Article 91. The issues dealt with concerned alleged age discrimination and restrictions on certain professions. These will be dealt with below under Article 21.

Practice of national authorities

In 2003, the NHRO was also asked to determine whether the requirement of the mandatory retirement age, as it appears in several laws regulating specific professions,[136] complies with Article 91 of the *Satversme* (see further under Article 21).

The Ministry of Welfare is working on the transformation of EU directives (2000/43/CE, 2000/78/CE,) into national law with the deadline for this task being set by 1 May 2004.[137]

Reasons for concern

The regulation and practice concerning equal rights and non-discrimination is still evolving in Latvia. At the moment, it is at the stage where the authorities and the general public learn what is discrimination in different cases. In some instances, however, the implementation of equal rights requires the adoption of special measures. The available regulation and practice is particularly limited in this respect. Equal rights clauses may need to be revisited in all relevant laws.

[134] See further on non-citizens also under Articles 21 and 22.
[135] CCPR/CO/79/LVA, point 14.
[136] These are the Law on Higher Education, the Law on State Civil Service.
[137] Information provided to the author of the Report by the Ministry of Welfare on 18 December 2003.

Article 21. Non-discrimination

International case law and concluding observation of international organs

Committee on the Elimination of Racial Discrimination (CERD) noted that Latvia has to continue developing a comprehensive anti-discrimination legislation. Particular attention has to be paid to ensuring effective complaints avenues.[138] The CERD identified the following specific issues of concern: rights of non-citizens and their integration; education reform and its effects on minority rights; lack of data on discrimination cases brought to justice.

Status and rights of non-citizens is also an issue of concern for the HRC under the rubric equal rights and non-discrimination.[139] More specifically, the HRC has noted the slow progress in naturalisation of non-citizens, restrictions in their enjoyment of certain rights based on the status of non-citizens, access to public administration based on language barriers, and possible problems in the area of the right to education after the transition to education in Latvian in secondary schools.

The European Court of Human Rights in *Slivenko v Latvia* case did not find the violation of Article 14. [140]

National legislation, regulation and case law

The *Civil Procedure Law* does not contain a provision specifically providing that in discrimination cases the burden of proof lies with the defendant. On 8 September 2003, the Riga city Latgale district court of first instance in case *George Steele v Brīvības partija* decided that there has been a violation of honour and dignity of Mr Steele in view of the pre-election advert of the defendant in the case - a political party.[141] The advert was suggesting that with the entry into the EU Latvia will be over-flooded by persons from Asia and Africa and that this is not what mothers of Latvian brides want. The plaintiff claimed the violation of his honour and dignity because of the racist character of the advert in relation to his life since he is an Afro-American married to a Latvian. One of the arguments in the case was that burden of proof is on the defendant. The court, while ruling positively in the case, did not elaborate the burden of proof issue because it relied on an earlier ruling by the Supreme Court in a related case brought against this party by Ch.C.Egugbo and P Mensaha where the court found that the advert was inciting to racial discrimination.[142] The applicants in the latter case were the actors involved in the advert who were not informed about the message of the advert.

Practice of national authorities

In 2003, the question was raised in front of the Constitutional Court and the NHRO whether mandatory retirement age in several laws is compatible with the prohibition of discrimination in the *Satversme* and relevant international human rights treaties. The details of the views taken by the two institutions will be provided below under Article 25.

Reasons for concern

Several reasons for concern continue to persist in the area of prohibition of discrimination. First of all, the anti-discrimination legislation or clauses in relevant laws need further work. This concerns both the definition and the procedural aspects, such as the question of burden of

[138] CERD/C/63/CO/8, 22 August 2003.
[139] CCPR/CO/79/LVA, points 18 – 20.
[140] *Supra*, note 80
[141] Lieta Nr. C29240503, 8 September 2003.
[142] Lieta Nr. PAC – 244, 9 April 2003.

proof in civil, labour and administrative cases.[143] Secondly, there is no specific plan of action identifying special measures to be taken in relation to different groups of persons so as to ensure the equality in their enjoyment of rights. Such a plan of action needs to include training the law enforcement and other relevant institutions, including the judiciary, concerning the issues of burden of proof since these questions are not part of the university curricula.

Some statements in media by some political parties concerning non-citizens and minorities continue to give reasons for concern. Recently, a party 'Motherland and Freedom', which forms current government, suggested that non-citizens should not be allowed to work as teachers in schools because they have been behaving disloyally to the country.[144] At the end of 2003, the Immigration and Citizenship Board (Pilsonības un imigrācijas pārvalde) of the Ministry of Interior has submitted amendments in the *Law on Those ex-U.S.S.R. Citizens Who do not have Latvian and Other Citizenship* to the Legal Committee of the *Saeima* which would allow the Board to deprive non-citizens of their status if they resided for a long period of time or have permanent residence in another country.[145]

Article 22. Cultural, religious and linguistic diversity

International case law and concluding observation of international organs

The HRC has pointed out to the State that "it should take all necessary measures to prevent negative effects of the transition to Latvian as the language of instruction. It should also ensure that if state subsidies are provided to private schools, they are provided in a non-discriminatory manner". The HRC has especially noted that all obstacles have to be removed to the practical enjoyment by the Roma of their rights under the Covenant.[146]

National legislation, regulation and case law

The Constitutional Court declared restrictions on broadcasting in a minority language unconstitutional.[147]

Practice of national authorities

The answer to the question whether the protection of minority rights is satisfactory in Latvia depends on the point of reference. If the point of reference is practices elsewhere in EU Member States, one could easily admit that the situation in Latvia is satisfactory for a number of reasons.

The legislative framework allows the more recent settlers – permanent or temporary residents – to associate themselves with a minority and to enjoy the rights guaranteed.[148] The

[143] According to information from A. Dimitors, a lawyer with the Secretariat of the Minister for Integration, both laws determining discrimination and equal rights and amendments to the Labour Law and the Civil Procedure Law have been prepared by the end of 2003. Reply to the author on 06.01.2004.
[144] 'Tēvzemieši vēlas liegt nepilsoņiem strādāt skolās', *Diena*, 20. 12. 2003., p. 3.
[145] D. Arāja, 'Deputāte iebilst pret ierēdnes kritiku', *Diena*, 20. 12. 2003., p. 6.
[146] CCPR/CO/79/LVA, points 20 – 21.
[147] According to Article 19 of the *Law on Radio and Television*, the broadcasting organisations could only broadcast up to 30 % of their monthly broadcasting time in foreign languages which included minority languages. Subsequently, this was changed to provide that it is up to 30 % a day. There was another amendment which reduced the daily allowance to 25 %. See Satversmes tiesas spriedums Lietā nr. 2003-02-0106, 05.06.2003, available at http://www.satv.tiesa.gov.lv
[148] I. Ziemele, "Die Ausgestaltung des Minderheitenschutzes in Lettland: ein Lehrstück für Europa", in G. Manssen/B. Banaszak (Hrsg.), *Minderheitenschutz in Mittel- und Osteuropa*, Frankfurt am Main, Peter Lang, 2001, pp. 65 – 94 (reprinted also in Latvian in "Likums un Tiesības", no. 26, 2001.).

distinctions in the enjoyment of economic and social rights that existed in the 1990s between citizens and non-citizens have been abolished to a considerable extent.[149] Restrictions remain as concerns, for example, the security guards and attorneys. Only citizens can work in three branches of the State: legislative, executive and the judiciary. At the same time, the State funds more than 200 minority schools – 179 Russian, 6 Polish, 2 Jewish, 1 Ukrainian, 1 Estonian, 1 Lithuania and 1 Belorussian as well as Roma classes in several schools.

The education reform introducing mainly Latvian as a language instruction at the level of secondary schools as of 1 September 2004 has been modified and takes into consideration the needs of minorities.[150] In 2004, only the tenth grade in minority schools will have 40% of subjects in a minority language and 60% of subjects in Latvian.[151] The rest is still taught in a minority language. After three years, the whole secondary education will adopt this model. In 2007, upon graduating from the secondary school the final exams will have to be taken in Latvian. Private educational establishments can continue teaching entirely in a minority language.

It is in this context that the hesitation of the Latvian parliament to ratify the *Framework Convention for the Protection of National Minorities* is not understandable since, with the exception of the issue of street signs and personal names, the fulfilment of the other obligations would not represent a particular problem. However, if a more integrated society is to be created, the question of participation of non-citizens in public life has to be addressed. At the moment, non-citizens can be part of public processes through, for example, the cultural organisations of minorities and membership in political parties. They cannot vote in municipal or national elections or in referenda.

The government has created a post of the Minister for Integration Affairs. The Office of the Minister is however largely funded by foreign donations.[152] It is a good sign to a minority population that the government is interested to have a debate at a high political level. Nevertheless, the Minister has been experiencing difficulties in 2003 since not all political parties or politicians approve of his work and the principles on which he basis his approach to integration.

Situation of Roma:

In August 2003, the first ever comprehensive study on the situation of Roma in Latvia was publicised. It was carried out by the Center for Human Rights and Ethnic Studies, an NGO, and funded by the Integration Fund and PHARE Programme. The report was an absolute necessity and it is groundbreaking in a sense that for the first time the problems that the Latvian public is aware of are strongly and openly pointed out. The report generated an important public debate. This is the first effort of a State represented by the Integration Fund to assess the situation of the Roma minority.

Roma is a historical minority in Latvia and it is therefore that 92% are citizens and most of Roma speak Latvian (66%). Despite these positive figures, the Roma in Latvia face many

[149] See *Fifth periodic report of Latvia*. CERD/C/398/Add.2, 6 June 2002. The report does not provide very clear information on the restrictions that still persist.
[150] *Izglītības likums* [Education Law], 01.06.1999., available at http://www.politika.lv.
[151] Ilze Grīnuma, "Mazākumtautību padome atbalsta 40:60 principu", *Diena*, 09.05.2003, p. 4. The Association for the Support of Russian as a Language of Instruction does not support this model and since the decisions in May 2003 has been organising demonstrations against the reform. There are 149 schools subject to the reform in 2004. It is assessed that 18 of them are not ready for the change of which 11 are situated in Riga.
[152] The budget of the office is 2 955 576 LVL of which 2 061 894 LVL are foreign donations. In addition, the Ministry of Justice budget still lists the Department of National Cultural Associations with the budget of 6123 LVL.

problems in the fields of employment, education, housing, social benefits and health care.[153] But the main problem is the discriminatory attitudes based on stereotypes about Roma. There are reports of police violence against Roma but no information on national case law in this respect was reported.[154] The Report concludes that in none of the areas where the problems persist have the responsible State authorities showed a special interest or understanding towards Roma.

In June 2003, the NHRO visited the Roma organisations in Jelgava, the fourth largest town in Latvia with historically a considerable Roma population. The visit disclosed what can be considered a typical situation with Roma minority in Latvia. Among 3000 Roma in this town only 1-5% have jobs. Local municipality in this and some other towns has created free regime schools and provide teachers who work with the Roma children at home. The question, however, arises whether this approach helps the integration of Roma into the society. The other more typical problem with Roma is the lack of housing. The courts are obliged under domestic law to throw them out from the apartments if they have not been able to make the required payments (this applies to everyone but it is estimated that Roma suffer the most). There is very limited social housing in Latvia and the housing that exists is reserved for the individuals who have served their sentences and are released from prisons.[155] Arguments about the right to housing in relation to Roma have not been fully tested in courts.

