



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Second period report**

**LATVIA\***

[13 November 2002]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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## **GENERAL PART**

### **Introduction**

1. The initial report of Latvia on the implementation of 1966 International covenant on civil and political rights (hereinafter - the Covenant), binding for Latvia as of 14 July 1992, was examined by the Human Rights Committee on 12 and 14 July 1995.
2. Currently, in accordance with Article 40 of the Covenant, the periodic report on the implementation of the Covenant in Latvia has been prepared, providing information for the period since the submission of the initial report mentioned above in paragraph 1, as well as information on measures taken to give effect of suggestions and recommendations of the UN Human Rights Committee (hereinafter - the Committee) of 26 July 1995. The present report has been prepared in compliance with guidelines for the elaboration of national reports, approved by the Committee in 1981 and reviewed in 1990, 1991 and 1995, as well as taking into account the General Recommendations of the Committee on the interpretation of Articles of the Convention.
3. A special working group was set up for the elaboration of the present report, including representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Interior, the Ministry of Defence and the Ministry of Culture. According to the Regulations of 17 March 1998 No 92 "On Representation of the Cabinet of Ministers at International Human Rights Institutions" a representative, authorised by the Cabinet of Ministers, headed the said working group National Human Rights Office presented comments concerning the report elaborated by the working groups, while Human Rights Institute of the Faculty of Law at the University of Latvia (hereinafter - Human Rights Institute) prepared detailed opinion concerning the report. The updated report was reviewed and approved by the Cabinet of Ministers on 22 October 2002.

### **Place of norms of international law in the legal system of Latvia**

4. Taking into account paragraph 18 of suggestions and recommendations of the Committee of 26 July 1995, Latvia would like to present additional information on the place of norms of international law in the legal system of Latvia.
5. 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 the Latvia.

6. In compliance with laws and main legal principles of Latvia norms of international agreements that have been ratified following the prescribed procedure, can be applied directly in judicial proceedings. Several courts of Latvia, among them also the Constitutional Court, have referred to and applied norms of international agreements, including the Covenant, that are binding for Latvia.

## **PART 1**

### **Article 1 of the Covenant**

7. The initial report of Latvia (paragraphs 59 - 63) provides information about the right of self-determination exercised by the people of Latvia in 1920 in electing the Constitutional Convention that in 1922 adopted the Satversme (hereinafter - the Constitution), which is still in effect. The Constitution stipulates that only a referendum can amend the following its Articles, which contain norms that in their essence are the reflection of the right of self-determination:

(a) Article 1 of the Constitution stipulates that “Latvia shall be an independent democratic republic”;

(b) Article 2 of the Constitution stipulates that “the sovereign power of the State of Latvia shall be vested in the people of Latvia”;

(c) Article 3 of the Constitution stipulates that “that the territory of the State of Latvia within boundaries established by international agreements shall consist of Vidzeme, Latgale, Kurzeme and Zemgale”;

(d) Article 6 of the Constitution stipulates: “the Saeima (Parliament) shall be elected in general, equal, direct, secret and proportional elections”.

8. The unambiguous will of the people of Latvia to exercise their right of self-determination was manifested at the elections of the Supreme Council in 1990 when the majority of mandates in the Parliament were won by nominees who supported the establishment of democratic and politically independent Latvia.

9. The transition period for the restoration of the international legal capability of Latvia and its *de facto* independence ended with the enactment of the Constitutional Law “On the Status of the Republic of Latvia as a State” on 21 August 1991.

10. From the point of international law, at present Latvia is not responsible for international obligations of any other territory; likewise Latvia has no colonies. At the same time Latvia has repeatedly expressed its support to the right of self-determination of nations.

## PART 2

### Article 2 of the Covenant

#### Prohibition of discrimination

11. On 15 October 1998 the Constitution was amended, supplemented by a new Chapter “Fundamental Human Rights” thus consolidating the protection of human rights at the constitutional level.

12. Article 89 of the Constitution of Latvia prescribes that “the State shall recognise and protect fundamental human freedoms under the present Constitution, laws and international treaties binding for Latvia”. As emphasised by the Human Rights Institute, although the Constitution is a normative act of the highest legal force in Latvia, its norms in compliance with the said Article 89 have to be interpreted in the light of international human rights norms. The Constitutional Court also has recognised that in cases of doubts as to the content of the norms of the Constitution, they are to be interpreted to the extent possible according to the interpretation of the international human rights norms. Article 91, in its turn, contains both the principle of the prohibition of discrimination as well as the principle of equality. The said Article stipulates: “all people in Latvia shall be equal before law and court. Human rights shall be exercised without any discrimination”.

13. Since the submission of the initial report Latvia has recognised as binding several important documents of international law in the area of human rights. Thus, on 27 June 1997 the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols became effective for Latvia (except for Protocol No.6, which entered into force with respect to Latvia on 1 June 1999, and Protocol No.7, which entered into force on 1 September 1997). Latvia has also recognised also the competence of the European Human Rights Court to receive and review complaints on possible violations of human rights in Latvia. On 4 November 2000 Latvia signed the 12th Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms that provides for the prohibition of discrimination as a separate right.

