Judicial Independence in Latvia

Table of Contents

Judicial Independence in Latvia

Executive Summary

Latvia has made important progress towards the creation of an independent judiciary. Many of the formal guarantees of judicial independence are in place, partly as a result of progressive reforms in the early 1990s.

However, reform has not remained a priority, and major problems persist. In particular, the political and social environment is unfavourable to the development of an independent judiciary, over which the executive continues to exercise unduly intrusive administrative, supervisory, and financial powers.

Unfavourable Political Environment

The judiciary has failed to evolve into a fully effective, independent, and authoritative branch, due in part to a lack of political and public support for the principle of a strong and independent judiciary.

Insufficient Separation of Powers

As a consequence of these attitudes towards judicial independence, insufficient efforts have been made fully to develop and implement the structural framework of separate powers on which judicial independence relies. Important elements of the separation of powers are poorly defined in the constitutional structure, or are based only on ordinary legislation. Parliament has attempted to pre-empt the courts' jurisdiction on important cases.

Undue Executive Involvement

The executive – in particular the Ministry of Justice – has retained extensive authority over judicial administration, finances and career paths, exercising broad discretionary powers with numerous opportunities for improper influence on judges' decision-making. The concentration of so many regulatory, administrative, information-gathering, and supervisory functions in the Ministry inevitably places courts and individual judges in a subordinate position. In addition, political actors have occasionally attempted to circumvent formal procedures to intervene directly in cases.

Insufficient Funding and Work Conditions

The judiciary has little legal or practical control over or input into its own financing, which is determined by the Ministry of Justice. The judiciary is poorly funded. Unsatisfactory working conditions and a lack of technology contribute to other problems, including serious inefficiencies, backlogs, lack of enforcement, and corruption, all of which further erode public support for the judiciary.

In addition to these general issues, the following issues of particular concern are discussed in the body of the Report:

Parliamentary Committees

Parliamentary committees have investigated pending court cases, threatening to pre-empt the courts' jurisdiction. No specific Law on Parliamentary Investigation Committees has been adopted, while the Constitution and the Rules of Procedure of the Parliament provide only limited guidance.

Representation

There is no independent institution representing the judiciary in its relations with other branches, to speak on its behalf or ensure the independence of the judicial system.

Training

Training of judges in particular is poorly funded.

Supplemental Pay

Supplemental payment levels are established in law; however, some judges have not received their supplemental payments in full and in 2000 the promotion of some 100 judges was blocked as it would have necessitated additional remuneration. Discretionary refusal to pay promised and legally established benefits can be used by the executive as a form of improper leverage against judges.

Non-Tenured Appointment

Judges are initially appointed to a three-year term, after which they may be confirmed by Parliament for an unlimited term in office or re-appointed for an additional two-year term. The Minister of Justice proposes candidates for reappointment based on assessments provided by the Judicial Qualification Board. There are no additional criteria for deciding whether to nominate a judge for an additional two-year term or for an unlimited term of office. Such a system of largely discretionary vesting of tenure inevitably has a chilling effect on judges' willingness to adjudicate without concern for their job safety.

Discretionary Extension beyond Retirement

Discretionary extension of service beyond the mandatory retirement age – over which the Minister of Justice and senior judges have effective vetoes – gives judges an incentive to curry favour with the executive or their judicial superiors.

Supreme Court Binding Clarifications

The Plenum of the Supreme Court issues compulsory clarifications on the application of laws, which are binding for the courts of general jurisdiction. Many judges feel this practice effectively subordinates them to another court's interpretations, in violation of the constitutional provision that "judges shall be independent and subject only to the law."

Case Assignment

The system of case-assignment is outdated and unnecessarily allows court presidents too much discretion.

Enforcement

Enforcement of civil judgements is particularly problematic; seventy percent of all civil judgements are not enforced. Such low levels of enforcement undermine public confidence in and respect for the judiciary. Court bailiffs are hampered by meagre resources, a lack of legal training and equipment, and poor salaries that encourage corruption.

Corruption

Corruption is generally perceived to be widespread in the judiciary, as in other segments of public life.

I. Introduction

Latvia has made important progress towards the creation of an independent judiciary. Many of the formal guarantees of judicial independence are in place, partly as a result of progressive reforms in the early 1990s.

However, reform has not remained a priority, and several major problems persist. In particular, the political and social environment is unfavourable to the development of an independent judiciary, over which the executive continues to exercise unduly intrusive administrative, supervisory, and financial powers.

A. Unfavourable Political Environment

The judiciary has failed to evolve into a fully effective, independent, and authoritative branch of the State. This is due in part to a lack of political and public support for the principle of a strong and independent judiciary, and as a result the judiciary operates in a generally unfavourable environment.

There have been no reports of public denunciation of judges by government officials or personal insults directed at judges. However, politicians have publicly voiced opinions to influence judicial decisions in pending cases, and individual judges have been exposed to severe criticism, with frequent accusations of corruption and bias raised in the mass media. Media criticism in particular is often superficial and polemical, and not founded on a thorough examination of the case.

Public scepticism and suspicion regarding the judicial system persists, despite the introduction of reforms. In one recent survey, almost one quarter of Latvian firms surveyed indicated a lack of confidence that the justice system would uphold their contract and property rights.[1] The lack of public confidence in the protection of property rights is closely connected to more general dissatisfaction with the judiciary; according to the same survey, many individuals believe that courts are unfair, corrupt, inconsistent, costly, and slow, and that their decisions are poorly enforced.[2] Without public trust in judges, there is little incentive for politicians to support policies that would entrench real judicial independence.

---

1 World Bank and the European Bank for Reconstruction and Development, Monitoring Performance of the Latvian Judiciary, Danish Trust Fund, 2001 (in English).

2 World Bank and the European Bank for Reconstruction and Development, Monitoring Performance of the Latvian Judiciary, Danish Trust Fund, 2001 (in English).

B. Undue Executive and Legislative Involvement in the Judiciary

1. Insufficient Separation of Powers and Independence

Neither political actors nor Latvian society as a whole appreciates the importance of the separation of powers and institutional independence of the judiciary. As a consequence of these attitudes, insufficient efforts have been made fully to develop and implement the structural framework of separate powers on which judicial independence relies. Instead, the executive has retained extensive and intrusive authority over judicial administration and finances.

In particular, the executive, through the Ministry of Justice, is responsible for representing and administering the judiciary, and for preparing and allocating its budget. The Ministry also plays a decisive role in determining judges' career paths. In all these areas, the Ministry exercises broad discretionary powers, which create numerous opportunities for it improperly to influence court presidents and individual judges' decision-making. In a number of areas, Parliament also has unnecessarily broad discretion in areas of judicial administration which could more properly be conducted by judges themselves; for example, judges may only be granted tenure by a vote of Parliament after three to five years of service.

In addition, political actors have occasionally attempted to circumvent formal procedures in favour of more direct intervention in cases. For example, eight Parliamentary deputies submitted a petition to the Riga Central District Court in March 1999, requesting the discharge of a journalist from prison; this action was widely considered to be an attempt to interfere with the activities of the court and the prosecutor's office.[3]

In 2000, two Members of Parliament (MPs) publicly expressed their views on a pending case involving another MP accused of co-operating with the KGB. The Judges' Association considered these actions as undue pressure on the court, because in 2001 the judge hearing the case was to be considered for lifetime tenure before Parliament. Parliament has also attempted to pre-empt the courts' jurisdiction on important cases. More problematic is the fact that Parliament is in a position to pass on a judge's tenure in the first instance.

---

[3] The announcement on 26 March 1999 of the general meeting of the Latvian Judges' Association. See also *Diena*, 27 March 1999.

2. Insufficient Funding and Work Conditions

As a consequence of the poorly developed separation of powers and persistent executive interference, the judiciary has little legal or practical control over or input into its own financing. The regional and district courts have no say in the process of drafting their budgets; they are represented by the Ministry of Justice, acting on a discretionary basis.

The judiciary is poorly funded. Working conditions in courts are inadequate and contribute to serious inefficiencies, backlogs, lack of enforcement, and corruption, which in turn further erode public support for the judiciary. The most important short-term challenges facing the judiciary are working conditions, fighting corruption, and improvement of the legal qualification of judges – all of which can be attributed to insufficient funding.