Reasons for concern

The government should pay particular attention to the contents of education programmes. Studies of the culture and history of minorities, including Roma, should become mandatory. Human rights education in schools could be a way to deal with the problems of intolerance, etc. For obvious historical reasons, it seems unreasonable to expect that the government could have already tackled the problems of Roma. I consider that with the preparation of the comprehensive study on the Roma situation the ground has been prepared so that the government now would address systematically the issues raised in the study

The idea that integration can be achieved when the non-Latvian population learns the Latvian language dominates integration processes in Latvia. Certainly, this is a necessary pre-condition. At the same time, other important principles should be followed such as equal rights. Whether the Latvian government and the Parliament will recognise all of the applicable principles will be seen in its decision concerning the ratification of the FCNM. At the moment, there are discussions to make declarations limiting the scope of the application of the FCNM in a way some other countries have done, for example, Estonia. In other words, the integration processes in Latvia require further attention of the international community.

[153] It is estimated that there are 13 – 15 000 Roma in Latvia but it is difficult to know the figure precisely. Less than 5% of Roma have normal employment, 40% of Roma have four classes of education, 7% are infected with AIDS which is disproportionately high as compared to the size of this minority, and 12% of offenders for dealings with narcotics are Roma. Latvijas Cilvēktiesību un Etnisko Studiju Centrs, *Čigānu stāvoklis Latvijā*, Rīga, 2003, p.7, available at http://www.politika.lv

[154] One of the first cases against policemen who were accused of having killed a Roma man took place in June 2003. The judge acquitted the four former policemen but she announced the judgment behind the closed doors excluding even a wife of the deceased, the interpreter and the media. For this violation, the judge received the least severe disciplinary punishment. The judgment has been appealed by the prosecution. Ibid. p. 51.

[155] See *Fifth periodic report of Latvia*. CERD/C/398/Add.2, 6 June 2002. Paragraph 113 provides data on 1999.

Article 23. Equality between man and women

International case law and concluding observation of international organs

Draft State Report to the Committee on the Elimination of Discrimination against Women (CEDAW) is in the circulation in the government, but has not been finalised.[156] The HRC has noted that "discrimination against women with regard to remuneration persists, notwithstanding the measures taken by the government to guarantee equal treatment, including employment law, and the programme on the implementation of gender equality". The HRC has recommended that Latvia should take all necessary measures to ensure equal treatment of women and men in the public and private sectors, if necessary through appropriate positive measures".[157]

National legislation, regulation and case law

Equality between men and women is provided for in the new *Labour Law* which has been drafted with an aim to transform relevant EU directives into national law.[158] Article 7 provides that everyone has the right to equal access to work, just, safe and healthy working conditions and equal pay. The *Labour Law* prohibits unequal treatment between men and women when deciding on employment, during the employment or at its termination. The Law contains a wider list of non-discriminatory basis. The *Labour Law* prohibits both direct and indirect discrimination where the latter means that apparently neutral criteria of employment create negative consequences for obviously larger portion of individuals of one gender unless this can be explained by objective circumstances.

Complaints about discrimination in labour relations between men and women have not yet reached in great numbers the available complaints mechanisms.[159] This does not mean that the problem does not exist.[160] It is rather a question whether women know their rights and want to enforce them.

Practice of national authorities

The Ministry of Welfare is the authority responsible for the development and implementation of gender equality policy in Latvia. The Cabinet of Ministers accepted a Concept on Gender Equality in 2001. Within this framework, the Inter-Ministerial Working Group and Gender Equality Council have been established. On 9 July 2002, the Cabinet of Ministers amended instructions concerning the preparation of legal acts by the government requiring the assessment of the impact on gender equality situation when new legal acts or amendments thereof are prepared by different governmental bodies.

In 2002, a final decision was rendered in one of the first cases brought by a women against her discrimination when she applied for a job as prison administrator. The Central Prison Administration refused her application on the grounds that she was a women, while they

[156] Draft has been published on http://www.politika.lv in Latvian.
[157] CCPR/CO/79/LVA, November 2003, point 14.
[158] *Darba likums*, 20.06.2001. (entered into force on 01.06.2002.), published Riga: Firma AFS, 2003.
[159] The government reported two cases in the draft State Report to the CESR which involved discrimination on the basis of sex. In one case, a woman was refused the employment as a prison administrator. In another case, a women received a lower salary than men in the same position. *LR Sākotnējais Ziņojums par 1966. gada Starptautiskā pakta par ekonomiskajām, sociālajām un kultūras tiesībām izpildi laika posmā līdz 2002. gada 1. janvārim. Projekts* (hereafter *Ziņojums*), para. 97, available at http://www.politika.lv. The NHRO has not received too many complaints about discrimination in labour relations. See Interview with S. Zaiceva, a lawyer at the NHRO, with the Portal Appollo (forth-coming). Submitted to the author of the Report on 24. 12. 2003.
[160] In accordance with the Association of Latvian Trade Unions, women after maternity leave and in the country-side are particularly vulnerable in the area of employment. L. Marcinkēviča, "Nodarbinātība atstāta novārtā", *Diena*, 05.01.2004., p. 2.

considered that only men are fit for the job. The applicant complained about discrimination based on applicable international treaties, including ICESCR, CEADW, etc., and the violation of her honour and dignity in this context based on Civil Law. First instance court found in favour of the applicant, including the requested compensation. The Appeals Court also found in favour of the applicant, but it repealed the part of the judgment concerning the compensation, considering that an apology in the court was a sufficient remedy in this case. In view of the Court, in this case the *Labour Law* was violated. The fact that women where excluded from applying for the job concerned did not infringe honour and dignity of women at large and of the applicant in particular. In accordance with the law in force, individuals can claim moral damages only on the basis of *Civil Law* and only when their honour and dignity is concerned. The Court refused to accept applicant's point that the refusal of an employment on discriminatory basis is also to be seen as a violation of honour and dignity of a women and thus is to be compensated. The court of cassation supported the arguments of the court of appeals.[161] Moreover, the Court of Cassation stated that the mere fact of determining a discrimination by a court decision is sufficient satisfaction.

At the beginning of 2003, the Womens' Interparliamentary Cooperation Group was established by 17 female MPs.

Reasons for concern

Women in Latvia are represented in the judiciary, the government and the *Saeima*, etc.[162] This representation is not, however, equal to the proportion of women in the society and/or among the labour force. It is still a case that women occupy the positions that are less paid than those occupied by men.[163] In 2002, the overage salary of women against that of men was 81.5 %.[164] In accordance with the data of the Board of Statistics, 59.1 % of unemployed in 2003 were women.[165]

Latvia is only now beginning to approach gender equality issues in an organised manner at governmental and parliamentary levels. It remains to be seen what specific legislative, administrative and financial steps will be undertaken to improve the economic and social situation of women and their representation in Latvia. For example, the legislation that gives the right to men to stay home for only 10 days after a child has been born is a good start (first two instances took place in January 2004), it has to be seen as the beginning only. It is thus submitted that for the equality between men and women to happen in Latvia special measures of a temporary character ought to be taken by the legislature and the government.

It is in this context that the practice of national courts has to be carefully assessed. It appears that the right to compensation for the infringement of one's rights on discriminatory basis is very limited in the laws in force.

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[161] Augstākās tiesas Senāta spriedums Lieta Nr. SKC-297, 08. 05. 2002., available http://www.politika.lv.

[162] After the 2002 Parliamentary elections, there are 21 female MP or 18 %. In the Cabinet of Ministers, the following ministries are led by women: Foreign Affairs, Health, Welfare and Culture.

[163] According to some studies, the women are about three times less represented in the business community and among managers. See L. Abramoviča & L. Ābola, *Women in Entrepreneurship and High-Level Management in Latvia: Obstacles and Resolutions*, Stockholm School of Economics in Riga, 2002, p. 1, available at http://www.politika.lv. While according to other data, in 2002 57.6 % were women among managers and specialists. See *Latvia. Human Development Report 2002/2003. Human Security*, Appendix, p. 140. Table on Status of women. The latter data could be quite accurate considering that women are still highly represented in public sector where salaries are low. Among civil servants in 2000 60 % were women and 40 % were men. *Ziņojums*, para. 130, *supra*, note 159

[164] *Latvia. Human Development Report 2002/2003. Human Security*, Appendix, p. 139, Table on Gender Differences: Ratio of women to men.

[165] Par reģistrēto bezdarbu valstī, Press release, 17.12.2003., available at http://www.csb.lv

Article 24. The rights of the child

International case law and concluding observation of international organs

In 2001, the Committee on the Rights of the Child considered the report of Latvia submitted in 1998.[166] In 2003, the HRC was concerned about a low level of registration as citizens of children born in Latvia after 21 August 1991 to non-citizen parents.[167]

National legislation, regulation and case law

Several draft amendments to laws have been prepared by the government with a view to improve legal and social situation of children. Draft Amendments to the *Law on Protection of the Rights of the Child*[168] (entry into force envisaged for 1 July 2004) address the right of a child to a family in situations of eviction from home and increase the requirements for parents and relevant State authorities to look after children.[169] Several draft amendments in a series of laws have been prepared to build a comprehensive approach in assisting parents or guardians having children with special needs. A new social benefit is proposed for taking care of a child with disabilities.[170]

Draft Amendments to the 1994 *Law on Citizenship* have been prepared to clarify the right of a child to acquire citizenship. It is proposed that the results of the education reform are reflected in the *Law on Citizenship*. As a result of the reform, most children will be graduating secondary schools with extensive instruction in Latvian language. These persons are given the right to acquire citizenship through registration. This same procedure is proposed to apply to the children living in orphanages with no other citizenship and no parents. A simplified procedure for the acquisition of citizenship is proposed to apply to children whose parents have been deprived from their parental rights.[171]

The Secretariat to the Minister for Children and Family Matters have prepared several legislative initiatives that are aimed at improving the situation with child adoptions in Latvia and providing for more equality between natural parents and adopting parents. The latter group of individuals is proposed to be entitled to receive some social benefits such as child benefit while looking after a child outside one's employment and adoption benefit. Also, amendments to the *Labour Law* are proposed to entitle adopting parents to take childcare leave.[172]

In 2003, a child dispute case was dealt with by Latvian courts. It brought up issues that have presented problems for some time and have attracted the attention of media. The case concerned the enforcement of the judgment of the Norwegian court which had granted the responsibility for two children to both parents while determining that their residence should be with their mother in Latvia. The allegations that the father had abused children was not proven in the court and thus he was not deprived of the right to meet with children. The first instance court in Latvia had recognised the Norwegian judgment and decided to enforce it in full, while on the appeal the regional court decided to enforce the judgment partly without granting the right to the farther to see the children. There was a considerable public pressure

[166] CRC/C/15/Add.142, 21 February 2001.
[167] CCPR/CO/79/LVA, November 2003, point 17.
[168] *Bērnu tiesību aizsardzības likums*, 19.06.1998., *Latvijas Vēstnesis*, No. 199/200, 08.07.1998.
[169] For more effective control over parents especially in view of the increased problem of violence against children in the families, the Minister for Children proposed to amend the Criminal Law appropriately providing for criminal responsibility if parents have failed to oversee their children until the age of 7. Information from the website of the Secretariat of the Minister for Children and Family Matters, at http://www.bm.gov.lv
[170] Information provided on the home page of the Secretariat to the Minister for Children and Family Matters, available at http://www.bm.gov.lv
[171] Ibid.
[172] Ibid.

in view of the suspicions of child abuse by the father. The case raised a difficult question of the application of the principle of the best interests of the child in situations of the enforcement of a foreign judgment. The regional court considered that a complete enforcement was not in the best interests of the children.[173]

Practice of national authorities

The government formed after the 2002 Parliamentary elections established a post of a Minister for Children and Family Matters. This was an extremely important measure if the situation of children in Latvia was to be improved. As described, the office of the Minister has indeed taken much awaited initiatives.