14. Since the entry into force on 9 May 1995 of the Law “On status of citizens of the former USSR who are not citizens of Latvia or any other State”, which establishes the body of individuals who were recognised to be non-citizens of Latvia and eligible to a non-citizen’s passport, it has been amended several times with the purpose of facilitating the acquisition of the status of a non-citizen for those individuals who could not be granted this status under the previous version of the law. Amendments adopted in 2000 prescribe procedure and situations when the status of non-citizen’s status can be lost. In compliance with Article 6 of the Law only a person who has the citizenship of another State or who is guaranteed the citizenship of another country, may renounce the status of a non-citizen. In the case of a minor the application on the renunciation of the status is submitted by parents (adoptive parents) of the said person on behalf of the minor. If the minor has reached the age of 15, a written consent of the minor is required for the renunciation of the non-citizen’s status. If, upon renouncing the non-citizen’s status, the person becomes a stateless person (apatride), the application on renunciation is rejected. The

decision on the rejection of the application may be appealed before the court. A person may be deprived of the status of non-citizen's only in cases provided by law (Section 1 of Article 7 of the Law) and the person may appeal this decision before court.

15. Taking into account paragraph 10 of the suggestions and recommendations of the Committee adopted on 26 July 1995, Latvia would like to inform the Committee that according to Article 2 of the Law "On status of citizens of the former USSR who are not citizens of Latvia or any other state", at present a non-citizen enjoys all human rights and duties prescribed by the Constitution of Latvia, among them also the right to return to the country at any time if the place of residence in Latvia has not been retained. However, in specific areas the rights of non-citizens are restricted due to objective reasons and taking into account the principle of proportionality. Non-citizens still cannot hold offices in public administration and court system, they cannot participate in elections and cannot be elected, they may not acquire in ownership land in borderland zone and in protective zone for public water bodies. Non-citizens cannot work as private detectives and armed guards. At the same time since the submission of Latvia's initial report a number of restrictions concerning employment have been removed - on 16 January 1997 the Law "On Fire Safety" was amended providing that also non-citizens may be employed in the State Fire-fighting and Safety service; amendments of 30 October 1997 of the Aviation Law abolished the restriction for non-citizens to be included in the aircraft crew and to receive certificate of aircraft exploiter; Pharmacy Law's amendments of 14 July 2001 allow non-citizens to become heads of pharmacies and veterinary pharmacies. Moreover, it should be emphasised that taking into account amendments to the Citizenship Law adopted in 1998, every non-citizen has the right to submit application in order to acquire Latvian citizenship through naturalization, therefore, the issue of existing differences has lost its topicality.

### **Integration of society**

16. On 6 February 2001 the Cabinet of Ministers approved the National Programme "Integration of Society in Latvia". This Programme was developed in the course of several years by analysing and studying process of the formation of the society as well as by involving inhabitants, non- governmental organisations and public agencies in a discussion. The purpose of the Programme for the Integration of Society is to establish a democratic, consolidated civic society that is based on common fundamental values.

17. In compliance with the Law of 5 July 2001, the Foundation on the Integration of Society has been established with the purpose of providing financial support and promoting the integration process of the society in line with the basic guidelines of the above National Programme. Representatives of minorities - archbishop of Latvia's Orthodox Church, Chairman of Latvia's Roma national culture association, Chairman of organisation "Russians of the West" participate in the decision-making within the Foundation. The Foundation is administered by the Foundation Council and the said Council includes the Minister of Education and Science, the Minister of Culture, the Minister of Welfare, the Minister of Justice, the Minister of Environment Protection and Regional Development, the representative of President, one representative of local governments from Kurzeme, Vidzeme, Latgale, Zemgale and Riga as well as five representatives delegated by non-governmental organisations.

## **Citizenship and naturalisation**

18. As since the submission and review of the initial report of Latvia in 1995 several significant amendments have been made to the 1994 Citizenship Law, as well as taking into account paragraph 27 of the suggestions and recommendations of the Committee of 26 July 1995, in the present report Latvia would like to provide information about legal norms that are effective at present and that regulate the acquisition of citizenship, as well as information about the implementation of the Citizenship Law and the progress of naturalisation in Latvia.

19. In compliance with the Citizenship Law, adopted in 1994 and amended by public referendum in 1998, conditions and restrictions for the acquisition of citizenship include the objective domicile principle. The Law prescribes the following types of the acquisition of citizenship: naturalisation, the recognition of citizenship, the registration of the citizen's status and the restoration of citizenship.

20. Persons who have reached the age of 15 have a right to submit an application for naturalisation, complying with the following conditions:

(a) on the date of submitting an application for naturalisation the person's permanent residence has been in Latvia for not less than 5 years;

(b) the person knows the Latvian language, knows the basic provisions of the Constitution of the Republic of Latvia, the text of the national anthem and the history of Latvia (a applicant must take a respective test);

(c) the person or the person's guardian has a legitimate source of income;

(d) restrictions of naturalisation do not apply to the person - Latvian citizenship is not granted to persons who have turned against the independence of the Republic of Latvia, the democratic parliamentary public system or the existing public power in Latvia if it has been established by a court judgement; persons who have expressed ideas of fascism, chauvinism, national socialism, communism or any other totalitarianism or incited to national or racial superiority or enmity after 4 May 1990 if it has been established by a court judgement; who are officials of public, administrative or law-enforcement bodies of a foreign country; who serve in the armed forces, the interior forces, the security service or the police (militia) of a foreign country; have chosen the Republic of Latvia for their place of residence after 17 June 1940 directly after their discharge from the armed forces of the USSR (Russia) or the interior armed forces of the USSR (Russia) and on the day of their draft or conscription have not had their permanent residence in Latvia; persons who have been staff-members, informers, agents of the security services, intelligence services or counterintelligence services of the USSR, the LSSR or a foreign country if it has been established by a court judgement; persons who have been sentenced in Latvia or any other country for the commission of a crime which is a crime also in Latvia at the moment of the Citizenship Law becoming effective; persons who after 13 January 1991 have participated in the Communist Party of the USSR (the CP of the LSSR), the International Front of Workers of Latvia, the United Council of Work Collectives, the Organisation of War and Labour Veterans, the All-Latvia Public Salvation Committee or its regional committees or the Union of Communists of Latvia acting against the Republic of Latvia.