Apparently in response to criticisms from the Commission's 2000 Regular Report the Minister of Justice declared that the judiciary should be a priority for the 2002 State budget, and acknowledged that funding for the judiciary to date has been insufficient for the judiciary to fulfil its responsibilities.[4] The Program for Developing the Judicial System in 2002–2006 identifies increasing judicial salaries as a priority.[5]

C. The Judiciary and the EU Accession Process

The EU has consistently highlighted various areas in need of improvement over the past several years. The Commission's 1998 Regular Report identified the need to improve the status of judges in order to attract qualified individuals and to increase public confidence in the court system. The 1999 Regular Report noted that the court system still required improvements, including training for court bailiffs.[6] The 2000 Regular Report stressed the need to complete the legal framework, expand and intensify the training of judges, and to make further improvements to the infrastructure of court buildings.[7] Most recently, during his visit to Latvia in July 2001, EU Enlargement Commissioner Guenter Verheugen raised the issue of improving Latvia's judicial system.[8]

---

4 I. Klinsane-Berzina, "Judicial power in the tether of the budget", *Neatkariga rita avize,* 23 April 2001.

5 The Program was adopted by the government on 12 December 2000, protocol No. 58.

6 See <http://www.mfa.gov.lv/eframe.htm>, in Latvian (accessed 20 August 2001).

7 European Commission, *2000 Regular Report on Latvia's Progress towards Accession*, November 2000, <http://europa.eu.int/comm/enlargement/dwn/report_11_00/pdf/en/lv_en.pdf> (accessed 20 August 2001), p. 17, (hereafter *2000 Regular Report*).

8 RFE/RL Newsline, Vol. 5. No. 137, Part II, 23 July 2001.

In general, political actors, State officials and judges are aware of Commission recommendations, but there has been little debate on the issues raised, or on accession in general.

D. Organisation of the Judicial System

Prior to the Second World War, Latvia had a civil law system. With the introduction of the Soviet system, the executive powers were greatly expanded, and legal institutions were viewed as instruments of unitary state-party control. The role of the prosecutor was expanded and given a significant measure of authority over the judiciary. Extra-legal interference with judicial decision making – "telephone justice" – was common. The legacy from the communist re-organisation of the legal system continues to have a profound impact on the judiciary.

Latvia's independence was re-established *de facto* in 1991. The Constitution, first adopted in 1922, was fully restored in 1993. In 1992, the Law on Judicial Power was adopted, with the purpose of reforming the judicial system by establishing a modern, efficient court system based on the continental European model.

The Constitution and the Law on Judicial Power establish a three-tier court system, consisting of district courts, regional courts and the Supreme Court, collectively considered the courts of general jurisdiction.[9] District courts are courts of first instance for all civil, criminal, and administrative cases, unless otherwise provided by law.[10] There are thirty-four district courts. Civil and administrative cases are reviewed by one professional judge; criminal cases are reviewed by a panel consisting of one professional judge and two lay judges. District court decisions may be appealed to a regional court or, under the cassation procedure, to the Supreme Court.

There are five regional courts.[11] Regional courts are courts of first instance for criminal cases concerning grievous crimes and for civil cases as established by law. Regional courts also act as courts of appeal for district court decisions. Each regional court has two sections: one for civil matters and another for criminal matters. Panels of three judges review regional court cases. When reviewing a case in the first instance the

---

9 Constitution of the Republic of Latvia, adopted 15 February 1922, *State Gazette*, 1 July 1993, No. 43 (hereafter CONST. REP. LATVIA). Law on Judicial Power, adopted 15 December 1992, Art. 82. *"Augstakas Padomes un Ministru Padomes Zinotajs"*, 14 January 1993, No. 1, Art. 1.

10 Law on Judicial Power, Arts. 29–33.

11 Law on Judicial Power, Arts. 35–42.

panel consists of one professional judge and two lay judges. When reviewing a case as an appellate court the panel consists of three professional judges.

Land Registry Offices are attached to the regional courts.[12] Land Registry Office judges have the status of district judges.

The Supreme Court consists of a Senate and two Divisions for civil and criminal matters.[13] The Divisions hear appeals against regional court decisions in which the regional courts have acted as the court of first instance. The Senate reviews appeals under the procedure of cassation. There are three Departments in the Senate: the Civil Matters Department, the Criminal Matters Department, and the Administrative Matters Department. A panel of three judges of the Court hears Supreme Court cases.

All judges of the Supreme Court constitute the Plenum. The Plenum issues instructions concerning the application of laws which are binding for the lower courts, establishes the Divisions and Departments of the Senate of the Court, and provides an opinion as to whether there is a basis for the removal of the President of the Supreme Court or the dismissal of the Prosecutor General from office.[14] The Plenum functions in accordance with the Law on Judicial Power as well as the Statute of the Plenum.

There are no military courts in Latvia. The Constitution provides that any military courts should function on the basis of a separate law,[15] but no such law has been adopted since the restoration of independence.

A separate Constitutional Court reviews laws for compliance with the Constitution.[16] The Court can declare laws or other enactments invalid. Its judges are appointed by Parliament.[17] The Constitutional Court is considered an independent institution of judicial power;[18] consequently, the Constitutional Court is detached from the general court system both jurisdictionally and organisationally.

---

12 Law on Judicial Power, Arts. 42(1), 98(1), and 98(2).

13 Law on Judicial Power, Arts. 43–50.

14 Law on Judicial Power, Arts. 49.

15 CONST. REP. LATVIA, Art. 86.

16 CONST. REP. LATVIA, Art. 85.

17 CONST. REP. LATVIA, Art. 85.

18 Constitutional Court Law, 11 September 1997, Art. 1(1).

As of March 2001, there were 423 professional judges in Latvia: 219 district court judges, 88 regional court judges, 38 Supreme Court justices and 78 Land Registry Offices judges.[19] The ratio of judges to the total Latvian population (2,431,000)[20] is one judge for about 5,750 people.

Most current judges joined the bench in the 1990s. In the first few years following the restoration of Latvia's independence, 60 to 70 percent of all judges (including 30 percent of Supreme Court judges) retired from office on their own initiative. Some retired because of legal restrictions introduced to remove members of the former Soviet military and secret service from the judiciary.[21] Judges retired for other reasons as well, including lack of necessary qualifications, refusal or inability to study new laws, and involvement as a judge in earlier political cases. This law is still in force, and every judicial candidate must undergo compulsory screening. In practice, no judicial application has been rejected due to screening.

---

19 Information from the Deputy State Secretary of the Ministry of Justice, 19 March 2001.

20 The Data of the Central Statistical Bureau on 10 August 1999, <http://www.csb.lv/>, in Latvian (accessed 20 August 2001).

21 Persons who are or were in the past salaried or contracted employees of the former USSR or Latvian SSR KGB, the USSR Ministry of Defense, the Security Service of the Army, the intelligence or counterintelligence services of Russia or other countries, and the owners and inhabitants of apartments used for secret meetings, may not be candidates for the office of judge (or lay judge). Furthermore, persons who are or were in the past members of organisations whose activities are restricted by the laws or judgements of the courts of the Republic of Latvia may not be judges. Law on Judicial Power, Art. 55.

II. Constitutional and Legal Foundations of Judicial Independence

A. Separation of Powers and Guarantees of Independence

The principle of the separation of powers is not explicitly stated in the Constitution. The clearest expression of a separation of powers is found in the Law on Judicial Power, which declares that "[a]n independent judicial power[22] exists in the Republic of Latvia, alongside the legislative and the executive power"[23] and that "only a court shall deliver justice."[24]

In order to change constitutional guarantees a two-thirds majority is necessary, as well as other procedural guarantees.[25] Statutes regulating the judicial power can be changed by ordinary procedure which makes them more susceptible to political swings. Therefore, the fact that the separation of powers is only established in law and not clearly in the Constitution, despite the Constitutional Court's rulings, weakens the certainty and protection the separation can provide.

However, the principle may be implied in the division of the Constitution into Chapters addressing "The Parliament", "The State President", "The Government", and "Courts".[26] Moreover, the Constitutional Court has made clear its opinion that the Latvian system is based on the separation of powers, although it is also clear from the Court's rulings that the other branches have violated that principle. For example, in a 24 March 2000 decision[27] the Constitutional Court stated that the Cabinet of Ministers ignored the principle of separation of powers and infringed upon the competence of the judiciary by adopting a resolution which authorised the Privatisation Agency to settle a dispute between two companies by ensuring that one of the parties, a State stock company, signed a contract with the opposing party. The Constitutional Court held that according to

[22] There is no accepted interpretation of what either a judicial power or an independent judicial power means.

[23] Law on Judicial Power, Art. 1(1).

[24] Law on Judicial Power, Art. 1(2).

[25] CONST. REP. LATVIA, Art. 76.