Reasons for concern

As noted under the right to education and elsewhere in this report, children and families with children continue to be particularly vulnerable in face of abuse and violations of their rights in Latvia.[174] One cannot conclude that the existing legislative guarantees comprehensively the rights of children and is in their best interests. This was in fact noted already by the CRC which recommended that further reform is required to ensure that legislation is fully compatible with a child-rights approach.[175] Further analysis and legislative initiatives are required across the whole spectrum of laws to enable, for example, child friendly court proceedings and equal rights and State support to all those individuals and institutions who provide care to the children. It is to be hoped that similar to gender equality the State institutions could start assessing the impact on child-rights of proposed actions, decisions, projects, etc.

Article 25. The rights of the elderly

National legislation, regulation and case law

Law on Social Services and Assistance entered into force on 1 January 2003 replacing the 1995 *Law on Social Assistance* that also started the reform of old-age pension schemes (on this Law see further under Article 34).

The *Labour Law* prohibits discrimination on the grounds of age. The scope and content of this prohibition was examined by the Constitutional Court concerning the mandatory retirement age for researchers and professors at the universities and civil servants. As to the former category, the Court established that having the criterion of the age as the only reason for mandatory retirement in research and the academic field does not comply with the principle of proportionality of restrictions, as they may be applied in relation to the right to chose one's employment. The decision was reached taking into consideration a wider context of the situation in the Latvian academia which suffers from the lack of human resources and faces difficulties with changes of generations.[176]

[173] *Augstākā tiesa: nebija pamata apšaubīt tiesneses kompetenci*. Press Release of the Supreme Court available at http://www.at.gov.lv

[174] In 2002, there were 2066 children whose parents were deprived of their rights. The Safe the Children, an NGO, working most actively in this field, has reported several serious concerns about child mortality, access to health, to education. Press Release on shadow report of this NGO to the UN, available at: http://www.glabietbernus.lv/alt_prez.htm

[175] CRC/C/15/Add.142, 21 February 2001, point 7.

[176] Satversmes tiesas spriedums *Par Augstskolu likuma 27. panta ceturtās daļas un 28. panta otrās daļas teksta «vai uz laiku līdz 65 gadu vecuma sasniegšanai» un likuma «Par zinātnisko darbību» 29. panta piektās daļas atbilstību Latvijas Republikas Satversmes 91. un 106. pantam*, 20. 05. 2003., *Latvijas Vēstnesis*, No. 75, 21.05.2003.

As concerns age restrictions imposed on civil servants, the Constitutional Court, first of all, determined that in principle civil service is covered by the right to work, as it is provided for in Article 106 of the *Satversme*. Secondly, it noted that a different regulation may apply in relation to certain types of professions such as civil service, judiciary, police and prosecution. It is therefore that in the context of the development and strengthening of good public administration in Latvia the imposition of the retirement age is legitimate and the flexible application of the retirement criterion with respect to civil servants, as confirmed by the survey of the practice, was seen as complying with the principle of proportionality. The Court did find that a provision which allowed women to retire at the age of 58, while that age for men was set at 62 was discriminatory, but the age requirement in the civil service context per se was not contrary to the *Satversme*.[177]

Practice of national authorities

The NHRO had differed in its conclusion concerning the criterion of retirement age in the Law on State Civil Service. It concluded earlier that the provision of the Law preventing a person of a certain age to continue his/her employment with the civil service only on the basis of the age is contrary to the *Satversme*. In view of the NHRO, when younger and older employees with the same qualifications are treated differently because of their age, this amounts to different treatment in otherwise comparable situations. Different treatment without objective and reasonable reasons is discrimination.[178] Furthermore, it also noted that national laws provide for different retirement ages for men and women. The NHRO considers this as a violation of equal rights between men and women.[179]

One can certainly share the point that there cannot be different retirement age for men and women. During the early 1990s, women and men retired at a different age.[180] Already then, it was contrary to several international human rights provisions. Furthermore, considering that life expectancy for women in Latvia today is about ten years higher then for men,[181] there could be arguments to raise temporarily or on case by case basis the retirement age for women. One has to note that these questions have come up in Latvia in the context of a broader debate in Europe about mandatory retirement, as noted by the Constitutional Court. Latvian authorities may have an easier task to tackle these questions in view of the absence of long traditions and well functioning retirement schemes. The view persists among individuals that they are better off continuing working after the retirement age.

The development of comprehensive retirement schemes in the 1990s has not provided all elderly with the necessary security. There are considerable differences among different age groups which could be explained by some miscalculations or even abuses of the old-age pension system. The most vulnerable group of old people are those who retired before or just after the independence.[182]

[177] Satversmes tiesas spriedums *Par Valsts civildienesta likuma 41. panta 1. punkta «f» apakšpunkta atbilstību Latvijas Republikas Satversmes 91., 101. un 106. pantam*, 18. 12. 2003., *Latvijas Vēstnesis*, No. 180, 19. 12. 2003.
[178] Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 2. ceturksnī*, at 16 – 19.
[179] Ibid., at 19.
[180] In 1995, the retirement age for women was 55, while for men – 60 to 62. In accordance with the 1995 *Law on State Pensions*, the progressive system of evening out the retirement age was introduced. This meant that by 2001 both men and women would begin to retire at the age of 62. See *Ziņojums*, para. 173.
[181] In 2002, life expectancy for men was set at the age of 65, while for women that was at 77. See *Latvia. Human Development Report 2002/2003. Human Security*, p. 10.
[182] The average old-age pension was 62 LVL in 2002. Minimum subsistence required per person was set at 88.70 LVL. The factor causing most insecurity for Latvians – health-related expenses – were reported to be paid out of pocket by 39 %. See *Latvia. Human Development Report 2002/2003. Human Security*, p. 29, 36. The latter affects particularly the elderly.

Reasons for concern

It is to be hoped, however, that these developments in the area of equal rights and retirement age would not detract the government's attention from building such retirement schemes that enable people to retire since this is also closely linked with the need to tackle unemployment issues. The retirement threshold could gradually become higher with the improvements in life expectancy situation. The legislative framework has to provide a possibility to assess each case individually. Since case by case approach is not yet part of the legal tradition, this will require some efforts of State authorities.
It seems that there is a room and may be a need to carry out an analysis of the effects of current old-age pension scheme on different age groups since the discrepancies seem to be too large.

Article 26. Integration of persons with disabilities

National legislation, regulation and case law

The 1992 *Law on Medical and Social Protection of Persons with Disabilities* was followed by the 1998 Cabinet of Ministers Programme *On Equal Rights for All*. The *Law on Social Services and Social Assistance* is of particular importance for the integration of persons with disabilities. It replaces gradually the previous legislation in the area of social services and assistance. The positive feature of the Law is that it very clearly determines the scope of social services and assistance, which apply also to persons with disabilities, and that it attributes clearly responsibilities to relevant State authorities.[183] The *Annual State programme on Improvement of Status of Children and Family* declared the needs of children with disabilities as the focus of the attention in 2003.[184]

Practice of national authorities

In 2002, the Ministry of Welfare initiated a research through a public tender with an aim to assess the situation in the implementation of the above laws and policies in relation to persons with disabilities.[185] The research established that the institutional framework for the protection of such persons is scattered and lacks in co-ordination. This is partly due to unclarities in laws. The legislative framework concerning education is particularly week in this respect. It does not clearly provide for responsibilities of relevant authorities to guarantee and integrate persons with disabilities into the education system. The research noted that the obligation to integrate persons with disabilities into the society has not become one of the guiding principles when decisions, laws, programmes, etc. are being considered for the adoption by relevant State authorities.

Notable improvements were reported in the area of so-called professional rehabilitation of persons with disabilities which is under the responsibility of the State service for employment. Professional education and training provided by the service and existing rehabilitation centers has enabled more and more persons to find the employment and thus integrate into the society.[186] The researchers note that more such centers are required.

[183] *Sociālo pakalpojumu un sociālās palīdzības likums*, 31.10.2002., *Latvijas Vēstnesis*, No. 168, 19. 11. 2002.
[184] See above under Article 24.
[185] SIA Attika E, *Sociālo pakalpojumu efektivitāte un resursu izmantošanas optimizācijas iespējas invalīdu integrācijas nodrošināšanā*, Rīga: 2002, pp. 14 - 21, available at http://www.politika.lv.
[186] In 2002, only 15 % of graduates from a rehabilitation center «Koledžu RRC» did not find an employment. Since 2000, 54 % graduates from the programme provided by the State Service for Employment have found the employment. Ibid., p. 24, 26.

Reasons for concern

As noted in the research, there is no uniform statistical information about persons with disabilities.[187] This complicates the development of a comprehensive approach to or a uniform State policy concerning the necessary measures to ensure the enjoyment of the rights by persons with disabilities. The research that provided the essential part of the report on this article lists several steps that should be undertaken by the Latvian government. The proposals are well prepared. It is to be hoped that the findings of this research requested by the Ministry of Welfare will be implemented in practice.

In accordance with the *Law on Social Services and Social Assistance* the State funded social rehabilitation of individuals until the end of 2003. The draft 2004 budget does not envisage this support. In accordance with the Ministry of Welfare, in order to meet the needs of all those requesting assistance in social rehabilitation, the State has to find about 3 billion LVL.[188] The financial means to back up the proper implementation of the 2003 Law remain a serious reason for concern.

CHAPTER IV: SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

National legislation, regulation and case law

Article 11 of the *Labour Law* provides for the "right to information" and "consultations" of workers through their chosen representatives or trade unions. Article 10 states that the workers implement their "social, economical and professional rights and interests" directly or through representation.[189] Disputes arising from collective bargaining and related issues will be dealt with, first of all, by conciliation commissions at working places and, then, they can be submitted to courts for civil litigation in accordance with general provisions of the *Civil Procedure Law*. Disputes arising from a contract can be submitted to the court.

Practice of national authorities

It is still a widespread practice that a large number of employers do not sign formal employment contracts with their employees in order to avoid paying taxes.[190] This leaves employers in a particularly vulnerable situation as concerns the enjoyment of the whole spectrum of worker's rights. In 2003, the government announced the fight against the payments under the table. This has led to the increase of the effectiveness in the work of the State Revenue Agency (Valsts ieņēmumu dienests).[191] The Agency carried out controls of 16 608 employees. In 1212 cases they established a violation of the laws in force. In 367 cases the contract with the worker was not concluded.[192] At the same time, only a few investigations by the financial police have been reported in media as possibly leading to court cases.