21. If the Latvian citizenship is granted through naturalisation to a person who has attained majority, his/her children under the age of 15 and permanently living in Latvia also acquire Latvian citizenship.

22. A child, born in Latvia after 21 August 1991 is to be recognised a citizen of Latvia, if he/she complies with the following requirements:

(a) the person has permanent residence in Latvia;

(b) the person has not been sentenced in Latvia or any other country to deprivation of liberty for a period in excess of five years for the commission of a crime;

(c) until then the person has been an apatriote or a non-citizen.

23. Under Article 2 of the Citizenship Law citizens of Latvia are (persons who acquire the status of a Latvian citizen through registration):

(a) persons who were citizens of Latvia on 17 June 1940 as well as descendants of these persons, except those who have acquired the citizenship of another country after 4 May 1990;

(b) Latvians and Liivs who have permanent residence in Latvia and who do not have the citizenship of another country.

(c) descendants of those women who have permanent residence in Latvia and who under Article 7 in the Law of the Republic of Latvia of 23 August 1919 "On Citizenship" (upon marriage the woman acquires the citizenship of her husband) had lost their Latvian citizenship, except persons who have acquired the citizenship of another country after 4 May 1990;

(d) persons who have permanent residence in Latvia and who have completed a full study course in school with Latvian as a language of instruction or in the bilingual schools' Latvian language stream provided these persons are not citizens of any other State. If in compliance with this provision the citizen's status is registered by a person who has attained majority, alongside with the said person citizenship is granted also to the person's children under the age of 15 who have permanent residence in Latvia;

(e) children who have been found in the territory of Latvia and whose parents are unknown;

(f) children who have no parents and who live in an orphanage or boarding school in Latvia;

(g) children whose parents at the time of their birth are citizens of Latvia, irrespective of the children's place of birth.

24. Article 25 of the Law "On Citizenship" stipulates that the Latvian citizenship may be restored by persons who have lost it as a result of their parents (adopters) choice, a legal error or illegal deprivation of citizenship.

25. Officials of European Union institutions as well as officials of the Organisation For Security and Co-operation in Europe have repeatedly emphasised that the current variant of the Citizenship Law (as amended in 1998) satisfies the European Union as well as the OSCE. Naturalisation criteria comply with international standards and are not discriminatory. Thus for example, on 11 January 1999 the OSCE High Commissioner announced publicly that he was satisfied with the current situation in the area of Latvian citizenship and further recommendations would not be forthcoming.

26. After the abolition of naturalisation “windows” the rate of naturalisation in the period of 1995 - 1997 increased to a considerable extent.

27. According to the results of the studies and surveys conducted by the Naturalisation Board, the present rate of naturalisation is determined by the following main factors:

- (a) the insufficient state language proficiency;
- (b) the amount of the state fee for specific groups of the population that cannot acquire the status of a poor person under norms of legal acts;
- (c) lack of motivation (minimum differences in the rights of citizens and non-citizens).

28. It must be emphasised that the international community, international organisations and institutions have had no objections concerning the work of the Naturalisation Board. There are no queues for the submission of applications for naturalisation and for taking naturalisation tests, applications are reviewed within a shorter period of time than prescribed by law. In practice three to six months pass from submission of the application until acquisition of citizenship, although the Citizenship Law provides for one year for the procedure of naturalisation. Survey among non-citizens conducted by the Baltic Institute of Social Sciences in April of 2001 shows that 95% of non-citizens are confident with the Naturalisation Board.

29. In June 2001 the Cabinet of Ministers Regulations No. 234 of 5 June 2001 “On State Fee for the Submission of Applications for Naturalisation” were repeatedly reconsidered, and as a result the state-fee for naturalisation was reduced by one third (from 30 LVL to 20 LVL). The body of persons who pay 50% of the state-fee has been expanded and now includes also students and disabled persons of III invalidity group. Until then 50% of the state-fee were paid by schoolchildren, disabled persons of II group and pensioners. Persons, whose monthly income is lower than crisis minimum (38 LVL), unemployed persons and members of families with three and more children may 3 LVL as a state-fee. Naturalisation tests have been simplified on several occasions. About 95% of the applicants pass these tests at first attempt, and that proves that the tests are adequately elaborated. In June 2001 the Cabinet of Ministers Regulations No 33 of 2 February 1999 “On Tests of the Latvian Language Proficiency, and on Basic Provisions of the Constitution of the Republic of Latvia, the Text of the National Anthem and the Knowledge of the History of Latvia for Persons Who Want to Acquire the Latvian Citizenship through Naturalisation” also were amended. Amendments stipulate that graduates of minority schools who take the centralised examination on the Latvian language and literature and wish to undergo

naturalisation may combine the language test of the naturalisation examination with the centralised language examination. Consequently, these persons only have to take tests in the basic provisions of Constitution, national anthem and history.