[26] See CONST. REP. LATVIA, Chapter VI, on the courts.

[27] Decision of the Constitutional Court, Case No. 04–07(99), *State Gazette*, 29 March 2000, No. 113.

the Constitution and the Law on Judicial Power, civil disputes should be reviewed exclusively by the courts, and that the Constitution obligates all State institutions to observe the rule of law, the principle of the separation of powers, and the principle of checks and balances. In pre-empting the courts' jurisdiction, the executive violated those principles.

The Constitution does enshrine the independence of individual judges and courts, establishing that "[j]udges shall be independent and subject only to the law"[28] and that judgements shall be made only by the courts.[29]

Parliamentary Committees: There have been instances of a parliamentary committee investigating pending court cases. No specific Law on Parliamentary Investigation Committees has been adopted, while the Constitution and the Rules of Procedure of the Parliament regulate this issue only minimally.

The draft Law on Parliamentary Investigation Committees now before Parliament has raised certain doubts as well. The main concern is that the draft law may interfere in the judicial domain by ignoring the principle of separation of powers, since the committees would be authorised to request information from "public institutions," which could be construed to include courts.

B. Representation of the Judiciary

There is no independent institution to speak on behalf of the judiciary and represent it in its relations with other branches. In practice, the Ministry of Justice and the President of the Supreme Court act as representatives; the Ministry's involvement raises concerns about conflicts of interest and also weakens the separation between the branches.

The Conference of Judges is a self-governing organisation of the judiciary.[30] All judges participate and vote in the Conference, which has, however, quite limited powers, and is perceived as a vetting device for decisions made in other fora. The Conference examines current issues of court practice; submits requests to the Supreme Court Plenum to issue explanations on the application of laws and discusses financial, social security, and other significant matters integrally related to the work of judges. The Conference

28 CONST. REP. LATVIA, Art. 83.

29 CONST. REP. LATVIA, Arts. 82 and 86.

30 Law on Judicial Power, Art. 92.

also elects the Judicial Qualification Board[31] and its chairman and elects the Judicial Disciplinary Board.[32] Except for election of the Boards, the powers of the Conference are purely advisory.

In practice, the Minister of Justice, or the Ministry's State Secretary, and the President of the Supreme Court speak on behalf of judiciary and represent it in its relation with the other branches of government. There is no legal basis for their role, but rather a common perception among judges and political actors that the President of the Supreme Court is the senior ranking judge and that the Minister is the chief of the judiciary and has administrative and supervisory responsibilities over it.

Many judges believe that introduction of an independent Judicial Council would enhance representation of the judiciary *vis-a-vis* the other branches and help consolidate the judiciary's control over its own affairs, including finances.[33] To date, however, there has been no widespread public discussion of the question.

C. Rules on Incompatibility

Judges in courts of general jurisdiction are prohibited from membership in any political party or movement and cannot hold political office. A judge who is nominated as a candidate for Parliament must resign from judicial service when the list of candidates is registered.[34] In municipal elections, judges need only relinquish their judicial posts upon being elected – that is, they may participate in political campaigns while still sitting on the bench.

---

31 The Judicial Qualification Board consists of ten judges. The Supreme Court Senate, the Plenum of the Supreme Court, the regional courts, the district courts and the Land Registry Offices are each represented on the board by two judges. The Head of Parliament's Legal Committee, the Minister of Justice, the Prosecutor General, the President of the Supreme Court, the Dean of the Faculty of Law of the Latvian University, the Rector of the Latvian Police Academy and the representative of the Latvian Judges' Association may attend the meetings of the Judicial Qualification Board. The Chairman of the Board is elected by the Conference of Judges. The Board acts in compliance with the Law on Judicial Power, Regulations On the Judicial Qualification Board and Rules for Attestation of Judges.

32 See V.D.2.

33 Information from a Justice of the Constitutional Court, 18 May 2001.

34 *Saeima* (Parliament) Election Law, adopted 25 May 1995, *State Gazette*, 6 June 1995, No. 86, Art.6; and the Election Law on City and Town Councils, District Councils and *Pagasts* (Councils), adopted 13 January 1994, *State Gazette*, 25 January 1994, No. 10, Art. 10.

Generally, judges cannot serve in the executive branch. However, judges may hold specific positions prescribed by other laws and international agreements.[35] For example, by law one of the nine members of the independent Central Election Commission is a judge elected by the Plenum of the Supreme Court.[36] A judge of the Supreme Court was employed as a consultant to the independent State Human Rights Bureau. As long as clear procedures allow such judges to recuse themselves in the event a case related to their commission work comes before them, such limited work on independent commissions may not present a serious threat to judicial independence.

However, the draft amendment to the Law on Judicial Power would allow the Minister of Justice to second judges to other state institutions or international organisations.[37] Having in mind the executive's traditional dominance over the judiciary, this provision would seem to give the Ministry undue leverage over judges' external career options, as well as unnecessarily introducing opportunities for compromising contacts between judges and other State actors.

Limitations on other professional activities of judges are established by the Anticorruption Law, which covers not only judges but all State officials.[38] Judges are prohibited from holding any other position or engaging in any other professional or commercial activity, with the exception of educational, scientific, and creative activities.[39] Judges are not allowed to strike.[40]

D. Judges' Associations

Judges are free to form or join professional associations. The Latvian Judges' Association is the only registered judges' association at present. The Association was originally founded in 1929 and its charter was renewed in 1992.[41] The Association is an independent, voluntary, professional organisation, which, according to its statute, promotes the "intellectual, social and material interests of judges" and strengthens judicial power

35 Anticorruption Law. Art. 19, adopted 21 September 1995, *State Gazette*, 11 October 1995, No. 156, Art. 15.

36 Law on the Central Election Commission, adopted 13 January 1994. *State Gazette*, 20 January 1994, No. 8, Art. 2.

37 Information from the Deputy State Secretary of the Ministry of Justice, May 2001.

38 Anticorruption Law, Art. 15.

39 Anticorruption Law, Art. 19.

40 Law on Judicial Power, Art. 86.

41 Information from the President of the Latvian Judges' Association, August 2000.

and its prestige within the State. More than fifty percent of all Latvian judges are currently members of the Association, which is the largest public organisation of lawyers. The Association has not been particularly influential, however, or successful in petitioning the executive on issues it considers important.[42]

[42] For example, the Association lodged complaints with the Government concerning its December 1999 decision to transfer ownership of certain court buildings from the Ministry of Justice to a stock company – an action which the Association believed harmed judges' independence – but has never received a reply.

III. Administration of the Justice System and Judicial Independence

The system of court administration has perpetuated the judiciary's dependence on the Ministry of Justice, a phenomenon that has also been noted by international observers.[43] This subordination creates conditions for the executive improperly to influence judges and especially court presidents.

There is no independent court administration on the national level. The Ministry of Justice manages regional and district courts through a special Department of Courts[44] and through the court presidents, who are responsible for day-to-day administration. The Supreme Court administers itself autonomously.

The Department of Courts consists of two sections: the Section of Court Operations and Statistics and the Section of Legal Professionals and Qualification.[45] The Section of Court Operations and Statistics prepares rules and issues regulations concerning court management and the handling of documents in regional and district courts; gives instructions on administrative issues to presidents of regional and district courts; supervises the organisation of regional and district courts' work (including case allocation, statistics, and internships); and supplies courts with legislative and other materials. In addition, it may request information and clarifications from officials of district and regional courts.[46]

The Section of Courts Operation and Statistics also indirectly monitors the performance and efficiency of the judiciary through its collection of statistics and assessments of individual judges' performance.[47] This data can be used, for example, by the Judicial Qualification Board in deciding whether to grant a judge a higher qualification or by the Ministry of Justice in deciding whether to ask the Parliament to increase the number of judges in the country. The Department of Courts prepares annual reports on the work of courts for the Minister of Justice, which form part of the Minister's annual report to the Prime Minister.[48]

---

43 World Bank, Functional and Organisational Review of the Ministry of Justice, 2000; Swedish Court Administration (SIDA), Development of the Court administration in Latvia, 2000.

44 Law on Judicial Power, Arts. 33 and 40.

45 Statute of the Department of Courts of the Ministry of Justice, adopted 2 April 1996.

46 Statute of the Department of Courts of the Ministry of Justice.

47 Statute of the Department of Courts of the Ministry of Justice.

48 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

The Ministry of Justice organises inspections of the district and regional courts, using either Ministry employees or judges from the Supreme Court and regional courts.[49] There is no formal system for selecting judges for this task. In practice, the presidents of regional courts and the Supreme Court have discretion in this matter. In practice, however, judges are not normally involved in inspections, which are conducted entirely by Ministry employees.[50] Such inspections, even though they are not directed at the core decision-making acts of judges, often serve as a tool to restrain judges and, in effect, to subordinate them to the Ministry.