In two instances, the Association of Trade Unions has been involved in the dispute between the workers and their employees when the reorganisation of the undertaking was planned. The

[187] SIA Attika E, *Sociālo pakalpojumu efektivitāte un resursu izmantošanas optimizācijas iespējas invalīdu integrācijas nodrošināšanā*, Rīga: 2002, p. 11, 13, available at http://www.politika.lv.
[188] Staķe lūgs ZZS atbalstīt papildus līdzekļu piešķiršanu sociālai rehabilitācijai sociālās rehabilitācijas institūcijās, Press Release of the Ministry of Welfare, available at http://www.lm.gov.lv.
[189] *Darba likums*, published by Firma AFS, Rīga, 2003.
[190] *Human Development Report 2002/2003*, pp. 36 – 37.
[191] E.g. as a result of the audits carried out during the nine months of 2003, 2.2 billion LVL in income tax were collected. Information available at http://www.vid.gov.lv
[192] *Par tematisko pārbaužu rezultātiem 2003. gada 11 mēnešos*, available at http://www.vid.gov.lv

employees did not inform the workers. In principle, the Association assisted in finding a compromise in the two situations, although a few court cases about unjustified dismissal are pending.[193] Similar situations could be avoided if the undertakings were more transparent. Trade unions and workers have to use better their lawful rights.

Reasons for concern

The main reason for concern remains the lack of contracts with employers. Workers are therefore vulnerable and most often will not try to insist on their rights. They are also left with very limited protection upon reaching the retirement age. There is a need for the State to keep up controlling more thoroughly and hold employees responsible for the lack of contracts with employers.

Article 28. Right of collective bargaining and action

National legislation, regulation and case law

Chapter 5 in the *Labour Law* regulates collective bargaining. There is a dispute settlement procedure (see above under Article 27). The *Satversme* provides for the right to collective agreement and the right to strike (Article 108).

Practice of national authorities

In accordance with the Association of Trade Unions (ATU), in those working places where there are trade unions in about 70 per cent of instances collective agreements are reached. Usually such agreements contain better employment and payment conditions. It is also a general practice that such collective agreements simply restate the provisions of normative acts.[194]

In 2003 there were no strikes in Latvia. In accordance with the ATU, this is due the complex procedure envisage by the *Law on Strikes*.[195]

Reasons for concern

The tradition that the workers stand by their rights is only slowly emerging in Latvia. This may require some special measures on the part of the government to assist the emergence of the tradition. In particular, the procedure for calling a strike has to be revisited.

Article 29. Right of access to placement services

No significant development to be reported during the period under scrutiny

Article 30. Protection in the event of unjustified dismissal

National legislation, regulation and case law

The *Labour Law* in detail regulates the reasons and procedure for the termination of the contract. Article 122 provides for the right to challenge the termination of the contract in

[193] Reply of A. Freibergs, a lawyer with the Association of Trade Unions, to the author on 9.1.2004.
[194] Ibid.
[195] Ibid.

courts within one month after such a decision has been adopted. The one-month term can be extended by the court where the applicant provides for reasons for the delay in the submission of the application to the court. If the termination of the contract was unlawful or violated the procedure, or was carried out in violation of other rights of the employer, the court will reinstate the employer in his/her work. In this case, the employer will also be compensated his/her salary. The burden of proof rests on the employee.

In 2003, several seniour civil servants were fired because arguably they either exceeded their competence or were not carrying out their duties diligently which may have led to the financial loses for the State budget. In two instances the court did not satisfy the claims that the decision of the Prime Minister or the Cabinet of Ministers were unlawful and unjustified.[196] Other cases are pending in courts.

Disputes within the civil service are of special character. The existing cases discloses that the burden of proof in such cases has been resting on both parties in accordance with the civil procedure principles. The cases also show that there is a great deal of uncertainty concerning the procedure to be used for such labour disputes. In one case, the court has relied on *Labour Law* provisions.[197] In another case, the court has relied on provisions relating to the procedure for the challenge of administrative acts.[198]

Practice of national authorities

At the beginning of 2004, the third judgment in a civil service related labour dispute was adopted which found that the dismissal of a high-ranking civil servant has been unjustified. The judgment is not public yet, but the Prime Minister came out with the statement calling the judgment absurd. [199]

Reasons for concern

The regulation of civil service is largely within the domain of the State. It may put forward special requirements to civil servants. The fight against the alleged corrupt actions of civil servants by current government is also important. This however has to take place within and on the basis of the law. Undue political pressure on courts is contrary to the basic principle of a democratic State. The emerging court practice may have shown that there is a need to revisit the regulation of labour relations within the civil service and the dismissal procedures thereof.

Article 31. Fair and just working conditions

No significant development to be reported during the period under scrutiny

Article 32. Prohibition of child labor and protection of young people at work

National legislation, regulation and case law

Article 37 of the *Labour Law* prohibits employing children. For the purposes of the Law, a child is a person below the age of 15 or a person who continues primary education until the age of 18. In exceptional case, with the permission of a parent or a legal guardian a child at the age of 13 can be employed in the free from school time in the activities listed by the

[196] Lieta C 27110603, 14.05.2003., Lieta C 27138903, 04.11.2003. (on file with the author).
[197] Lieta C 27110603, 14.05.2003.
[198] Lieta C 27138903, 04.11.2003
[199] BNS, "Premjers: Briča atjaunošana darbā – absurds", available at http://www.delfi.lv on 06.01.2004.

Cabinet of Ministers. In exceptional cases, with the permission of parents or legal guardians and the State Labour Inspection, a child can be employed in cultural, art, sport or advertisement activities. Such activities shall not be contrary to the health, safety and morals of a child.

The young persons between 15 and 18 years of age are prohibited from the employment that may endanger their security, health, morals and development. The list of such employment places is adopted by the Cabinet of Ministers as well as exceptions for the purposes of professional education.

Persons below the age of 18, when they are employed, are requested to undertake a medical examination upon entering into the employment contract. The requirement for a mandatory annual medical examination applies to all persons until they reach the age of 18. The Law regulates the working hours and the remuneration of children and young persons. Persons below 18 years of age have a five-day working week. Children at age of 13 can work 2 hours a day and maximum of 10 hours a week during the school time and 4 hours a day and up to 20 hours a week during holidays. Young persons between the age of 15 and 18 cannot work for more than 35 hours per week.

Practice of national authorities

Protection of young people at work is a question that is closely linked to the more general issue of the protection of the rights of children and young people. It depends on the existence of the effectively functioning system of State institutions and NGOs able and willing to monitor the implementation of the rights of children and young people in different contexts. Problems that have been noted in the area under Articles 14, 24 and 35 affect the situation in the context of labour rights.

Reasons for concern

Latvia has acceded to the 1961 *European Social Charter*, but it has not accepted Article 7 on the rights of children and young persons to protection. Had it accepted Article 7, the provisions allowing for some employment of children at age of 13 would be in violation of this Article. One can use the argument that in many families in Latvia children support themselves and their families through their work. On the other hand, this affects fundamentally the right of the child, including and especially the right to education which is the basis for better employment prospects in the future for these persons. The State has to fundamentally rethink its social assistance policy to families with children.[200] Once again, the rights of children have to be made a priority since it is the future of the country.

Article 33. Social security and social assistance

No significant development to be reported during the period under scrutiny

[200] See above under Article 24. One of the most active and vocal NGOs in Latvia, Save the Children, has also called upon the government to turn towards the children. See Press Release on shadow report of this NGO to the UN, available at http://www.glabietbernus.lv/alt_prez.htm

Article 34. Social security and social assistance

National legislation, regulation and case law

In accordance with the 2002 *Law on State Social Benefits*, citizens and permanent residents with a personal number registered in Latvia have the right to social benefits (Article 4 (2)).[201] Temporary residents are not subject to this right, even if they reside lawfully in the territory. There are seven regular social benefits. These are: family support, child-care support, legal guardian support, guardianship support, foster family support, transportation support to persons with disabilities, social support. Family support is paid for each child until age of 15 or when a child attends a school until the age of 20 or the marriage. There is an additional support for children with disabilities until they reach the age of 18. In accordance with the *Law on State Old-Age pensions*, "all persons residing in the territory of Latvia" who have been making payments towards the pensions have the right to receive old-age pensions.[202]

Practice of national authorities

By the end of 2003 the old-age pension grew slightly as compared to the stagnation in previous years.[203] The problem remains that in accordance with the existing old-age pension scheme, those individuals who retired after the independence from higher salaries as the point of calculation of old-age pensions continue to accumulate faster higher pensions than those who retired during the Soviet period from the Soviet salaries as the point for calculations (see above under Article 25). There is therefore a large group of elderly below the average old-pension of 62 LVL in 2002.

In accordance with the statistical data for 2002, the amount of social assistance per person was 31.7 LVL. A family support per month was 5.65 LVL. At the same time, the minimum subsistence level per person a month was set at 88.76 LVL.[204]

Reasons for concern

The growing disparities in income between different groups of individuals are a fact that is publicly known. The public considers these disparities unjustified and too big and sees that the responsibility lies with the government to remedy the situation.[205] Individuals dependent on State support are among the most vulnerable groups. This requires a complex analysis and adoption of further measures, if necessary, concerning the collection of taxes and other State revenues, job creation, and ensuring the access of the low-income groups to various forms of social security, provided they are made adequate. The exclusion of temporary residents from the enjoyment of social benefits also appears problematic. It would have been preferable to allow for a case by case approach.

Article 35. Health care

National legislation, regulation and case law

The Health Care Strategy was adopted by the Cabinet of Ministers in March 2002.

[201] *Valsts sociālo pabalstu likums*, 31.10.2002., *Latvijas Vēstnesis*, No. 168, 19.11.2002.
[202] *Par valsts pensijām*, 02.11.1995., *Latvijas Vēstnesis*, No. 182, 23.11.1995.
[203] According to the 2002 data, 12.4 per cent of GDP was spent on social security. See Human Development Report 2002/2003, p. 10.
[204] LR Centrālā statistikas pārvalde, Nabadzības novēršanas monitoringa indikatoru tabula [Table of Poverty Monitoring Indicators], available at http://www.csb.lv/Satr/nabdz.cfm (accessed on 09.01.2004.).
[205] Ibid., 38.

Practice of national authorities

2003 continued to be a year of a fierce debate about the health-care system, in particular its funding principles, with one minister's resignation and another minister's resignation demanded by the end of the year. According to the UNDP's annual human development study in Latvia, health is one of the main reasons for human insecurity in Latvia.[206] Latvia's health ratings remain the lowest in Europe with only 4.8 % GDP expenditures for health care in 2001.[207] The report also concludes that "the health-related expenses that patients are having to pay for out of pocket continues to increase, limiting health security options for the poor".[208] Other studies confirm that the lack of a system has created a situation where the State does not cover the medical expenses. This affects the low-income groups and the overall health condition of the population. The State has not reconsidered the priority areas or medical treatment that it could fund in the circumstances of limited funds available.[209]

The increase of State spending on health care to 7 % GDP has been determined as one of the objectives in the strengthening the health-care system.

The NHRO has received complaints about the health-care system. The two main groups of complaints where the availability of medical treatment in prisons and the unauthorised removal of organs. As concerns, the first set of complaints, the NHRO did not find violations. As concerns the second set of complaints, the NHRO has begun to get acquainted with the problem.[210]

Reasons for concern

The access to the health-care system remains a problem. Different groups of individuals such as elderly, low-income families and others often cannot afford the help of a doctor when in need. It undermines the enjoyment of other human rights, most notably the right to human dignity. The possible solution lies with a real commitment of the government to ensure equal access to health-care to all. This implies that special measures need to be adopted for those with the most need. It also requires finally carrying out the reform of the health-care system which has been debated for many years with no decisions in sight.