30. The Naturalisation Board has undertaken many educational and information activities aimed at providing the most extensive information to the general public on the significance and possibilities of acquiring citizenship. Since 1999 the Naturalisation Board has established the Information Centre for the information and education of the general public on issues of citizenship and the integration of society. In November 2001 an extensive campaign "For Information and Promotion of the Understanding of the Public about Citizenship Issues" was commenced, the main tasks of the campaign being to inform about possibilities of acquiring citizenship and to motivate non-citizens to choose the Latvian citizenship. Information ads were placed in TV, radio, Internet and the regional press, thematic broadcasts were prepared for TV, non-citizens were addressed in person through postal deliveries, information days on citizenship issues were organised, as well as an Internet home page in Russian was created.

31. Since the beginning of the operation of the Naturalisation Board information is prepared and disseminated on regular basis among potential applicants for citizenship about possibilities of acquiring citizenship. Thus, the booklet "Latvian Citizenship" has been published repeatedly (in 1995, 1997 and 1999), providing information about all ways of acquiring citizenship, indicating documents that must be submitted and giving addresses of regional offices of the Naturalisation Board. In 1999 the booklet was published in 150 000 copies in Latvian and 150,000 copies in Russian and disseminated among the population in Latvia. Within the frame of the European Union Phare Programme "Integration of Society with the Help of Information and Education" the Naturalisation Board has prepared and published several new information materials - a monthly bulletin "News of the Naturalisation Board", a quarterly bulletin "Citizenship - Participation and Integration" (in Latvian and in Russian) and a booklet "Citizenship: in Latvia and in the European Union" (in Latvian and in Russian). Video material in Latvian and Russian has also been prepared for schools on issues of citizenship, naturalisation and the integration of society.

32. Methodological recommendations for applicants to the Latvian citizenship have been published on regular basis since the beginning of the naturalisation process, providing assistance in preparing for the language proficiency test and the test on the basic provisions of the Constitution of the Republic of Latvia, the text of the national anthem and the knowledge of the history of Latvia. Methodological recommendations introduce applicants to the content, the procedure of tests and enable them to better prepare for the naturalisation tests.

33. Considerable attention is paid also to educational work and the promotion of the participation of the population. Already for the fifth consecutive year the Naturalisation Board in co-operation with other institutions organises a contest for pupils "On the Way to Civic Society". Within the frame of the contest young people not only acquire more knowledge about the history of Latvia, the Constitution, possibilities of acquiring citizenship and other issues, but they also participate in the establishment of a civic and integrated society by developing and implementing projects aimed at promoting the integration of society in Latvia.

34. The staff of regional offices of the Naturalisation Board organise on regular basis information days, meetings and other information activities at schools, local governments, non-governmental organisations in order to explain various possibilities of acquiring citizenship, including the recognition of the citizenship of children born after 21 August 1991. For example, on 6 December 2000 an Information Day was held in the premises of the Naturalisation Board in Riga; in the course of the day the Naturalisation Board was visited by about 300 people who received information that was of interest for them. On 15 January 2001 similar information day was organised in Jelgava, on 24 February information day was organised at Zilupe in the Ludza district. Staff members of regional offices pay regular visits to educational institutions providing information about issues in the competence of the Board.

35. Sociological studies have been organised in co-operation with several institutions in order to establish the attitude of the population towards the state of Latvia, the citizenship, the Latvian language and other matters. In 1997 - 1998 a research and action programme "On the Way to a Civic Society" was implemented that included group discussions, a nationwide opinion poll, the analysis of the content of mass media and the organisation of four regional and one international conference to analyse findings of the study. The study allowed acquiring valuable information about the motivation of the population to apply for the Latvian citizenship and obstacles in the process of acquiring citizenship.

36. In 2000-2001 the study "On the Way to a Civic Society - 2000" was repeated with the purpose of establishing the dynamics of the attitude of the population since the previous study as well as to conduct an in-depth study of issues related to the integration of society. A survey of the naturalised citizens was conducted alongside with the survey of the population and the analysis of the content of mass media, which clarified such issues as, for example, if the acquisition of the Latvian citizenship has justified expectations. The Naturalisation Board uses information gained in the course of research in formulating its own strategy for operation and the information of the population.

37. The Naturalisation Board has developed a language proficiency test model that corresponds to the European standards. The state language proficiency test as a relevant component of the naturalisation process was established on 22 July 1994 when the Citizenship Law was enacted. At that moment there was no ready-made model how to construct the test. Upon starting the naturalisation process the first model of the language proficiency test was developed in compliance with Article 20 of the Citizenship Law that strictly regulated the content of the language proficiency test, in part also its form. Preliminary knowledge about the theoretical basis for the language tests and practical work was gained with the support of experts of the Council of Europe - the Institute for the Test Development of the Netherlands (CITO) and the University of Cambridge Local Language Examination Syndicate (UCLES) and as a result the second and the third model of the language proficiency test were developed. During further co-operation experts of the UCLES analysed the third model and recommended making necessary corrections. Experts of the UCLES and the Goethe Institute stated that the language proficiency test model had been formulated in compliance with European standards, containing tasks that all had practical value for daily life that was structurally and methodologically balanced and fully complied with requirements of the Law "on Citizenship". The language proficiency test level for naturalisation needs has been defined and established as a threshold level, equating it to the third threshold level of the language proficiency developed by the Council of Europe and the ALTE 2 level.

38. Thus the language proficiency test level for naturalisation needs has been established and co-ordinated in Latvia (the Latvian language proficiency level) as well as equated and co-ordinated with language proficiency levels of the ALTE and the Council of Europe. This threshold level has been identified and scientifically justified. The threshold level is a level that any individual, residing in Latvia and encountering the actual language environment, could master. Neither is it too low as it allows to communicate in daily life and to perform those functions that are stipulated by the citizenship. The clearly and unambiguously stated threshold level and the appropriately formulated content and procedure of the Latvian language proficiency test allow to justify the objectivity of the language proficiency test and to defend the scale of language skills required for naturalisation at the language proficiency test in Latvia and at international organisations.