The Ministry of Justice is also responsible for training and improving the qualifications of judges and court employees.[51] In 1999, the Ministry of Justice delegated this competence to the Latvian Judicial Training Centre, a non-profit organisation established by the Latvian Judges' Association, and several international organisations. The Centre is funded partly by the Ministry of Justice and partly by its founders.[52]

There are few clear rules with regard to the Ministry's exercise of its administrative functions. The concentration of so many regulatory, administrative, information-gathering, and supervisory functions in the Ministry of Justice – an organ of the executive – inevitably places courts and individual judges in a subordinate position. Without staffing, financial resources, access to information, and involvement in the rule-making process, judges are dependent on the executive for almost all their needs and may be vulnerable to pressure if they fail to satisfy the executive's expectations.

In March 2000, the then Minister of Justice announced that the Ministry supported the introduction of expanded administrative autonomy for the courts;[53] no practical steps followed, however. Currently, following a study carried out by the Swedish Court Administration project "Development of the Court administration in Latvia", the Ministry of Justice has been developing a concept paper on the transformation of

---

49 Law on Judicial Power. Art. 108.

50 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.The Ministry of Finance may also ask the State Audit Office to perform an audit. Such audits are requested after a financial evaluation of issues under the Ministry's competence. The State Audit Office monitors the condition of State property and the finances of all State organisations, including courts. Law on the State Audit Office, adopted 28 October 1993, *State Gazette*, 4 November 1994, No. 101, Art. 1.

51 Law on Judicial Power.

52 See Section IV.A.

53 The Minister also stated that "it is important for society to recognize authoritative judicial power." *State Gazette*, 7 March 2000, No. 76/77.

court administration. The original deadline for the preparation of the Concept of 1 March 2001 has been superseded, and work on the Concept Paper is still in progress.[54]

Other Administrative Provisions

District and regional court presidents have a broad management role at the court level. They oversee case allocation and management;[55] legal training for lay judges and court personnel; court schedules;[56] the compilation of court statistics; and the execution of court decisions. Many of these management functions require close contact with and reliance upon the personnel and resources of the Ministry of Justice. The position of a manager also places court presidents in a situation of frequent contacts with various agencies and individuals in order to ensure smooth operations of a court. This can compromise their independence and impartiality as they are also judges hearing cases.

The number of judges in district and regional courts is determined by Parliament based on the Minister of Justice's recommendation; each individual court recruits its own staff. There are no formal rules regulating staffing levels; in practice, the Ministry determines the required number of judges and court personnel based on its calculation of the average caseload in each court.[57]

As noted, the Supreme Court has an autonomous administration. The total number of judges in the Supreme Court as well as the number of judges in the Court's Senate and Divisions are determined by Parliament based on the recommendation of the President of the Supreme Court.[58] The Court has its own internal inspection system.

---

54 Information from the Assistant to the Deputy State Secretary of the Ministry of Justice, June 2001.

55 See Section VI.B.

56 Law on Judicial Power, Art. 33.

57 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

58 Law on Judicial Power. Arts. 32, 39, and 44.

IV. Financial Autonomy and Level of Funding

By law, the Ministry of Justice manages the financial resources for the operation of regional and district courts,[59] including preparation of the budget and the subsequent distribution of funds.[60] The judiciary is effectively excluded from the budget process, and has little involvement in the allocation of funding. The Ministry's broad discretion in financial matters and in supervising resource allocation introduces opportunities for indirect influence on court presidents and individual judges.

A. Budget Process

The Ministry of Justice effectively controls the budget drafting process for the regional and district courts. The financial position of the Supreme Court is also weak. As a whole, the judicial branch suffers from severe under-funding.

The State Budget Law does not provide for separate budget lines for the district and regional courts. Rather, their budget is incorporated into the budget line of the Ministry of Justice, and the Ministry is responsible for deciding upon allocations to these courts. District and regional court officials' budgetary requests do not bind the Ministry, and at no other stage in the budgetary process do the district and regional courts have input as to their budget allocation.

The Ministry of Justice prepares the draft budget request for regional and district courts and submits it to the Ministry of Finance. The Ministry of Justice does not follow any formal regulations with regard to the determination of funds for the district and regional courts, but the established practice is to base calculations on the number of positions and bills for infrastructure work.[61]

In practice there are no criteria for determining the amount allocated for each court; it appears that personal relationships between court presidents and Ministry officials are particularly important. There is a separate budget line in the State Budget Law for the Supreme Court, which prepares its own budget request and submits it directly to the Ministry of Finance.

---

59 Law on Judicial Power, Art. 107.

60 Information from the Directors of the Departments of Courts and Accountancy of the Ministry of Justice, May 2001.

61 Information from the Director of the Department of Accountancy of the Ministry of Justice, May 2001.

The Ministry of Finance is responsible for drafting the overall State budget,[62] and negotiates with the Ministry of Justice and the President of the Supreme Court over their respective sections. Disagreements are forwarded to the Cabinet of Ministers, although it appears that in practice State institutions' objections are not given much weight in the intra-governmental discussions.[63]

While reviewing the draft budget, the Government may, at its discretion, invite the President of the Supreme Court to participate in the review, and such an invitation has been issued occasionally; however, reportedly these opinions are not given serious consideration in the deliberations.[64] After the Government has given its approval, the budget is sent to Parliament, which adopts the annual State Budget Law.[65] The judiciary does not participate in the parliamentary debates over the budget.

The courts are therefore almost entirely dependent on the executive branch for their funding. The discretionary elements of the budgeting and allocation processes create opportunities for the executive to exercise undue influence over dependent court presidents.

The consequence is that courts remain under-funded. Court funding for 2001 was 7,316,892 Ls (c. € 13,193,053) representing approximately 0.50 percent of the overall State budget.[66] In 2000, the budget for the judiciary amounted to 8,102,231[67] – somewhat more than in 2001. The Government has already established spending limits for all State institutions, including the courts, until 2003. In setting these limits, proposals for increased funding of the courts were not taken into account.[68]

Training in particular is poorly funded.[69] In 1999, the Judicial Training Centre had insufficient funds to conduct courses and was in crisis. The Centre received 40,000

---

62 Law on the Budget and Management of Finances, adopted 24 March 1994, *State Gazette*, 6 April 1994, No. 41. Arts. 19 and 20.

63 Information from the President of the Supreme Court, August 2000; Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

64 Information from the Assistant of the President of the Supreme Court, May 2001.

65 Law on the Budget and Management of Finances, Arts. 20–22.

66 Information from the Director of the Department of the Accountancy of the Ministry of Justice, June 2001.

67 Information from the Ministry of Finance, July 2000.

68 The Resolution of the Cabinet of Ministers No. 30, Art. 24. On top state basic budget expenses of ministries and central state institutions and on key financial indicators in the special state budget for 2001–2003 years, adopted 5 June 2000. *State Gazette*, 7 July 2000, No. 252/254.

69 Information from the Latvian Judicial Training Center, July 2000. The Commission's *2000 Regular Report* notes that the training of judges is insufficient.

Ls from the Ministry of Justice's 2000 and 2001 budgets, as well as donations from non-governmental organisations.[70] The Government has reportedly promised an equivalent sum for the Centre in the 2002 budget.[71]

B. Work Conditions

As a consequence of inadequate funding, the judiciary suffers from shortages of space, necessary equipment, legal information and human resources, resulting in slow adjudication and large backlogs that undermine efforts to consolidate support for an independent judiciary.

Many court buildings do not meet basic requirements.[72] There are not enough courtrooms, and often there are no storage rooms for documents and no premises where lawyers and prosecutors can gather to review a case.[73] The most pressing shortages are in Riga Regional Court, where as of January 2001 there were ten courtrooms for 36 judges; some judges hold court hearings in their offices although there is no legal provision for doing so.[74]

In many courts, technical equipment, such as printers, copying machines, and safes are in short supply and of poor quality.[75] There are no tape recorders or stenographic machines in courtrooms for recording statements of witnesses;[76] court secretaries record session minutes by hand, which significantly reduces the efficiency of proceedings. Some progress has been made, however, with regard to computerisation. All Supreme Court judges have computers and in several district and regional courts each judge of

---

70 Information from the Assistant to the Executive Director of the Latvian Judicial Training Center, May 2001.

71 Information from the Assistant to the Executive Director of the Latvian Judicial Training Center, May 2001.

72 Ministry of Justice instruction No. 1 "The Guidelines for the Courthouses Project" of 20 March 2000 provides that the number of courtrooms should be the same as the number of judges in the first instance court (in exceptional circumstances two courtrooms for three judges) and one courtroom for three judges in the second instance court. The Development Program of the Judicial System of the Republic of Latvia 2002–2006. Courthouse Agency, January 2001.