Article 36. Access to services of general economic interest

International case law and concluding observation of international organs

In 2003 several international arbitration proceedings continued in UNCITRAL and ICC against companies providing services of general economic interest. In the area of telecommunications, Latvia had to interrupt a 20-year monopoly of the foreign investor in *Lattelekom*. The reason for the Latvian decision was the membership in the WTO and the forth-coming membership in the EU which do not allow such monopolies. *Latvia Gas* requested the State to liberalise the prices at least for industrial consumers. The foreign investor argued that the investment agreement has provided for that and that otherwise it cannot compete on the European market. The government is in a difficult situation since the increase in prices may negatively affect consumers and industries.

[206] *Supra*, note 182.
[207] See *Latvia. Human Development Report 2002/2003*, p. 106.
[208] Ibid., p. 29.
[209] SIA DEABALTIKA, *Veselības aprūpes pakalpojumu groza pašreizējā stāvokļa izvērtējums, tā ietekmējošo faktoru analīze un nākotnes tendences*, Rīga: 2002, p. 34, available on http://www.politika.lv
[210] Valsts Cilvēktiesību birojs, *Aktuālie cilvēktiesību jautājumi Latvijā 2003. gada 2. ceturksnī*, p. 8.

National legislation, regulation and case law

In 2000, the *Law on Regulator of Public Services* was adopted and the Regulator was established. It is a public law agency entrusted to represent the interests of the State and society in ensuring the access to services of general economic interest which are usually provide by private companies.

Practice of national authorities

Access to services of general economic interest continued to remain very low in Latvia which enabled persons with low income to continue largely enjoying the minimum services. Prices for gas for private users were raised first in July 2003 for about 16 % of the previous price. They will be raised next in 2004 for about 2.5 % and will continue to be on the rise. Prices for electricity were raised for the first time in 2004 for about 11 % for private users. Prices for telecommunications have not been raised.

Reasons for concern

It is unavoidable that these services will become more and more expensive since that is the reality of a liberalised market. It is therefore that the government should pay a particular attention to socially vulnerable groups, such as families with children, elderly, persons with disabilities and unemployed.

Article 37. Environmental protection

National legislation, regulation and case law

Article 115 of the *Satversme* provides for the right of everyone to live in a good environment and receive information on environmental situation. The State shall maintain and improve good environmental conditions.

In 2003, the Constitutional Court had to determine whether the project to construct a device for burning the hazardous waste in Olaine city, as approved by the Cabinet of Ministers in accordance with the EU demands, complies with Article 115 of the *Satversme* and other applicable laws. First of all, the Court addressed the issue of public participation in the debate concerning the project. The Court determined that Article 115 and other applicable provisions, providing for the duty to seek the opinion of the public, mean that there is a duty

> "not only to promote and ensure the public participation in the decision-making concerning the protection of the environment, but also the duty to inform effectively the public about its rights and possibilities to receive environmental information and take part in decision-making and to assess the opinions of the public expressed during its participation. The obligatory, as provided by law, public debate has an aim to ensure that the best possible decision for the interests of the society is adopted and that objections of everyone are assessed and justly taken into consideration. Public debate serves two main purposes: first of all, receiving the information that would assist in the adoption of a substantiated and just decision and, secondly, convincing the public that its views are taken into consideration (author's translation).".[211]

[211] Satversmes tiesas spriedums *Par Ministru kabineta 2001. gada 8. augusta rīkojuma Nr. 401 «Par bīstamo atkritumu sadedzināšanas iekārtas izvietošanu Olainē» atbilstību Latvijas Republikas Satversmes 111. un 115. pantam, Atkritumu apsaimniekošanas likuma 5. pantam un 6. panta 1. – 3. punktam, likuma «Par ietekmes uz vidi novērtējumu» 3. un 11. pantam, likuma «Par piesārņojumu» 14. pantam un 17. panta pirmajai daļai, kā arī likuma «Par vides aizsardzību» 11. pantam*, 14. 02. 2003., *Latvijas Vēstnesis*, No. 26, 18.02.2003., point 3.

In other words, it is a duty of the authorities to adopt measures that would make it easier for the public to take part in the debate. In the particular case, even if the Court noted several procedural deviations (i.e., lack of public debate and incomplete information at the basis of the decision) leading to the adoption of the Cabinet of Ministers decision, the Court could not establish that these deviations were sufficient to establish that such a decision was unconstitutional.[212]

Practice of national authorities

The UNDP Human Development Report identifies that Latvia has relatively good environmental sustainability index (10th rank among 142 States) and that it can serve as an example to other countries.[213] The National Waste Disposal Plan was adopted in 2002. The NHRO has been receiving a few complaints about the right to healthy environment

Reasons for concern

Several key issues of concern and proposals for improvement have been noted in the UNDP Human Development Report that the author of this Report would like to side with. Most notably, the issue of raising environmental awareness and participation of the public has to be underlined and the responsibility of the State authorities in this respect. This can be seen as part of a broader task to educate civil society where revisiting the contents of education programmes could be an element.

Article 38. Consumer protection

Practice of national authorities

In 2003 (1 December), the Center for the Protection of Consumer Rights (Patērētāju tiesību aizsardzības centrs) has received 655 applications and complaints. Most of them emanated in Rīga – 468, while in the rest of the country – 187. The subject matter of these applications and complaints concerned the purchase of goods whose quality was contrary to the description, the services provided did not correspond to the description and in 9 instances the customer considered that he/she was discriminated. The applications and complaints cover a wide range of goods and services. Among the submissions, 55 per cent were settled by the Center, 3 per cent have resulted in court cases, 15 per cent have been forwarded to other institutions in accordance with their competencies, 4 per cent have been withdrawn, 17 per cent were unsubstantiated and 5 per cent were refused further consideration, while 1 per cent is still under consideration.[214] As far as the work of the Center is concerned, there are good grounds to believe in good continuation of its work.

[212] Ibid., point 6.
[213] See *Latvia. Human Development Report 2002/2003*, p. 48.
[214] Information available on http://www.ptac.lv/rezultati/lieltb1.htm and http://www.ptac.lv/rezultati/tab2.htm (accessed on 9.1.2004.)

CHAPTER V: CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

National legislation, regulation and case law

The *Draft Law on Elections to the European Parliament* has been accepted in the first reading in the *Saeima* in November 2003. The draft has been prepared on the basis of Directive 1993/109/EC. Every citizen of the European Union who has reached the age of 18 and has been registered in the voters' register has the right to vote. Draft Article 3 lists exceptions to this right. These are: (1) persons with no legal capacity in accordance with the law, (2) persons serving the sentence of imprisonment and (3) citizens of another EU Member State with no voting right in their State of nationality.

Every citizen of the European Union upon reaching the age of 21 has the right to stand as a candidate at elections to the European Parliament. In addition to the above three exceptions mentioned in relation to the right to vote, the following further exceptions apply: (1) a person has served a sentence for a grave or a very grave crime, but the personal criminal record has not been cleared and (2) a person has been detained to a closed medical establishment as a result of having committed a crime in a state of mental disorder or when the illness has appeared after the event, or if such a case is closed but without a detention order. The exercise of the right is further subject to the requirement that a candidate is a member of a political party or a political union registered as such in Latvia.

Practice of national authorities

The government of Latvia has submitted that non-citizens of Latvia will not be regarded as EU citizens. Moreover, Latvia does not intend to give Latvian citizenship automatically. It will keep the same procedures and law for the acquisition of citizenship. Therefore, non-citizens of Latvia will not have a right to stand for elections or be elected in the European Parliament. The Naturalization Board (Naturalizācijas pārvalde) explains that non-citizens of Latvia will be entitled to be regarded as permanent residents of one EU Member State and thus will have the same rights as permanent residents within the EU.[215] These rights include the freedom of movement and the right to find an employment without the need to apply for visas.

Reasons for concern

There are two major reasons for concern. First of all, it concerns the restrictions on the right to vote and to stand as a candidate. Secondly, it concerns the rights of non-citizens.

As concerns the restrictions, they follow the laws and practice concerning domestic elections. Recently, the Constitutional Court declared unconstitutional the prohibition to vote and to stand as a candidate to the Parliamentary elections as applied to persons in detention.[216] The

[215] "Nepilsoņi nekļūs par ES pilsoņiem un tādējādi nebaudīs visas ES pilsoņu tiesības. (..)
Latvijas nepilsoņi varēs pretendēt uz ES pastāvīgā iedzīvotāja statusu, kas dos viņiem zināmas papildu tiesības - tiesības bez vīzām pārvietoties Eiropas Savienībā un izvēlēties darba un dzīvesvietu. Eiropas Savienības pastāvīgajiem iedzīvotājiem būs jāatbilst noteiktiem kritērijiem: jābūt 5 gadu nodzīvotam laikam kādā no ES dalībvalstīm, legālam iztikas avotam, sociālajai apdrošināšanai, kā arī jāatbilst noteiktam integrācijas līmenim sabiedrībā. Tomēr jāņem vērā, ka ES pilsoņu tiesības jebkurā gadījumā būs plašākas nekā ES pastāvīgajiem iedzīvotājiem." For this statement, see http://www.np.gov.lv/lv/faili_lv/FL_EiropasSavieniba1.doc.

[216] Satversmes tiesas spriedums *Par Saeimas vēlēšanu likuma 2. panta 2. punkta atbilstību Latvijas Republikas Satversmes 6., 8. un 91. pantam*, 05. 03. 2003, *Latvijas Vēstnesis*, No. 36, 06. 03. 2003.

prohibition to vote and to stand as a candidate continues to apply to prisoners. There are arguments supporting legitimacy of such an approach. On the other hand, if the purpose of modern prison is to prepare a person to his/her return to normal life, at least, the right to vote would be an important element of rehabilitation programmes.

Status of a non-citizen of Latvia is a special status. The only other country in Europe having the same special status for a large group of individuals is Estonia. With the only exception of political rights, in the large majority of the areas, non-citizens in Latvia have the same rights and protection as citizens. Where there have been distinctions in the enjoyment of economic and social rights between citizens and non-citizens, this has been regarded as unjustified and discriminatory.[217] Over a certain period of time, this has led to the gradual abolition of such differences, but some still exist (see under Article 47 on sworn advocates).