### **Status of asylum seekers and refugees in Latvia**

39. Taking into account paragraph 26 of recommendations of the Committee of 26 July 1995 Latvia would like to provide additional information on the legal status of asylum seekers and refugees in Latvia.

40. On 19 June 1997 Latvia ratified the 1951 Convention on the Status of a Refugee and the 1967 Protocol of the said Convention, making the following reservations and declarations:

(a) Under Section 2 of Article 1.B of the Convention Latvia considers the

(b) alternative of Section 1 of Article 1.B of the Convention to be binding for the Republic of Latvia;

(b) In all cases when the Convention prescribes the application of the most favourable terms to refugees that are applied to citizens (subjects) of other countries, Latvia interprets norms of the Convention in a way that rights and privileges enjoyed by citizens (subjects) of those countries that have concluded agreements with Latvia on customs issues, economic matters as well as political or social security issues, do not apply to refugees;

(c) Under Section 1 of Article 42 of the Convention Latvia does not consider Article 8 of the Convention to be binding for the Republic of Latvia;

(d) Under Section 1 of Article 42 of the Convention Latvia considers Sections 1 and 2 of Article 17 of the Convention to be recommendations but not binding norms;

(e) Under Section 1 of Article 42 of the Convention Latvia considers Sections 1 and 2 of Article 24 of the Convention to be recommendations but not binding norms;

(f) Under Section 1 of Article 42 of the Convention that refers to Article 26 of the Convention, Latvia retains the right to determine the place of residence for specific groups of refugees in public interests;

(g) Under Section 1 of Article 42 of the Convention Latvia does not consider Article 34 of the Convention to be binding for the Republic of Latvia;

(h) Under Section 1 of Article VII of the Protocol all provisions concerning the Convention apply also to the Protocol.

41. On the same day - 19 June 1997 - the Law "On Asylum Seekers and Refugees in the Republic of Latvia" was adopted with the purpose of prescribing the procedure for the exercise of the right of individuals to be granted asylum and the status of a refugee in Latvia as well as to determine rights and responsibilities of an asylum seeker and a refugee in compliance with universally recognised international human rights principles.

42. The above law stipulates a two-tier system in reviewing cases of asylum seekers - the first tier is the Centre of Refugees' Affairs at the Ministry of Interior, the appeal body being the Council on Appeals on Refugees' Affairs at the Ministry of Justice. An individual may submit an application, requesting the status of a refugee upon entering Latvia at the national border control point where the application is accepted by an employee of the National Border Guard. If the individual is already on the territory of the country - application may be submitted at the Centre of Refugees' Affairs at the Board on Immigration and Citizenship Affairs or at the territorial unit of the National Border Guard. The submission of the application is followed by an interview with the asylum seeker and the person's identity is established. If the asylum seeker resides in Latvia illegally, he/she is placed in the Asylum seekers' Accommodation centre, while his/her application is examined. Every asylum seeker person's document, which serves as an identity document in Latvia during the examination of his/her application. The interview is conducted by the officials of the National Border Guard and obtained information is subsequently sent to the Centre on Refugees' Affairs at the Citizenship and Migration Board. The application has to be examined and decision on whether the person is granted status of refugee has to be adopted within three months. In exceptional situations this term may be prolonged until 6 months.

43. Complaints concerning decision of the Centre on Refugees' Affairs may be submitted to the Council on Appeals on Refugees' Affairs within two months. Council's decision is final and is not subject to appeal. When the asylum seeker acquires the status of a refugee, the refugee receives permanent residence permit free of charge; refugees who do not have means of livelihood receive a benefit during the first 12 months.

44. Since the adoption of the above law 99 individuals have requested asylum in Latvia while the status of a refugee has been granted to 8 people.

45. At the same time it must emphasised that the Law "On Asylum Seekers and Refugees in the Republic of Latvia", effective at present, prescribes only one possibility - granting the refugee status to persons who feel well justified fear of persecution in the country of their origin due to race, religion, nationality, political conviction or affiliation to a specific social group. In practice more frequently there are cases when a person does not correspond to criteria mentioned in the Geneva Convention to be eligible to the refugee status, however the person cannot be deported to the country of origin in view of reasons mentioned in the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms. The Law "On Asylum" has been drafted in view of this reason as well as taking into account recommendations of the European Commission concerning asylum. The draft Law is currently debated in the Parliament and its adoption is planned until 1 March 2002.

46. The draft Law includes the possibility of granting alternative protection to persons who do not correspond to criteria given in the Geneva Convention to be eligible to the refugee status, but they need protection because in their domicile country or the country of citizenship they are under the threat of capital punishment or corporal punishment, torture, inhumane or humiliating treatment or humiliating penalisation; it is to be granted also in cases when the person needs protection in view of external or internal armed conflicts and the person cannot return to his/her country of origin. In order to ensure compliance with requirements contained in the European Convention on the Protection of Human Rights and Fundamental Freedoms, the draft Law stipulates that a sanction issued by a judge is required to detain the asylum seeker at the police station or the border crossing point for more than 72 hours. Likewise the draft Law provides criteria to recognise countries to be a safe country of origin, a safe third country; it specifies the definition of an manifestly ill founded application as well as the procedure for the review of such applications; the review of the application for the refugee status, while person stays at the border crossing point, guarantees provided to the person during the said procedure, compliance with the principle of the unity of the family, guarantees for minors unaccompanied by adults in the asylum procedure.