73 According to one estimate, as of January 2001, there was a shortfall of 173 courtrooms, 75 judges' offices, 168 offices for assistants, and 78 rooms for other court personnel. The Development Program of the Judicial System of the Republic of Latvia 2002–2006, Courthouse Agency, January 2001.

74 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

75 The Development Program of the Judicial System of the Republic of Latvia 2002–2006. Courthouse Agency, January 2001.

76 C. Sandgren, D. Iljanova, United Nations Development Program, "Needs Assessment of the Judicial System of Latvia", September 2000 (in English).

the court has a computer.[77] A unified computer network has been established in several courts, a unified database is being organised, and all regional courts and 16 district courts have been connected to the State data transmission network.[78] However, some district courts have a single computer for the entire court.[79]

Legal research resources are insufficient. Most courts, including the Supreme Court, have no law library.[80] There is no electronic database for case law or legal writing in Latvia, although the case law of the Senate of the Supreme Court is published annually and one or two paper copies are provided to each court. One paper copy of the official gazette, which contains current legislation adopted by the Parliament, is provided to each court. In addition, the gazette is also available in electronic version to all Supreme Court judges, regional court judges, and judges in twenty of the thirty-four district courts. There are plans to extend these services to the remaining courts within two to three years.

The shortage of technical staff contributes to large case backlogs and promotes superficial review of cases. Each judge is supposed to have a secretary and a legal assistant. However, since the wages of the court staff are low and there is a lack of space to accommodate them, many judges do not have assistants.[81] The court docket is so congested that cases are scheduled several years in advance. The worst situation is in Riga Regional court,[82] which is currently scheduling hearings for late 2003,[83] and has been compelled to disregard the one-month time limit for beginning review of filed cases.[84] Appeals in criminal cases are sometimes reviewed after the appellants have served their sentence and have been released.[85] Under these circumstances, the right of appeal is rendered

---

77 Information from the President of the Supreme Court, July 2000.

78 See <http://www.mfa.gov.lv/eframe.htm>, in Latvian (accessed 20 August 2001).

79 The Development Program of the Judicial System of the Republic of Latvia 2002–2006. Courthouse Agency, January 2001.

80 C. Sandgren, D. Iljanova, United Nations Development Program, "Needs Assessment of the Judicial System of Latvia", September 2000 (in English).

81 See "Development Program of the Judicial System of the Republic of Latvia 2002–2006", Courthouse Agency, January 2001, which acknowledges the problem.

82 A. Gulans, President of the Supreme Court, "The political will for strengthening of the Judicial power is necessary", *State Gazette*, 7 March 2000, No. 76/77.

83 *The Baltic Times*, 12 July 2001.

84 See Criminal Procedure Code, adopted 6 January 1961, Art. 241.

85 For example, in March 2000, the Minister of Justice reported that one convicted individual had already served a term of three years and been released without his appeal having been reviewed by a regional court. V. Birkavs, "It is important for society to realize authoritative judicial power", State Gazette, 7 March 2000, No. 76/77.

meaningless.[86] Extended delays in civil cases similarly undermine confidence in the judicial process.

C. Compensation

Compensation for judges may be considered sufficient from the point of view of ensuring their independence and impartiality.

Judges' incomes have improved considerably during the 1990s, and are comparable to that of civil servants, but lower than that of high political officials, such as Members of Parliament. Their earnings are considerably above the national average of 149.30 Ls/month (c. € 269/month).[87]

The salaries of judges are fixed by law in relation to the salaries in the civil service. Compensation for judges consists of a base salary and supplemental payments. The President and Vice-Presidents of the Supreme Court, the judges of the Supreme Court, and the presidents of the regional courts receive salaries equal to the maximum salary of a civil servant of the first qualification class,[88] which includes the State Secretaries of the Ministries and the Head of the Prime Minister's Office. The salary of a civil servant of the first class varies from 286 to 372 Ls (approximately € 516 to € 671), averaging 329 Ls (approximately € 593).[89]

The salary of a regional court vice-president, and those of regional court judges and district court presidents equal 90 and 85 percent, respectively, of the salary of a first class civil servant. The salaries of vice-president and judges of district courts equal 90 percent and 85 percent, respectively, of the salary of presidents of district courts.[90]

---

86 On 12 July 2001, *The Baltic Times* reported that in April 2001 the State President Vaira Vike-Freiberga visited Brasas, a prison for men, which at the time housed 192 boys aged 14–18. Of the 192, 160 had been waiting for trials or appeal hearings more than six months and 31 more than two years. The situation was described by the State President as a "shameful violation of human rights."

87 Information from the Central Statistical Bureau of Latvia, July–September 2000.

88 Law on Judicial Power, Art. 119

89 Regulations of the Cabinet of Ministers, No. 380, Regulations on positions of civil service and wages for civil servant candidates in the transitional period, adopted 8 October 1996, *State Gazette*, 11 October 1996, No. 172.

90 Law on Judicial Power, Art. 119.

Judges receive monthly supplemental payments in addition to their base salary, based on their qualification class,[91] ranging from 20 to 100 percent of the base salary.[92] The President of the Supreme Court receives an additional 50 percent supplemental payment, while a Vice-President of the Supreme Court receives an additional 25 percent supplemental payment.

Supplemental payment levels are established by law. However, State budgets consistently do not allocate sufficient funds to cover supplemental payments for judges. This opens the opportunity for manipulation: in 2000, some judges received their supplemental payments, and others did not and the promotion of some 100 judges was blocked as it would have necessitated additional remuneration.[93] Failure to allocate funding sufficient to guarantee legally established payments opens channels for improper leverage against the judiciary. In addition, it demonstrates the low regard in which the judiciary is held by the government.

Similarly, although judges are entitled to an extensive list of benefits,[94] which should equal the social benefits of civil servants,[95] in practice few judges receive these benefits; however, there is no evidence that payments are being made selectively to individual judges on any improper preferential basis. One of the most important of these benefits is the paid vacation benefit equal to up to one month's salary; no vacation benefits were paid to judges of district and regional courts in 1999 and 2000.[96] By law, other social benefits which should be provided to judges include a residence benefit for judges serving away from their permanent residence; transfer benefits for moving posts; benefits for special occasions (such as an accident, death of a family member, birth of a child); a family allowance; foreign language proficiency allowance; insurance upon being appointed to office; and insurance in case of injury or death.[97] However, special occasion benefits, family allowances, foreign language allowances, and transfer benefits have not been paid to judges.[98]

---

91 See Section V.C.

92 Law on Judicial Power, Art. 120

93 D. Ankipane, "Finances for legislation in budget are not provided", *Neatkariga rita avize*, 17 August 2000.

94 See Law on Judicial Power, Art. 125 (providing that the benefits outlined in the Law on Public Civil Service apply to judges as well).

95 Law on Public Civil Service, Arts. 32–37, 49 and 50.

96 Information of the President of the Latvian Judges' Association, September 2000.

97 Law on Public Civil Service, Arts. 32–37, 49 and 50.

98 Nor, in some cases, to civil servants also entitled to them.

Within six months of the date of appointment, a judge is supposed to be provided with an apartment or house upon the recommendation of the Minister of Justice or the President of the Supreme Court.[99] However, in reality, judges encounter difficulties in the process of obtaining an apartment from local authorities.

Judges' pensions are calculated on the same basis as pensions for all other pensioners, by a formula taking into account contributions to the State Social Insurance Fund and length of service. Therefore, pension amounts vary from judge to judge, but on average the amount of pensions is about 40 percent less than the last income earned.[100] These relatively lower pensions create disincentives for judges to leave the bench which may make them susceptible to pressure from the executive, especially when combined with discretionary retirement ages.[101]

Reduction in salary may only be used as a disciplinary sanction. In appropriate cases, the Judicial Disciplinary Board may reduce up to 20 percent of a judge's salary for up to one year.[102]

Staff Compensation: The compensation of the technical staff is very low – about 100 Ls before taxes,[103] which is approximately two thirds of the national average salary. Such low salaries make it difficult to maintain full staffing support for judges, and also encourage corruption.