Even if the situation of non-citizens was not resolved during the entry negotiations between Latvia and the EU, it is to be hoped that the entry into the EU will not add to insecurities and discomfort of non-citizens in Latvia.[218] At the same time, making them citizens automatically will not resolve the problem either, considering that the interest of non-citizens to acquire Latvian citizenship is not high. The solution may lie with the development and strengthening of a so-called two-way street between the EU/Latvia and non-citizens with mutual engagement, inclusion into the processes, and a dialogue as the key elements for building loyalties.[219]

Article 40. Right to vote and to stand as a candidate at municipal elections

International case law and concluding observation of international organs

There have been two cases in the European Court of Human Rights and the Human Rights Committee concerning the Latvian language requirement for candidates to elections in Latvia. The issue of concern was the arbitrary character of the procedure of the evaluation of the knowledge of the language.[220]

National legislation, regulation and case law

Article 101 (2) of the *Satversme* states that only Latvian citizens have the right to vote at municipal elections. The *Law on Elections to the City, Regional and Rural Municipalities* follows this principle (Article 5).[221] Exceptions are provided in Article 6. Individuals without legal capacity do not enjoy the right to vote. Individuals in prisons and in detention do not take part in voting. As to the candidacy, there is a requirement that the person who has reached the age of 21 has lived in the municipality concerned for last 12 month or that he/she has worked there for last 6 month, or has the property registered in accordance with the law. Similar to the elections to the national Parliament, there is a long list of exceptions to the right to stand as a candidate. Essentially, those are persons who are deprived of a liberty; have served a sentence for a grave crime, but still have a criminal record; have been members of the Communist party and agents of the KGB and other secret services. [222]

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[217] CERD/C/63/CO/8, 22 August 2003, point 15.
[218] In accordance with the information of the Naturalization Board, by 1 July 2003 there were 494 319 non-citizens in Latvia among the population of 2 324 183, available at http://www.ng.gov.lv.
[219] CERD suggests considering allowing non-citizens to participate in local elections. *Supra*, note 217.
[220] Eur. Ct.H.R., *Podkolzina c. Lettonie*, 09.04.2002.; Communication 884/1999: Ignatāne v Latvia. 31.07.2001
[221] *Pilsētas domes rajona padomes un pagasta padomes vēlēšanu likums*, *Latvijas Vēstnesis*, 10. 12. 1994.
[222] "**9.pants.** Domes (padomes) vēlēšanām nevar pieteikt par kandidātiem un domē (padomē) nevar ievēlēt personas:
1) kuras izcieš sodu brīvības atņemšanas vietās;
2) kuras likumā paredzētajā kārtībā atzītas par rīcības nespējīgām;

The Cabinet of Ministers has started a work on the *Draft Law on Elections to District Councils and City Domes*. It seems that for the moment no major differences from the legislation in force are envisaged. The right to vote has been intended only for Latvian citizens. The right to stand for elections may be broadened to allow associations of electorates to participate in all municipal elections.[223] Today, those are only political parties and party unions.

In 2000, a complaint about the restrictive character of the exceptions to the law in force was submitted to the Constitutional Court. The Court did not find it contrary to human rights. It stated that:

> "(..) items 5 and 6 of Article 9 of the Law on Elections to Municipalities comply with Articles 89 and 101 of the Satversme, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of the First Protocol of this Convention as well as Article 25 of the International Covenant on Civil and Political Rights".[224]

Reasons for concern

Amendments to Article 101 of the *Satversme* have been prepared by the Ministry of Justice working group and have been submitted to the *Saeima*. Their aim is to open the way for further amendments to meet the requirements of the EU law. As concerns the participation of EU citizens in local elections, there are several obstacles. The administrative reform of the country is far from being completed. The mentioned amendments still need to be adopted. It seems that there is no single established view in the government concerning the necessary changes in the law on municipalities. The ministries often express contradictory opinions on whether or not EU citizens should be given the right to vote and stand as candidates in municipal elections.[225]

Article 41. Right to good administration

The right to good administration is not part of constitutional rights in Latvia. It has been, however, acknowledged by Article 10 (5) of the *Law on State Administration*.[226] It states that:

> State administration in its activities shall observe the principles of good administration. Such principles shall include openness with respect to private individuals and the public, the protection of data, the fair implementation of procedures within a reasonable time period and other regulations, the aim of which

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3) kuras bijušas sodītas par smagu vai sevišķi smagu noziegumu un kurām sodāmība nav dzēsta vai noņemta, izņemot reabilitētos;
4) kuras Krimināllikumā paredzētā nodarījuma izdarīšanas laikā atradušās nepieskaitāmības stāvoklī, ierobežotas pieskaitāmības stāvoklī vai arī pēc noziedzīgā nodarījuma izdarīšanas saslimušas ar psihisku slimību, kas tām atņēmusi iespēju saprast savu rīcību vai to vadīt, un kurām sakarā ar to piemērots medicīniska rakstura piespiedu līdzeklis vai arī lieta izbeigta bez šāda piespiedu līdzekļa piemērošanas;
5) kuras pēc 1991.gada 13.janvāra darbojušās PSKP (LKP), Latvijas PSR Darbaļaužu internacionālajā frontē, Darba kolektīvu apvienotajā padomē, Kara un darba veterānu organizācijā, Vislatvijas sabiedrības glābšanas komitejā vai tās reģionālajās komitejās;
6) kuras ir vai ir bijušas PSRS, Latvijas PSR vai ārvalstu valsts drošības dienestu, izlūkdienestu vai pretizlūkošanas dienestu štata darbinieki;"

[223] The information about the Draft Law is with the Ministry of Local Government and Regional Development.
[224] See *On Compliance of Article 5 (Items 5 and 6) of the Law on Elections to the Saeima and Article 9 (Items 5 and 6) of the Law on Elections to Municipalities with Articles 89 and 101 of the Satversme (Constitution), Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 25 of the International Covenant on Civil and Political Rights*, *Latvijas Vēstnesis*, 09. 01. 2000.
[225] As per information gathered by K. Jarinovska-Buka.
[226] *Valsts pārvaldes likums*, 06.06.2002., *Latvijas Vēstnesis*, NO. 94, 21.06.2002.

is to ensure that State administration observes the rights and lawful interests of private individuals.

In practice, this has been one of the most difficult principles to understand and follow. This is confirmed by the so far existing cases before the ECtHR and the Human Rights Committee (e.g., *Podkolzina, Ignatāne, Slivenko*).

There is no an independent mechanism for the monitoring and solving problems arising in the context of good administration. The NHRO so far has not dealt with this issue.

Article 42. Right of access to documents

The legislative framework providing for the right to access to documents has been criticised as providing too wide a discretion for State authorities in restricting access to information or documentation. At the same time, it has been also admitted that in practice the State authorities are becoming more transparent and public.[227] The Constitutional Court has had to deal with some uncertainties in the national legislative framework.

In the case "On the Compliance of Article 11 (the Fifth part) of the Law "On State Secrets" and the Cabinet of Ministers June 25, 1997 Regulations "List of Objects of State Secrets" (Chapter XIV, Item 3) with Article 92 of the Republic of Latvia Satversme (Constitution)", the Court stressed that in defining limitations with respect to the right of access to information, one has to comply with Article 116 of the *Satversme* and Article 10 of the ECHR. These two articles have a similar content. [228].The laws cannot provide for other restrictions on access to information.

Today, normative acts in Latvia do not deal with the question how residents in Latvia could access EU documents. In practice, the Ministry of Foreign Affairs is responsible for the determination which EU documents should be considered confidential and which are public. The EU Regulation on access to the documents of European Parliament, Council and Commission speaks about situations when there might be doubts about the confidential character of a document. A State authority is requested to either ask for the opinion of the EU institution or redirect such a request for information to this institution. It is unclear how it works in Latvia. The latter is also a reason for concern.

Article 43. Ombudsman

In 2001, the President of Latvia Ms. V. Vīķe-Freiberga proposed to introduce in Latvia a new institute of ombudsman. The draft law is prepared. There are some hesitations as to this proposal.[229] Local experts have bee rather critical about the draft law. In summer 2003, the government established a working group with an aim to determine the submission of the

[227] I. Indāns, *Informācijas atklātība*, Rīga: ES Phare, 2001, pp. 47. As a result of the project "Raising quality of rendering information in the institutions of State and Local Government" Delna, and NGO, prepared a study "Accessiblity of information in the institutions of State and Local Government". See Sabiedrība par atklātību – DELNA, L. Austere, *Informācijas pieejamība valsts un pašvaldību iestādēs*, Rīga, 2003. Available on the internet at: http://test.delna.lv/uploads/Petijumi_9.pdf. Last visited on 18 August 2003.

[228] Satversmes tiesas spriedums *Par likuma "Par valsts noslēpumu" 11. panta piektās daļas un Ministru kabineta 1997. gada 25. jūnija noteikumu Nr.226 "Valsts noslēpuma objektu saraksts" XIV nodaļas 3. punkta atbilstību Latvijas Republikas Satversmes 92. pantam*, *Latvijas Vēstnesis*, 24.04.2003. English version is available on the internet at: http://www.satv.tiesa.gov.lv/Eng/Spriedumi/20-0103(02).htm. Last visited on 1 August 2003.
Article 100 provides that: Everyone has the right to freedom of expression which includes the right to receive freely, keep and distribute information, express one's opinions. Censorship is prohibited.
Article 116 provides that: Individuals rights stipulated in … Article 100 … may be restricted in accordance with law for the protection of the rights of others, democracy, public safety, welfare and morals.

[229] Valsts tiesībsarga (ombuda) institūcijas izveide Latvijā. http://www.nmr.lv/lat/news/ombud_kartiba.htm

President's draft to the *Saeima* and to develop a plan for the implementation of the law, once adopted.

Article 44. Right to petition

The main concern of international monitoring bodies in respect to right to petition relates to the *Language Law* requirements. The HRC has noted that:

> "The Committee is concerned about the impact of the state language policy on the full enjoyment of rights stipulated in the Covenant. Areas of concern include the possible negative impact of the requirement to communicate in Latvian except under limited conditions, on access of non-Latvian speakers to public institutions and communication with public authorities (Article 26).
> The State party should take all necessary measures to prevent negative effects of this policy on the rights of individuals under the Covenant, and, if required, adopt measures such as the further development of translation services."[230]

The right to petition is established in the Article 104 of *Satversme*: "Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply. Everyone has the right to receive a reply in the Latvian language." The procedure how the submissions should be reviewed and answered is dealt within the *Law on Procedure for Examination of Applications, Complaints and Proposals*. It provides for an obligation to answer requests within two weeks or a month at the latest, if needed.[231] Silence or non-observance of the timetable results in breach of the administrative procedure. The *Language Law* provides that the State institutions can answer only requests made in Latvian unless requests in foreign languages are accompanied with an official translation. The only other exceptions to the language rule concerns those instances when a general public has to be informed about emergency, security and similar situations or when an international event takes place.[232]

With the entry into the EU, this legislative framework will most likely apply in relation to communications as concerns the EU matters. The question will arise whether it is necessary as a matter of EU law, when a petition is in another language (mostly that will be Russian, a non-EU language, or in another EU language), that it has to have an official translation into Latvian.

Article 45. Freedom of movement and of residence

International case law and concluding observation of international organs

In case of *Slivenko and others v. Latvia*, wife and daughter of an ex army officer of the former U.S.S.R. complained that:

> "1.[…] their removal from Latvia had violated their rights guaranteed by Article 8 of the Convention in that the measures taken against them in that connection had not respected their private life, their family life and their home in Latvia. They claimed

[230] Concluding observations of the Human Rights Committee: Latvia. 06/11/2003. CCPR/CO/79/LVA. (Concluding Observations/Comments)
http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/c9778e6288fa75bdc1256e000050cb71?Opendocument

[231] Article 8 (1.2,), (1.3). *Iesniegumu, sūdzību un priekšlikumu izskatīšanas kārtība valsts un pašvaldību institūcijās* [Procedure for Examination of Applications, Complaints and Proposals], *Latvijas Vēstnesis*, 05.11. 1994.

[232] *Valsts valodas likums*, 09.12.1999, *Latvijas Vēstnesis*, No. 428/433, 21.12.1999.