47. Upon strengthening the independence of the Council on Appeals in Refugee Affairs, it is provided that the Chairman and members of the Council are appointed by the Cabinet of Ministers. The draft Law emphasises that the Chairman of the Council on Appeals in Refugee Affairs and its members are independent in acting and taking decisions within their competence.

### **Effective protection of rights**

48. Compliance with Section 3 of Article 3 of the Covenant in Latvia is ensured by the Constitution where Article 92 stipulates that “everyone can defend his/her rights and legitimate interests in fair court”. The same Article stipulates, “in the event of unjustified infringement of rights every person has a right to an appropriate compensation”.

49. The three-tier court system existing in Latvia has been described already in the initial report (paragraph 43). In 1996 the Constitutional Court was established, entrusted with the task of reviewing compliance of laws and normative acts to the Constitution as well as the compliance of the said legal acts to international agreements that are binding for Latvia. The Constitutional Court has also interpreted the said Article 92 of the Constitution and has established that no specific law is required for a person to be able to exercise his/her right to an appropriate compensation in case of unjustified infringement of rights, therefore, this person may directly appeal to the court and absence of a specific law on compensation cannot be used as a reason to decline the examination of request for compensation.

50. On November 30 2000 the Law “On Constitutional Court” was amended. Under the said amendments, as of 1 July 2001 individuals have a right to submit an application to the Constitutional Court to start judicial proceedings on the compliance of laws and international agreements of Latvia to the Constitution, the compliance of other normative acts or their parts to legal norms of higher legal power as well as the compliance of the national legal norms of Latvia to those international agreements Latvia has signed that are not contrary to the Constitution.

A constitutional complaint (application) to the Constitutional Court can be submitted by every person who holds the opinion that the fundamental rights prescribed for the person by the Constitution are affected by the legal norm that does not comply with the legal norm of higher legal power.

51. Since its establishment in 1996 the Constitutional Court has reviewed several cases on the compliance of legal acts of Latvia to international commitments undertaken by Latvia in the area of human rights as well as in several judgements the Constitutional Court has referred to international human rights documents, among others also the Covenant.

52. Following the appeal of the UN World Conference on Human Rights held in Vienna in 1993, in 1994 a national programme "Protection and Promotion of Human Rights" was elaborated and in 1995 the National Human Rights Office was established in Latvia. The said office was established as an independent institution for the protection of human rights and as a human rights ombudsman in line with the "Principles of Paris" (Principles that apply to the status and operation of public institutions protecting and promoting human rights).

53. Principles of operation and the status of the National Human Rights Office are stipulated by the Law "On National Human Rights Office", adopted on 17 September 1996. Under Article 1 of the said Law the National Human Rights Office (hereinafter - NHRO) is an independent public agency that promotes respect for human rights in Latvia in compliance with the Constitution and international agreement in the area of human rights that are binding for Latvia. Article 2 of the Law defines tasks of the Office:

(a) To provide comprehensive information to the public on human rights as well as to promote the recognition and understanding of these rights;

(b) To provide comprehensive information to the public on human rights, guarantees and responsibilities prescribed by normative acts of Latvia;

(c) To review any complaint on the violation of human rights;

(d) To immediately react to facts of the violation of human rights as well as to establish at its own initiative circumstance that might cause such violations;

(e) To study the situation on compliance with human rights in the country, in particular in those areas that affect the vulnerable group of the society;

(f) To formulate programmes for promoting respect for human rights as well as to co-ordinate the implementation of programmes developed in the area of human rights by other public and municipal institutions and work groups;

(g) To conduct an analysis of the legal norms of Latvia in order to determine their compliance with international agreements in the area of human rights that are binding for Latvia.

(h) Not less frequently than once a year to submit a written report to the Saeima (Parliament) and the Cabinet of Ministers on the operation of the Office and once in a quarter - a written account on topical human rights issues.

54. Under the Law, NHRO receives and reviews written complaints of individuals about possible violations of human rights as well as provides oral consultations. In 2000 816 written complaints were received and 4347 oral consultations provided. In 2001 the National Human Rights Office received 969 written complaints and provided 3939 oral consultations. It should be emphasised that on 30 November 2001 amendments to the Law "On the Constitutional Court" were adopted, according to which NHRO is empowered to submit applications to the Constitutional Court concerning compliance of laws to the Constitution and international agreement. NHRO has already submitted 3 such applications.

55. At the end of 2000 the Office of President of the State established a working group, entrusted with the task of assessing the necessity of introducing the institute of ombudsman in Latvia as well formulating a concept for an institution of the kind. On 16 January 2001 the President of the State received concept on the introduction of the institute of ombudsman elaborated by the said working group. According to the report of the group, the public trust in the Civil Service, the law-enforcement agencies and courts is low, thus the resolution of conflicts between the population and State and municipal institutions is ineffective. The working group offered several variants for the resolution of the problem, including the option of establishing five various ombudsmen, of developing the ombudsman on the basis of the existing National Human Rights Office etc. The public discussion about these issues still continues, thus none of the proposals offered by the work group has been implemented yet.