99 Law on Judicial Power, Art. 124.

100 Information from the Deputy State Secretary of the Ministry of Justice, May 2000.

101 See Section V.B.2.

102 Judicial Disciplinary Liability Law, Art. 7. See Section V.B.2, concerning judges' pensions and possible pressures for them to remain on the bench after retirement.

103 Information from the Head of the Courts' Department of the Ministry Of Justice, 17 May 2001.

V. Judicial Office

The executive exercises considerable influence over the career path of judges with relatively few clearly established rules to restrain its discretion, such that it is in a position to hinder judicial independence. Particularly problematic are the removability of judges for their first three to five years in office and discretionary decisions to extend judges' terms beyond the mandatory retirement age.

A. Selection Process[104]

Selection: Apart from the threshold legal requirements,[105] there are no clear rules for identifying candidates for a judgeship. Court presidents invite individuals to submit an application or the Ministry of Justice may advertise a competition for candidates. Candidates who comply with the legal requirements are invited to discussions with the State Secretary of the Ministry and with the president of the court with the vacancy, after which they may be selected for an apprenticeship.[106]

The apprenticeship period varies from one to six months, based on the decision of the State Secretary of the Ministry of Justice and the candidate's professional qualifications. The main responsibility of apprentices is to familiarise themselves with the work of a judge by analysing cases and helping the judge in legal research.[107] Apprentices do not adjudicate cases. Following the apprenticeship, candidates must complete an examination before the Judicial Qualification Board elected by the Conference of Judges of Latvia.[108] At this point, they are eligible for appointment.

Appointment: District court judges are nominated by the Minister of Justice and appointed by the Parliament.[109] Apart from confirming the threshold legal eligibility requirements, there are no other standards limiting Parliament's discretion to approve or reject a candidate. Judges are initially appointed only for a term of three to five years.[110]

---

104 Appointment of court presidents is discussed at Section V.C.

105 In order to qualify as a candidate for district court judge, an individual must be a citizen at least 25 years old, have a legal education and have completed two years of service in a legal field.

106 Law on Judicial Power, Art. 52; Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

107 Information from the Director of the Department of Courts of the Ministry of Justice May 2001.

108 Law on Judicial Power, Arts. 52 and 93.

109 CONST. REP. LATVIA, Art. 84; Law on Judicial Power. Arts. 51–52, 55, 57, and 60.

110 See Section V.B.1.

The Minister of Justice makes nominations based on an assessment issued by the Judicial Qualification Board following review of a candidate's examination results and an evaluation of performance during the apprenticeship. The law is unclear as to whether an assessment of the Board is binding or merely a recommendation.[111] In practice, however, the Ministry has not deviated from the Board's assessments to date.

Higher Court Judges: Regional court judges are also nominated by the Minister of Justice on the basis of the opinion of the Judicial Qualification Board, and appointed by the Parliament for unlimited terms.[112] This system applies to both the judges elevated from the district court (who must have at least two years' experience) and to initial nomination (for individuals who have at least three years' experience as an attorney or public prosecutor). For judges elevated from the district court, appointment is treated as an entirely new process, not a promotion.

Candidates for the Supreme Court judgeship are nominated by the President of the Supreme Court on the basis of the opinion of the Judicial Qualification Board, and appointed by Parliament to unlimited terms. District court judges (with at least four years' experience), regional court judges (with at least two years' experience) and certain legal professionals (attorneys, prosecutors and law lecturers with six years of experience) are eligible.[113]

Lay judges for the district and regional courts are elected by the local municipality for five years. A lower legal threshold applies to candidates for lay judgeship, who must be citizens of Latvia at least twenty-five years old.[114]

B. Tenure, Retirement, Transfer and Removal

Discretionary political involvement in judges' careers remains a problem. Parliament's power to delay the vesting of tenure and irremovability– up to five years after appointment – threatens judges' decisional independence for that period. Discretionary extension of retirement – over which the Minister of Justice and senior judges have effective vetoes – gives judges incentives to be co-operative with the executive or their judicial superiors.

111 Law on Judicial Power, Art. 57.

112 Law on Judicial Power, Arts. 51, 53, 55, 57, and 61.

113 Law on Judicial Power, Arts. 51, 54, 55, 59, and 62.

114 Law on Judicial Power, Arts. 56 and 64.

1. Non-Tenured Appointment

According to the Constitution, judicial appointments are irrevocable.[115] Once appointed to an unlimited term, judges are guaranteed tenure until a mandatory retirement age. However, judges are not given tenure until three to five years into their service, and the final decision to grant them tenure is based, in part, on their performance in office and in part on the Ministry of Justice's and Parliament's discretion, which inevitably creates incentives for judges to avoid adjudicating in ways which might displease the executive.

Judges are initially appointed to a three-year term.[116] On completion of the initial term, a judge may be confirmed by Parliament for an unlimited term in office or re-appointed for an additional two-year term. In one instance, in 1998 Parliament refused to re-appoint two probationary judges who were to hear a politically sensitive case concerning the mayor of Daugavpils. When one of the rejected candidates was re-nominated, the Parliament appointed him; the other judge was re-nominated to the Land Registry Office and was also appointed by the Parliament, which provided no explanations for either the initial rejection or subsequent appointment of either candidate. In general, however, the Parliament rarely rejects a nominee for the bench.

The Minister of Justice proposes candidates for reappointment based on assessments provided by the Judicial Qualification Board; the Minister may refuse to re-nominate a judge.[117] There are no additional formal criteria for deciding whether to nominate a judge for an additional two-year term or for an unlimited term of office. There is no possibility provided in any rules to appeal a decision of the Board or the Ministry, although the Ministry is reportedly planning a proposed amendment to provide for the possibility of appeals.[118]

Informally, the judge's performance on the bench, litigants' complaints concerning the judge's performance, the number of cases decided by the judge, and the percentage of the judge's decisions overturned on appeal are taken into account by the Board.[119] Usually, after the initial three-year term, judges are appointed to unlimited terms of office. In 2000, for example, only one judge, and in 2001 two judges, were given two-year re-appointments; there were no instances reported of the Minister refusing a re-

---

[115] CONST. REP. LATVIA, Art. 84.

[116] CONST. REP. LATVIA, Art. 84; Law on Judicial Power. Arts. 51–52, 55, 57, and 60.

[117] Law on Judicial Power, Art. 60.

[118] Information from the Director of the Department of Courts of the Ministry of Justice, 17 May 2001.

[119] Information from the Director of the Department of Courts of the Ministry of Justice, 17 May 2001.

nomination altogether, nor of Parliament refusing to appoint a candidate nominated by the Minister. Nonetheless, such a system of largely discretionary vesting of tenure inevitably introduces chilling effects on judges' willingness to adjudicate without concern for their job safety.

For example, in 2000, two Members of Parliament made public statements to the press concerning the pending court case of another Member accused of co-operating with the KGB. The presiding judge, in the final year of his three-year probationary term, was to be considered for lifetime tenure by Parliament in 2001. The Latvian Judges' Association opined that the Parliament members' actions constituted an attempt to indirectly influence the decision of the court.

What is most relevant from this case is the fact that Parliament is in a position to rule on a serving judge's tenure. Although using the media to make inflammatory attacks on the judiciary or to create a hostile atmosphere against judges is improper, there is nothing necessarily improper in Members of Parliament publicly criticising a judicial decision, or even the conduct of a pending case. The Members' statements are potentially troublesome only because they are in a position actually to affect the outcome of the case, because the law bests power to grant or withhold judicial tenure.

In 2001, a major opposition political party recently proposed a constitutional amendment abolishing life tenure in favour of direct popular elections of judges to four-year terms; the amendment would also allow the State President to appoint the President of the Supreme Court to a four-year term as well.

2. Retirement

The mandatory retirement age is sixty-five for district and regional court judges and seventy for Supreme Court justices.[120] Judges receive a pension after leaving office.

A judge's term of office may be extended beyond the mandatory retirement age. The Minister of Justice and the President of the Supreme Court, upon receiving a favourable opinion from the Judicial Qualification Board, may extend, with a joint decision, the office of a district or regional court judge for up to five years. The President of the Supreme Court alone has the same power with regard to the Supreme Court judges.[121] This discretionary power may give judges approaching retirement improper incentives

[120] Law on Judicial Power, Art. 63.