> that those measures had not been in accordance with the law, had not pursued any legitimate aim and could not be regarded as necessary in a democratic society within the meaning of Article 8 § 2."

The ECtHR found that:

> "2. Having regard to all the circumstances, the Court considers that the Latvian authorities overstepped the margin of appreciation enjoyed by the Contracting Parties in such a matter, and that they failed to strike a fair balance between the legitimate aim of the protection of national security and the interest of the protection of the applicants' rights under Article 8. Therefore, the applicants' removal from the territory of Latvia cannot be regarded as having been "necessary in a democratic society".
> 3. Accordingly, there has been a violation of Article 8 of the Convention."[233]

National legislation, regulation and case law

Citizens, non-citizen (a special category of people defined in the Article 1 of *Law on Those ex-U.S.S.R. Citizens Who do not have Latvian and Other Citizenship*) enjoy the right to free movement and residence. Similarly, persons who are registered in Latvia as stateless persons enjoy free movement and residence.[234]

An introduction of a declaration of domicile in 2002 and 2003 and the abolition of the Soviet style *propyska* (mandatory registration with the living space) can be seen as an important improvement as concerns the freedom of movement.[235] This means that persons do not need to go through a difficult bureaucratic system when they change their domicile.

If an individual does not have a lawful basis for the presence in Latvia, he/she is transported initially to a camp with a view of expulsion.[236] An important decision has been adopted by the Senate of the Supreme Court. It acknowledged that expulsion from the country (as a punishment for a criminal offence) cannot be applied because Article 43 of the *Criminal Law* provides for this measure only in respect to persons who have other citizenship. Since the persons in that case did not have any citizenship (there were former citizens of U.S.S.R), then expulsion could not be applied in their case.[237]

Practice of national authorities

There is no information about any legislative initiatives that would deal with the question of residence of EU citizens in Latvia after the entry of the country into the EU or how the social and work related issues will be dealt with. Even if it has to be admitted that the procedures for acquiring residence permit are more simple today in relation to EU citizens than other third country nationals, they still seem to fall below the relevant practices in the EU States.

Reasons for concern

The relevant State authorities have to begin considering the necessary legislative changes concerning the freedom of movement of persons within the EU.

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[233] *Supra*, note 80.
[234] *Par bezvalstnieka statusu Latvijas Republikā* [Law on Stateless Persons], *Latvijas Vēstnesis,* 02.03.1999.
[235] Dzīvesvietas deklarēšanas likums [Law on Domicile], *Latvijas Vēstnesis.* 10.07.2002.
[236] Noteikumi par pagaidu uzturēšanās kārtību personām, kuras aizturētas par nelikumīgu uzturēšanos Latvijas Republikā. *Latvijas Vēstnesis,* 26.04.1995.
[237] Lieta Nr. SKK-345, 10. 09. 2002., in: *Latvijas Republikas Augstākās tiesas Senāta Krimināllietu departamenta lēmumi*. Rīga: TNA, 2003, p. 48.

Article 46. Diplomatic and consular protection

National legislation, regulation and case law

Article 98 of the *Satversme* provides that "Everyone having a Latvian passport shall be protected by the State (..)." This means that Latvian citizens and Latvian non-citizens have a constitutional right to diplomatic and consular protection. According to Latvian authorities, in the future Latvia intends to rely heavily on the help of the EU in promoting these rights.[238]

Directive 95/553/CE has not been implemented. There are some drafts circulating in the Ministry of Foreign Affairs.

Practice of national authorities

The practice whereby the Latvian foreign service provided assistance to both citizens and non-citizens as well as stateless persons with Latvian passports abroad has to be seen as an example of a good practice both in the historical context of the country and also for the purposes of the future EU integration.

Reasons for concern

It is therefore that the situation which will emerge after the entry of Latvian into the EU and is likely to bring more noticeable differences between citizens and non-citizens is to be seen as highly unsatisfactory. This is especially so since Latvian non-citizens is a unique category with no precedent in international law and the steps taken so far by the Latvian authorities were appropriate.

CHAPTER VI: JUSTICE

Article 47. Right to an effective remedy and to a fair trial

International case law and concluding observation of international organs

The Human Rights Committee's comment in this respect and the recommendations were as follows:

> "10. While acknowledging the State party's admission that the average length of pre-trial detention is unsatisfactory and its attempt to remedy the situation in the proposed code of criminal procedure, the Committee is concerned about the length of pre-trial detention, which is often incompatible with articles 9(3) and 14. While being aware of the draft criminal procedure law intended, inter alia, to speed up trials, the Committee remains concerned at the length and frequency of pre-trial detention, particularly with regard to juvenile offenders.
> The State party should take all legislative and administrative measures to ensure compliance with articles 9 (3) and 14 as a matter of priority."[239]

[238] "Sevišķi nozīmīga būtu ES pilsoņiem pieejamā diplomātiskā aizsardzība, jo daudzās valstīs Latvijai nav savu vēstniecību." See ES PILSONĪBA UN PILSOŅU TIESĪBAS. http://www.workingday.lv/akademija/DN37.htm

[239] Concluding observations of the Human Rights Committee : Latvia. 06/11/2003. http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/c9778e6288fa75bdc1256e000050cb71?Opendocument

National legislation, regulation and case law

Length of proceedings:

Article 35 of the *Criminal Procedure Law* provides for the possibility to speed up the trial. In practice, however, courts are not using this possibility effectively. In accordance with the *Law on Compensation of Damages incurred as a result of unlawful or unsubstantiated behaviour of the police, prosecution or the judiciary* an arrested or accused person may request pecuniary and non-pecuniary damages when the arrest was unlawful or the accused was acquitted.[240] In accordance with the law in force and the available practice, violations of the limitations on the length of proceedings, as generated by the law enforcement and the judiciary, have not led to the acquittal of the accused and thus no damages have been requested on this basis.

The *Draft Criminal Procedure Law* is meant to change this situation. If the officials and the judiciary will exceed the time limits provided for by the law (Article 377), the case will have to be closed.[241] The question is whether the accused will be entitled to compensation as part of the remedy. Technically, *Civil Law* could be used to claim damages. The Draft also provides for another important innovation in the Latvian legal culture – the plea bargain procedure. It is meant to give some relief to the judiciary. The shortened or fast track criminal procedure which already exists has also not yet shown its possibilities.

Right to defence:

Several judgments of the Constitutional Court in 2003 deal with different aspects of this right. Article 92 of the *Satversme* provides that "… everyone has the right to an attorney." On 1 January 2003, amendments to the *Civil Procedure Law* narrowed down the scope of individuals who could represent a party in the proceedings governed by the *Civil Procedure Law*.[242] Until the entry into force of the *Administrative Process Law* this applied also to administrative disputes. The Court recognised that the legislator may have had legitimate aims in narrowing down this scope, i.e., to make sure that parties receive a professional legal representation. In the circumstances, however, where often individuals are unable to pay for the attorneys and where there is no legal aid scheme in civil cases and the number of attorneys is insufficient, the amendments may run contrary to the obligation to ensure effective representation in civil cases. This prejudices the exercise of the effective right to a fair trial.[243]

Another amendment to the *Civil Procedure Law* entered into force at the beginning of the year. It imposed an obligation that only sworn attorneys can represent parties at the cassation stage and sign the cassation appeal. The Court explained a special character of the cassation stage which is aimed at more general legal interests in ensuring uniform interpretation and application of the law.[244] The Court established nevertheless that despite legitimate aims to ensure quality at the special cassation stage, in the whole context of the Latvian reality it may prejudice the right of the parties to effective representation and thus violate their right to a fair trial. Finally, the Constitutional Court had to examine whether the provision in the *Criminal Procedure Law* providing for that the counselor in criminal cases can only by Latvian attorney, i.e., member of the Latvian bar complies with Articles 89 and 92 of the *Satversme*. The Court identified that the existing system in Latvia with limited number of members of the

[240] *Supra*, note 65.
[241] Comments of G. Kūtris, Head of the Working Group on the Draft Criminal Procedure Law.
[242] Previously the parties had a free choice of their representatives. Often they were represented by lawyers who are members of the Bar.
[243] Satversmes tiesas spriedums, *Par Civilprocesa likuma 83. panta 4. punkta atbilstību Latvijas Republikas Satversmes 92. pantam*, 06.11.2003., *Latvijas Vēstnesis*, No. 157, 7.11.2003.
[244] Satversmes tiesas spriedums, *Par Civilproces likuma 82. panta piektās daļas un 453. panta otrās daļas atbilstību Latvijas Republikas Satversmes 91. un 92. pantam*, 27.06.2003., *Latvijas Vēstnesis*, No. 97, 01.07.2003.

Bar does not guarantee effectively the right to defense in criminal cases. The Court noted various possibilities to enlarge the number of lawyers and organisations entitled to provide legal aid. Moreover, with the entry into the EU, the *Criminal Procedure Law* will discriminate against lawyers from within the EU. The legislator is under the obligation to amend the *Criminal Procedure Law* by 1 March 2004 to bring it in compliance with the right to a fair trial in the EU and the Council of Europe requirements.[245]

The *Law on Sworn Attorneys* was amended to extend its application also to the attorneys that are practicing within the EU Member States. The knowledge of Latvian and Latvian law will be required. These attorneys will be registered in a separate register. Presence of a Latvian attorney is required in the court proceedings where the EU lawyer will be involved. At the same time, Latvian non-citizens who may have studied in Law schools in Latvia and know the language are not given the right to become an attorney.[246]

Practice of national authorities

Independence and impartiality of the judiciary:

As noted in a study on the Latvian courts, the difficult political environment and problems with the legal culture make the work of the courts in Latvia additionally difficult.[247] The *Lavents v Latvia* case also showed that sometime, especially in sensitive cases, the courts may have a difficulty in preserving an independent appearance or that the executive may have a difficulty to refrain from comments. In addition, the case highlighted that the procedure for the recall or dismissal of the judge trying a case, where one of the parties has questioned his/her impartiality may need at least a debate in Latvia. This is an important guarantee of the impartiality of the court and thus its regulation has to be absolutely clear.[248]

A new draft *Law on Judiciary* has been prepared and has been examined by various international organisations and their experts.[249] The draft is subject to serious discussions and therefore has not been submitted to the Parliament. Meanwhile, the 1992 *Law on Judiciary*, as amended, is in force.[250] An insightful and comprehensive study on the independence of the judiciary in Latvia was carried out in 2001 with the support of the Open Society Institute.[251] It lists the problems or issues that impede the development of the fully independent judiciary, such as the unfavourable political environment, budgetary constraints, administration by the Ministry of Justice, etc. It has to be admitted that two years later many of the problems remain despite some recent developments.

A policy paper on the new ways of self-government of the judiciary has been circulated in 2003 for discussions and comments. In accordance with the new concept the administration of the judiciary will be transferred completely to the new institution called Court Administration.

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[245] Satversmes tiesas spriedums, *Par Latvijas Kriminālprocesa kodeksa 96. panta otrās daļas 1. teikuma atbilstību LR Satversmes 89. un 92. pantam*, 6.10.2003., *Latvijas Vēstnesis*, No. 138, 7.10.2003. The Court was not asked to address the question that only Latvian citizens can become sworn attorneys.