56. On 2 June 2001 a conference "Establishment of an ombudsman institution in Latvia" was held where the above-mentioned issues were discussed. In April of 2001 group of international experts arrived in Latvia with a task to examine human rights protection mechanisms existing in Latvia and to evaluate the elaborated concept on the introduction of the institute of ombudsman. Mandate and functions of the National Human Rights Office also were evaluated. It should be emphasised that international experts recognised that the National Human Rights Office is a full-fledged ombud on the protection of human rights. Besides the National Human Rights Office is a full-fledged member of the International Ombud Institute. Practically all recommendations of the experts have been implemented (a co-ordination mechanism has been established in order to prevent overlapping functioning of different institutions in examination of individual complaints; internal restructurisation of the NHRO has been carried out and new Information and public relations Division established; NHRO staff-members regularly visit rural regions, as well as conduct visits to police isolators and psychoneurological hospitals). The dynamics of complaints submitted to the NHRO in 2001 is close to the one of 2000, and that shows the people's trust in NHRO. In 2002 the budget of NHRO is increased by 10% thus allowing NHRO to fulfil its functions more effectively. As long-term goals experts suggested several variants for complementing the existing human rights protection mechanisms with new functions, particularly concerning maladministration. Simultaneously it was emphasised that these changes should not be done in a hurry.

### **Article 3 of the Covenant**

57. Issue of gender equality at the constitutional level is regulated by Article 91 of Chapter 8 “Fundamental Human Rights” in the Constitution of Latvia, which prescribes that “all people in Latvia shall be equal in front of law and court” as well as that “human rights shall be exercised without any discrimination”. The above principles of the prohibition of discrimination and of equality are in effect in the exercise of any rights - civic, political, economic, social, cultural. Besides, the 1979 Convention on Elimination of all Forms of Discrimination against Women forms part of the legal system of Latvia, as it is binding for Latvia since 14 May 1992.

#### **Historic development of the understanding about gender equality**

58. The development of social and cultural conduct of men and women in Latvia has been determined by the national history and culture that have been influenced by the various political regimes that have existed in the territory of Latvia and the dominant cultural forms. The most significant impact to be mentioned is the traditional culture of the ethnic native population of Latvia, Christian traditions and norms of canon law, traditions of democracy and authoritarianism during the period of independent statehood between World War I and World War II, the culture of the soviet period and the position of the woman in the community, the tradition of political and community culture developed since the restoration of independence.

59. The traditional cultural base of the ethnic native population in Latvia is the patriarchal peasant family where the woman mostly holds the place of the mother. In this context the woman enjoys particular respect and receives privileges, however in the social structure of society the woman holds the position that is characteristic for the model of the patriarchal family.

60. The impact of Christian traditions and norms of canon law on the role of the woman in society in the territory of Latvia is basically related to the influence of Catholicism (in Latgale) and Lutheranism (in Kurzeme and Vidzeme), which are the most widespread denominations in Latvia. However during the soviet period this tradition lost most of its influence.

61. Democratic traditions and gender equality traditions during the period when the territory of Latvia was incorporated in the Russian Empire, developed at a comparatively more rapid rate, due to the higher educational and living standards of the population. The activity of both genders during the revolution of 1905 and during the process of the development of a civic society until the beginning of World War I may be viewed as the first confirmation of the fact that these ideas had taken root in the community.

62. Upon the foundation of the state in 1918 women acquired political and civil rights on an equal basis with men, which were also extensively exercised during the period of democracy as well as during the period of authoritarianism.

63. During the soviet period a brutal concept on the equality of men and women was cultivated, which often led to a ill-considered equalisation of social functions, disregarding the specific physiological and psychological needs of women, although this concept was based on the universal recognition of women’s rights and their implementation in practice, it often achieved the reverse effect which degrading the woman as a full-fledged member of society.

64. Since the restoration of independence in 1991 the attitude towards the issue of gender equality in Latvia has been slowly changing. The community has access to materials on the feminist movement and activities of women's organisations, movements, activities of political parties and associations, which are related to the change of stereotypes. On the whole, all mass media gradually and more consistently reveal a change of stereotypes in the attitude of the public opinion to the issue of gender equality. Various models of mutual relationships are offered in addressing the issue of gender equality, this problem is given a more tolerant assessment; increasingly more frequently it is the individual choice of the woman and its significance that is emphasised.

### **Legal acts guaranteeing gender equality and the practice of their application**

65. Legal acts containing norms, discriminating women, are not characteristic for Latvia. On the contrary, a number of laws and other normative acts that are in effect, contain the prohibition of gender discrimination. The new Labour Law that will become effective as of 1 June 2002 contains also the definition of indirect discrimination and its prohibition. Under Section 4 of Article 29 of the above Law "indirect discrimination shall exist if obviously neutral provisions, criteria or practice cause unfavourable consequences for a considerably larger part of persons of one gender, except cases when such provisions, criteria or practice is appropriate and necessary and can be justified by objective conditions that are not related to the gender."

66. Likewise Latvia has adopted measures necessary for the prevention of discrimination against women in political and public life. There are no restrictions of active and passive electoral rights as concerns the gender of the person. When choosing the place where to participate in the elections of the Saeima (Parliament) or local governments, the woman is not bound by the male members of her family or their place of residence - persons enjoy the right to choose the place of voting on equal basis, irrespective of their gender. The Law "On Parliamentary Elections" stipulates that at Parliamentary elections a person may vote at any polling station in the whole country. At local elections the person may vote at his/her discretion in the territory of the local government where the person has registered residence or real estate registered in compliance with the procedure prescribed by law. A person, who has no permanent residence registration on the day of elections, has the right to vote in the administrative territory of the local government where the person has had his/her last registered place of residence.

67. According to the data provided by the Central Electoral Commission on the participation of women at Parliamentary and local elections, women are active in exercising their passive electoral rights (see the Table).