[121] Law on Judicial Power, Art. 63.

to ensure that their rulings do not jeopardise their chances for extension, especially as judges' pensions are considerably lower than their salaries. The authority for this decision is dispersed, but at the same time, as all three bodies – the Ministry, the President of the Supreme Court, and the Board – must give their consent, any one can also veto a judge's request to remain on the bench.

The Minister of Justice may assign emeritus judges, with their consent, to fill vacancies for up to two years, an arrangement which could potentially compromise the independence of those judges, especially if they are available for multiple substitute assignments.

3. Transfer

Parliament assigns judges to specific district or regional courts. Supreme Court justices are all assigned to Riga, the seat of the Court. Judges may not be permanently transferred without their consent. Judges may be temporarily transferred to substitute for another judge.[122] Whenever a vacancy develops in a district or regional court, the Minister of Justice may assign an emeritus judge or a serving judge of the same or a higher level (i.e., regional court judges may be assigned to district courts) to act as a substitute for a maximum period of two years, with the judge's consent. Lay judges may also be assigned as substitute judges at district courts. A serving or emeritus judge of the Supreme Court or a regional judge assigned by the President of the Supreme Court may substitute for a judge of the Supreme Court.

4. Removal

Judges may be dismissed or removed[123] only on grounds and by procedures established by law;[124] the executive's involvement, though it is unnecessary and perhaps increases marginally the possibility for undue influence, is not a particular threat to independence, as the power to remove or dismiss is divided among several powers.

---

122 Law on Judicial Power, Arts. 74–80.

123 Procedures for dismissal and removal differ only in that dismissal is recommended by the Judicial Qualification Board (and dismissal of the President of the Supreme Court requires, in addition, the opinion of the Plenary session of the Supreme Court), while removal is recommended by the Minister of Justice for district and regional court judges, by the President of the Supreme Court for Supreme Court judges, and by the Cabinet for the President of the Supreme Court.

124 See Law on Judicial Power.

Judges may be removed by Parliament in the following circumstances: at their own request; if they are elected or appointed to another post; for health reasons; or if they have reached the mandatory retirement age.[125] A judge convicted and sentenced in a criminal case must be dismissed by Parliament after the judgement has entered into force. In addition, a judge may be dismissed on the basis of the Judicial Disciplinary Board's decision to dismiss in a disciplinary procedure.[126] In all cases Parliament has final discretion in the matter.[127]

If a disciplinary action is initiated against a district or regional court judge, the Minister of Justice can suspend the judge's activities until a final decision is reached. If a judge is charged with a criminal offence, the Minister suspends the judge's activities pending a final decision in the case. Judges of the Supreme Court can be suspended by a decision of the President of the Supreme Court under the same conditions.[128]

District court presidents can be removed by the Minister of Justice on the basis of a decision of the Judicial Disciplinary Board. Regional court presidents can be removed by Parliament on the proposal of the Minister or the President of the Supreme Court acting on the basis of the decision by the Board.[129]

A lay judge may be much more easily dismissed. A local government may dismiss a lay judge upon the request of a district or regional court.[130] Lay judges must be dismissed if they have been sentenced for a crime, are guilty of an intentional violation of the law in connection with the issuance of judgements, or if their conduct is deemed incompatible with the status of a lay judge's office.

A proposed constitutional amendment would make repeated and clearly unfounded decisions grounds for removing a judge. Even if cabined within careful procedural protections, such a rule risks chilling the very core of judicial decision-making.

---

125 Law on Judicial Power, Arts. 81–83.

126 Law on Judicial Power, Art. 83. See Section V.D.

127 Law on Judicial Power, Art. 81.

128 Law on Judicial Power, Art. 84.

129 Law on Judicial Power, Arts. 33 and 40.

130 Law on Judicial Power, Art. 85.

C. Evaluation and Promotion

Promotion in Class: There are six qualification categories for judges.[131] The Judicial Qualification Board decides about granting a particular qualification class,[132] which carries a pay rise with it.

The Minister of Justice makes recommendations on assigning district and regional court judges to a particular class, which must be submitted no later than two months after the judge has become eligible for the next class.[133] The President of the Supreme Court makes the recommendation for judges of that Court. (Judges themselves cannot directly request a promotion in class.)

Placement in a specific qualification class depends on seniority. New judge appointees are usually awarded the lowest, fifth qualification class, but if a new appointee is highly qualified and has extensive legal experience, he or she may be placed in a higher qualification class. However, class promotion is not connected with promotion to a higher court; some district court judges have the highest qualification class.[134] A higher qualification class entitles the judge to higher supplementary payments, ranging from 20 percent to 100 percent of the base salary.[135]

In deciding to grant a particular qualification class, the Judicial Qualification Board reviews the judge's personnel file, maintained by the Personnel Department of the Ministry of Justice, as well as references from the State Secretary of the Ministry, the presidents of courts in which the judge has served.[136] However, there are no clearly formulated assessment criteria, nor do there appear to be any clearly established informal rules. There is no complaint procedure against a refusal to grant the next qualification; however the Ministry reportedly supports the introduction of such a procedure.[137]

---

131 Regulation on the Judicial Qualification Board and Rules for Attestation of Judges, adopted 23 April 1999 by the Judicial Qualification Board.

132 Law on Judicial Power, Arts. 93 and 94.

133 Regulation On the Judicial Qualification Board and Rules for Attestation of Judges, Art. 4(3). Promotion to a higher qualification class requires a (progressively longer) period of service in the class immediately preceding it, so that a judge must serve two years in the lowest class to be eligible for promotion to the next class, while to be promoted to the highest class, he or she must have served seven years in the preceding class.

134 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

135 See Section IV.C.

136 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

137 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

The absence of clearly formulated criteria may allow the Judicial Qualification Board to abuse its discretion. To date, however, no controversy has been reported; judges are granted the next qualification class more or less automatically once they have completed the minimum service requirement in their current class.

Appointment as Court President: Court presidents are all appointed by the Ministry of Justice or the Parliament for limited, renewable terms, which unnecessarily allows the political branches a regular opportunity to intervene in the organisation of court supervision.

A nominee for court president must meet all the criteria for appointment as a judge to that same court, and in addition the Board, in forming its opinion, takes into account a poll among the judges of the court.[138]

Parliament appoints the presidents of regional courts for a five-year period based on the joint recommendation of the Minister of Justice and the President of the Supreme Court.[139] Their joint recommendation is based on the opinion of the Judicial Qualification Board. Although the law does not clarify whether the Board's opinion is binding, its opinion has not been rejected to date. Parliament appoints the President of the Supreme Court on the recommendation of the Cabinet of Ministers from among appointed judges of the Supreme Court for a period of seven years.[140]

Judges' irremovability is not affected by their appointment to or removal from positions as court presidents; however, the regular opportunity for the Ministry and Parliament to determine the court president unnecessarily provides the political branches opportunities to intervene in the organisation of the courts, and through them with the work of individual judges.

D. Discipline

1. Liability

Judges (including lay judges) have immunity "during the period he fulfils his duties in relation to adjudication in a court."[141] Judges are exempt from civil liability for

[138] Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

[139] Law on Judicial Power, Art. 40.

[140] Law on Judicial Power, Art. 50.

[141] Law on Judicial Power, Art.13.

actions carried out during the performance of their functions. A judge's property is not subject to forfeiture for damages suffered by a litigant resulting from an unlawful judgement;[142] in such cases, as specified by law, damages are paid by the State, but no indemnification of the judge is allowed.[143]

A judge can be arrested or prosecuted only with the consent of the Parliament. Criminal cases against judges may be initiated only by the Prosecutor General, and decisions concerning a judge's arrest, forced appearance before a court, detention or subjection to search are made by a specially authorised judge of the Supreme Court.[144] A lay judge cannot be arrested or prosecuted while executing judicial duties without the consent of the local government that elected that judge. However, a lay judge is subject to disciplinary proceedings for administrative violations.[145]

2. Disciplinary Proceedings

The Judicial Disciplinary Liability Law establishes the grounds and procedures for disciplinary proceedings against judges.[146] The process does not appear to present any particular risks to judges' decisional independence.

A judge may be charged with misconduct for intentional violation of the law during review of a case; failure to perform professional duties; dishonourable actions; administrative violations; or refusal to discontinue membership in a party or political organisation.[147] The most common cause for disciplinary procedure is intentional breach of the law during hearings.[148]

All disciplinary cases are reviewed by the Judicial Disciplinary Board.[149] The Board consists of the President and Vice-President of the Supreme Court, as well as three

---

142 Law on Judicial Power, Art. 13.

143 Law on Compensation for the Damages Suffered as a Result of the Unlawful or Ungrounded Action of an Investigator, Prosecutor or Judge, adopted 28 May 1998, *State Gazette*, 16 June 1998, No. 176.