[246] *Grozījumi Latvijas Republikas Advokatūras likumā* [Amendments to the Law on Latvian Bar], 30.10.2003., *Latvijas Vēstnesis*, No. 161, 14.11.2003.

[247] See further note 251.

[248] *Supra* note 61, Parts IV and V, esp. para 115.

[249] The draft with all the comments translated into Latvian is available on the Ministry of Justice website http://www.tm.gov.lv

[250] The Law was last amended on 27 June 2003. Judges of courts of first instance, after having been on probation for three years, are elected by the Parliament for life. Higher court judges are elected for life. There is a retirement age. With time the social and economic benefits of the judges have grown as well.

[251] *Pirmsiestāšanās procesa ES monitorings: tiesu varas neatkarība*, OSI, Budapest, 2001 (available in Latvian and in English at http://www.politika.lv).The Latvian chapter was written by A. Ušacka, judge of the Constitutional Court. Another report on the capacity of the judiciary touching upon the independence questions was published in 2002. *Pirmsiestāšanās procesa ES monitorings: Tiesu kapacitāte*, OSI, Budapest, 2002 (also available in English and Latvian at http://www.politika.lv).

For the moment, the judiciary is still administered by the Ministry of Justice except for the Supreme Court.

In accordance with the information of the NHRO, during the first half of 2003 complaints about the problems in the enjoyment of the right to an effective remedy and to a fair trial are the most numerous. The NHRO has received 128 written complaints and has provided oral advise in 44 cases. Among them, the unreasonable length of pre-trial detention remains the most prominent problem. Individuals are complaining that courts are unwilling to reconsider the detention, when applied, and that it is applied in cases where there is no need to apply such a restricting measure. The Ministry of Justice has announced that in this period there has been an increase of complaints about the work of the courts as compared to the entire year 2002. Also the complaints received by the Ministry mostly inform about the delays in the proceedings, the lack of general information about the cases, etc. More rare are the complaints about violations of equality of arms principle.[252]

In accordance with the Ministry of Justice, in 2003 the budget for the reform of the judiciary increased for about 13 per cent or 1.4 million LVL as compared with 2002. The increase was due to the increase of the salaries of the judges and court staff. The Cabinet of Ministers has, in principle, accepted the allocation of funds to enable the coming into effect of the Administrative Process Law and the beginning of the work by administrative judges, the establishment of the Court Administration and the implementation of the new Criminal Procedure Law scheduled to come into force in 2004.

The training of judges in Latvia is managed by the Judicial Training Center. The Supreme Court and the Constitutional Court are organising their own training. The areas of concern where the JTC does not seem to pay particular attention are human rights and EU law.

Legal aid[253]:

The UNDP together with the Ministry of Justice in summer 2003 carried out a project whereby poor persons were invited to address two legal assistance centers in Riga and in Rēzekne where attorneys were prepared to help them in submitting claims in civil cases to the courts. This is part of the project that was agreed upon in 2002 between the UNDP, the Ministry of Justice, the Supreme Court and the Constitutional Court on "Support for the Latvian system of Justice". Within this project, it is envisaged to tackle the problem of legal aid in civil cases on a more systematic basis.[254]
Execution of judgments:

Latvia has adopted a law, which governs the execution of judicial decisions.[255] Subsequently, multiple instructions to enable the work of executors have been adopted by the Minister of Justice. Practice still remains rather week, partly because the institution is new.[256]

Another but related issue concerns the question of execution of judgments within the EU. The plan is to draft a law establishing single execution order. It would establish a system under which every judgment within the EU will be automatically recognized. Under the law in force, it is the court which deals with the submission on the enforcement of foreign

[252] There have been 699 complaints from individuals and 128 complaints from legal persons. See Latvijas Tiesu Portāls [Portal of Latvia's Courts] at http://www.tiesas.lv.
[253] In 2003, 400 000 LVL of the State budget and 60 000 LVL of the Ministry of Justice budget were paid for legal aid in criminal cases.
[254] Since 1999, the Legal Clinic operates at the University of Latvia. It was opened with the support of the Soros Foundation – Latvia. It provides legal aid in the specified areas, including refugee cases. It is open to the 3rd year law students as part of their curricula. It is an elective course with limited number of seats available.
[255] *Law on Court Judgment Executors* [Tiesu izpildītāju likums], *Latvijas Vēstnesis*, No. 165, 13. 11. 2002.
[256] There are 128 executors in Latvia.

judgments. In practice, such claims can be satisfied fully, partly or refused on the grounds specified in law. The legislative work under way envisages that for the purposes of the execution of EU judgments no court procedure will apply. The question of execution of judgments os closely linked to the issue of access to the judgment.

Access to judgments:

There are no periodic publications of all court judgments in Latvia. The only exception is the Constitutional Court. Recently, the so-called website of portal of courts' was opened. It does not, however, help to access free of charge the judgments. The portal redirects to a so-called Lursoft system which is a very expensive database. The costs of the access can be managed by practicing lawyers, but it is not helpful for general public. This access to judgments can also be seen as the issue for the authority of the courts which remains rather low among the general public. The State funds a public law agency '*Tiesu namu aģentūra'* is entrusted with the dissemination of information and has some budget for that, but as concerns the access to judgments, even if it has improved over the years, their are still not placed in a public register.

Reasons for concern

At the moment, there are several good initiatives under way. Some of them still need to pass the Parliament. The reforms of criminal procedure or the legislative basis for the judiciary should have taken place earlier and it is therefore that it is important that these initiatives are not particularly delayed in the Parliament. A serious attention should be given to the problems of legal aid. The *draft Law on Legal Aid*, as planned, has to be adopted sooner rather than later. In this context, the question of the right to defense also arises, especially considering the attempts to restrict or control the number of practicing lawyers in Latvia. Despite the decisions of the Constitutional Court and a recent amendment to the *Law on Sworn Attorneys*, one would need to look comprehensively whether this law and the practice thereof guarantees the protection of human rights.

There have been and continue to be many developments taking place within the justice system of Latvia, especially more recently. The main problem is the slow progress of these developments. The importance of continuing education on human rights and EU law for the judges has to be underlined. The government should take a more serious interest in overseeing how exactly the Judicial Training Center is working in these fields, how are the resource persons selected and the methodology developed.

Latvia needs to be strongly advised to create a public register of judgments. This is particularly important in view of the possible developments in the EU concerning the mutual enforcement of judgments.

The main reason for concern relates to the legislative initiatives taking place within the Ministry of Justice that are aimed at meeting the needs of Latvia's entry into the EU. There does not seem to be a consolidated and comprehensive approach to the amendments being prepared with one, preferably, at least partly an expert body having a global view over these amendments.

Article 48. Presumption of innocence and right of defence

No significant development to be reported during the period under scrutiny

Article 49. Principles of legality and proportionality of criminal offences and penalties

National legislation, regulation and case law

The principle of legality and proportionality in criminal procedure and in determining the penalties is included in Title V of the *Criminal Law*. The evaluation of the published judgements in criminal cases shows that most of them concern questions of non-observance of the principles of legality and proportionality, the very fact that the Senate of the Supreme Court establishes a violation shows some progress in this area. The most common finding can be exemplified by the language of the Senate in the 2002 case. The Senate found that:

> "The Criminal Chamber recognises that the First Instance Court and the Court of Appeals have not fully complied with the requirements of Article 46 of the Criminal Law concerning the determination of the sentence. The counsel for the defendant during the court hearing has pointed out several factors that the court has not taken into consideration … . The court has neither evaluated these factors nor has it studied them further in case of doubt. It is therefore that at the moment it has to be presumed that such factors did exist and they have to be taken into consideration in determining the sentence; they can be the grounds for reducing the final sentence."[257]

Another example concerns the application of principle of proportionality. The Senate stated that:

> "Moreover, the decision of the court that obliges the defendant to compensate the subsistence costs, amounting to 1880 LVL by January 2001, which by the time of the hearing in the court have grown for several hundred Lats, does not comply with the spirit of the law and the requirement of the reasonableness."[258]

Practice of national authorities

During the first half of 2003, the number of criminal cases where courts have exchanged a more serious sentence for alternative sentences with educative purpose has increased two times.[259]

Reasons for concern

Opinions differ in Latvia whether the courts comply with the principle of proportionality of the sentence. There is a view that the sentences prescribed by the Criminal Law are still too high and that sometimes judges are limited in their choices. The co-operation within the Justice and Home Affairs framework may require Latvia to reconsideration the Criminal Law provisions and the practice thereof.

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[257] "Krimināllietu departaments atzīst, ka pirmās instances tiesa un apelācijas instances tiesa nav pietiekoši pilnīgi ievērojušas Krimināllikuma 46.panta prasības par soda noteikšanu. Pirmās instances tiesas sēdē tiesājamā N. Ivanova likumiskā pārstāve norādījusi uz vairākiem apstākļiem, kurus tiesa nav ņēmusi vērā (..). Tiesa šos apstākļus nav izvērtējusi vai šaubu gadījumā papildus pārbaudījusi. Tāpēc šobrīd ir jāpieņem , ka norādīte apstākļi ir pastāvējuši un jāņem vērā pie soda noteikšanas, un var būt par iemeslu galīgā soda samazināšanai." (author's translation in the text).
See Lieta Nr. SKK-358, 09. 09. 2002., in: *Latvijas Republikas Augstākās tiesas Senāta Krimināllietu departamenta lēmumi.* Rīga: TNA, 2003, p. 72.

[258] "Bez tam tiesas nolēmums, uzliekot par pienākumu J.Rudzītim viena gada laikā segt uzturlīdzekļu parādu, kurš uz 2001.gada janvāra mēnesi sastādīja 1880 latus un līdz lietas izskatīšanai pirmās instances tiesā vēl ir pieaudzis par vairākiem simtiem latu, ir neatbilstošs likuma garam un saprātīguma jēdzienam". (author's translation).
See Lieta Nr. SKK-322, 29. 08. 2002., in: *Latvijas Republikas Augstākās tiesas Senāta Krimināllietu departamenta lēmumi.* Rīga: TNA, 2003, p. 658.

[259] Information available on http://www.tm.gov.lv/index.php?mid=38 (accessed in December 2003).

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

National legislation, regulation and case law

The *Draft Administrative Punishment Procedure Law* (Administratīvo sodu procesa likums) has been prepared. It further clarifies the relationship between the punishment in the framework of this law (minor offences) and punishment in the framework of criminal prosecution. Draft Article 3 provides that:

> "Administrative punishment can be imposed for actions or inaction for which there is also criminal responsibility provided for in the Criminal Law if a decision has been adopted refusing to initiate a criminal case or when the criminal case has been closed, while person's actions contain elements of administrative offence."[260]

There is no clear prohibition to try a person after he has been punished for an administrative offence.

Reasons for concern

The relationship between the application of the law on minor offences and the *Criminal Law* remains uncertain. The issue has to be clarified further taking into consideration the case law of the EctHR.

In accordance with the *Criminal Procedure Law*, parties are entitled to appeal the points of law with the Senate of the Supreme Court at a cassation stage. The Senate may indicate to the parties, including prosecution, that it has chosen the incorrect legal basis for the criminal case. The Senate may decide to send the case back for pre-trial investigation or a new trial. This seems to raise issues under Article 50 and may require the assessment of this competence of the Senate at the cassation stage.

[260] Information available on http://www.tm.gov.lv/str/747_ASP.htm (accessed in December 2003).