144 Law on Judicial Power, Art. 13.

145 Law on Judicial Power, Art. 13.

146 Judicial Disciplinary Liability Law, adopted 27 October 1994, *State Gazette,* 10 November 1994, No. 132.

147 Judicial Disciplinary Liability Law, Art. 1.

148 Information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

149 Judicial Disciplinary Liability Law, Art. 2.; Law on Judicial Power, Art. 90.

judges of the Supreme Court, two regional court chairmen, two district court chairmen and the two heads of Land Registry Offices elected by the Conference of Judges.[150]

The President of the Supreme Court, the Minister of Justice, presidents of regional and district courts, or heads of the Land Registry Offices may initiate a disciplinary procedure against judges beneath them.[151] Any judge against whom a disciplinary case has been initiated has the right to review the case materials, furnish explanations, and participate in the meetings of the Judicial Disciplinary Board.

The Judicial Disciplinary Board may take the following actions: dismiss the disciplinary case; impose disciplinary sanctions, such as a reprimand or reduction of base salary; forward the case to the Prosecutor's Office for criminal proceedings; recommend to the Parliament that the judge be removed from office; or forward the case to the Judicial Qualification Board for a review of the judge's qualification class.[152] Decisions of the Board are not subject to appeal.

The Latvian Judges' Association adopted a Code of Judicial Ethics in 1995 but the Code is not applied in practice. The principle that a judge may be subject to liability for dishonourable actions is interpreted narrowly, and violations of the Code of Ethics do not constitute grounds for disciplinary liability.[153]

150 Judicial Disciplinary Liability Law, Art.2.

151 Judicial Disciplinary Liability Law, Art. 3.

152 Judicial Disciplinary Liability Law, Art. 7.

153 Judicial Disciplinary Liability Law, Art. 1.

VI. Intra-Judicial Relations

A. Relations with Superior Courts

The Plenum of the Supreme Court issues clarifications on the application of laws, which are binding for the courts of general jurisdiction,[154] a practice which many judges feel effectively subordinates them to another court's interpretations as if they were legislative acts, in violation of the constitutional provision that "judges shall be independent and subject only to the law."[155] The Plenum has issued clarifications on the application of laws in many highly contested and notorious civil and criminal cases.[156]

The regular appeals processes provide opportunities for superior court judges to alter the outcome of lower court judges' decisions, but according to procedures that do not affect individual judges' legitimate independence. Generally speaking, appeals of first instance claims may be reviewed on both factual and legal grounds as to the whole judgement or any part of it; the appellate court reviews the case on its merits *de novo*. The appellate instance court may affirm the judgement of the court of the first instance; vacate the judgement of the first instance court in whole or in part; or direct further investigation or a new review at the court of first instance.

Decisions of the appellate instance court may be further appealed under a cassation procedure. (Direct cassation review of a first instance decision is also possible.) The cassation court may affirm the decision, vacate it, or modify it. If the court of cassation instance vacates a decision it may return the case for pre-trial investigation (in criminal cases) or for retrial, or may terminate the proceedings.

There is no official system in Latvia of appointed supervisors acting as mentors, but in practice lower court judges often consult with superior court judges in specific cases. The Supreme Court organises an annual seminar for regional court judges to discuss

---

154 Law on Judicial Power, Art. 49.

155 Constitution of the Republic of Latvia, Art. 83.

156 The Plenum's clarifications concerning interpretation of the Civil Code include On Court Practice in Cases Concerning Defamation, On Court Practice in Cases Concerning Establishment of Facts Having Legal Significance (1993); On Application of the Law in Inheritance Cases (1995); On Application of the Law Reviewing Cases of Family Law (1996); On Application of the Law Reviewing Liability Conflicts (1997); and On Application of Article 1635 of the Civil Code when Reviewing Cases Concerning Moral Damages (1999).

topical issues of legal practice.[157] In addition, judges of the Supreme Court deliver lectures to judges of regional courts at the Judicial Training Centre.

B. Case Management and Relations with Court Presidents

The system of case-assignment is outdated and unnecessarily allows court presidents discretion in assignment of cases. In district courts, the president of the court assigns cases to judges, while in regional courts, the Presidents of the Civil and Criminal Divisions assign cases; in the Supreme Court, cases are assigned by the President of the Senate and by the presidents of the Divisions.[158]

In January 2001, the Ministry of Justice's instruction on case assignment took effect for district and regional courts.[159] The Ministry allows cases to be assigned by date of submission, to judges specialised in the relevant area of law, or alphabetically by the defendant or other respondent's name; each court president selects one of these three methods to distribute cases.[160] Judges' workload and specialisation are taken into consideration.

According to the January 2001 instruction, the Ministry of Justice intends to establish a new computer-based system of random case assignment by the year 2006.[161] However, the allocative principles of the system will not differ in substance from those employed now.

Although the law does not contain any provisions for transferring a case from one judge to another, in practice a case may be transferred to another judge if the original judge must take a long absence due to illness or pregnancy, for example, or if the original judge opts for recusal.

---

157 Information from the President of the Supreme Court, September 2000.

158 Information from the President of the Supreme Court, September 2000.

159 Instruction from the Ministry of Justice, No. 1–2/4, "On appointment of a judge to review a case", adopted 27 March 2000.

160 Instruction from the Ministry of Justice, No. 1–2/4, "On appointment of a judge to review a case".

161 Information from the Computerisation Expert of the Courthouse Agency, May 2001.

VII. Enforcement and Corruption

A. Enforcement of Judgements

State institutions generally fulfil their obligations arising from court decisions. Enforcement of civil judgements is particularly low, however; 70 percent of all civil judgements are not enforced, in part due to the difficult working circumstances of the court bailiffs responsible for enforcement as well as the difficult socio-economic situation in the country.[162] Such low levels of enforcement can lead to a decline in public support for the judiciary and calls for firmer control which will curtail judges' independence.

Court bailiffs are employees of the Court Bailiffs' Department of the Ministry of Justice.[163] Court bailiffs are in perhaps the most difficult material position of any of the legal professions. The profession is hampered by meagre resources and a lack of legal training and equipment. Basic salaries are minimal – 89 Ls (€ 162) per month for a junior bailiff and 112 Ls (approximately € 203) for a senior bailiff, both well under the national average – and corruption is reportedly widespread. The prestige of the profession is very low, and there are insufficient numbers of bailiffs to enforce outstanding judgements effectively.[164]

In response to these problems, the privatisation of the profession has been planned. A draft Law on Sworn Court bailiffs was prepared in 1999,[165] and the Cabinet of Ministers submitted it to Parliament at the end of April 2001.[166] The law would create an Institute of Independent Sworn Court Bailiffs as a body of legal professionals responsible for providing themselves with all necessary means to perform their duties, with compensation dependent on the number of executed court decisions. Bailiffs would also be required to have more legal qualifications.

---

162 C. Sandgren, D. Iljanova, UNDP "Needs Assessment of the Judicial System of Latvia", September 2000.

163 Law on Judicial Power, Art. 109.

164 See Information from Concept Paper: "Proposal on UNDP/Multi-Donor Assistance for Judicial Reform", October 2000.

165 Information from "Latvian National Program for Integration in the European Union", *State Gazette,* 7 July 2000, No. 252/254.

166 Information from the Head of the Legal Bureau of Parliament, 14 May 2001.

B. Corruption

Corruption is generally perceived to be widespread in the judiciary, as in other segments of public life. Latvia ranked 57th out of 90 States in the Transparency International Corruption Perceptions Index of 2000.[167] According to one poll, citizens listed the courts as the seventh most dishonest institution in the country.[168]

The actual level of corruption – as opposed to measurements of public perception about the issue – is difficult to determine. Allegations of widespread corruption in the judicial system are seldom substantiated. It seems likely that corruption in the judiciary is no more widespread – and perhaps less so – than in segments of the police, customs and municipal governments, although this is only a relative standard.[169] Nonetheless, even limited levels of corruption – or persistent, uncontradicted perceptions of corruption – can seriously weaken public support for the judiciary's special measure of independence.

[167] See <http://www.delna.lv/english/index.htm.> (accessed 20 August 2001).

[168] See Delna (Latvian branch of Transparency International), <http://www.delna.lv/> (accessed 20 August 2001).

[169] C. Sandgren, D. Iljanova, UNDP "Needs Assessment of the Judicial System of Latvia", September 2000 (in English).