	Women		Men	
	Candidates	Elected	Candidates	Elected
Local elections of 1997	4 843 (41%)	no data	7 099 (59%)	no data
Elections of the 7th Saeima in 1998	288 (26,64%)	17 (17%)	793 (73,36%)	83 (83%)
Local elections of 2001	5 933 (43,75%)	1 784 (41,15%)	7 627 (56,25%)	2 551 (58,85%)

68. The Latvian legislation does not impose any restrictions on the participation of women in the formulation of national policy and to hold public offices as well as to perform all public functions at all levels of public administration. Since August 1999 the highest office in the country - that of President - is held by a woman who at the same time is also the Commander-in-Chief of the National Armed Forces. It must be noted that, according to statistics, Vaira Vīķe-Freiberga has been the most popular politician in the country since her election. Women are represented also at the main body of the executive power in Latvia - the Cabinet of Ministers. There are no gender-related restrictions of the right to hold an office in the Civil Service of the country.

69. In Latvia the right to work as an unalienable right is guaranteed to women the same as to men. Article 1 in the Labour Code of Latvia stipulates, "in the Republic of Latvia natural persons are ensured equality in labour relations irrespective of their race, colour, gender, age, religious, political or other affiliation, national or social origin, and the material situation". On its turn, the new Labour Law stipulates that every individual enjoys equal rights to work, fair, safe working conditions that are not hazardous for health, as well as to a fair remuneration for work. These rights must be ensured without any direct or indirect discrimination, irrespective of the race, colour, gender, age, religious, political or other affiliation, national or social origin, the material situation or the family status of the person or other circumstances. To ensure these rights it is also prohibited to penalise an employee or in any other way to directly or indirectly incur consequences unfavourable for the person because the employee exercises his/her rights in a permissible manner within the frame of labour relations.

70. The Labour Code does not prescribe requirements in respect of the criteria for the selection of employees. The Labour Law, in its turn, includes the prohibition of gender discrimination in selecting employees. It is stipulated that advertised job offers must not apply on to men or only to women, except cases when belonging to a specific gender is an objective and justified prerequisite for the performance of the respective assignment or the respective occupation.

71. The legislation of Latvia does not prescribe any differences in career promotion for women and men. Career options, unrestricted on gender grounds, in the private sector are regulated following the principle of prohibiting unequal treatment. The Law "On Civil Service", in its turn, establishes the procedure for testing the suitability of applicants for the position of a civil servant as well as identifies requirements, which do not include discrimination on gender grounds. The rights of a civil servant include application for the recruitment procedure for vacancies of civil servants of the highest qualification, as well as participation in programmes to acquire expertise and skills necessary for the performance of official duties. According to information provided by the National Civil Service Board, as of 31 December 2000 the proportion of men and women in the State Civil Service is 40% and 60% respectively, and this is the largest difference in the proportion of men and women since the introduction of the Civil Service in the country.

72. Table 1 gives a summary of statistical data on the employment of women and men not only at public institutions but also in all areas of national economy, trade, manufacturing and services.

**Division of economically active population in 2001 (thousands of persons)**

	Total	Men	Women
Total	963.9	484.4	479.5
Agriculture, hunting and forestry	142.8	87.5	55.3
Fishery	2.3	1.8	0.6
Mining industry and quarries	1.6	1.2	0.4
Processing industry	157.1	84.9	72.2
Electric power, gas and water supplies	20.2	16.1	4.1
Construction	64.9	59.2	5.7
Wholesale or retail sale, repairs of automobiles, motorcycles and household appliances and equipment	159.1	63.8	95.2
Hotels and restaurants	25.3	6.3	19.0
Transportation and communications	78.8	55.4	23.4
Financial mediation	12.7	4.7	8.0
Transactions in real estate, lease and other commercial activities	39.2	20.6	18.5
Public administration and defence; compulsory social insurance	68.6	39.2	29.4
Education	87.2	15.3	71.9
Health and social care	49.3	7.7	41.6
Other utilities, social and individual services	52.3	19.7	32.6
Households with paid labour	1.9	0.4	1.5
Exterritorial institutions and organisations	0.0	0.0	0.0
Not indicated	0.6	0.6	

73. Under the Education Law in Latvia access to education does not depend on the person's gender. No separate education for girls and boys exists in Latvia, it is also not stipulated by the effective legislation. Due to this reason, there are no schools of differing quality in Latvia, boys and girls enjoy equality in access to school premises, equipment and the teaching staff. As admission rules to educational institutions do not stipulate any admission restrictions based on gender, and admission to educational institutions is effected on the basis of a competition or proceeding from the pupil's place of residence, girls have access to any speciality at vocational educational centres, colleges and higher educational institutions.

	number of pupils	number of girls	number of girls %
2000/2001 school-year			
Attend general education (day) schools	344 822	173 238	50.24
1999/2000 school-year			
Number of pupils who have completed Grades 1-4 at general education (day) schools	133 039	64 542	48.51
Number of pupils who have completed Grades 5-9 at general education (day) schools	159 601	78 128	48.95
Number of pupils who have completed Grades 10-12 at general education (day) schools	341 788	172 523	50.48
Number of graduates at night (shift) school)	11 765	5 844	49.67

#### **Activities undertaken for the promotion of gender equality**

74. Since January 1999 the Social Policy Development Department at the Ministry of Welfare is the competent institution co-ordinating issues of gender quality in the country. In 2000 a Division on Integration of Society and Gender Equality was established. The main tasks of the co-ordinator on gender equality issues are to co-ordinate gender equality issues at the Ministry of Welfare and to co-operate with other public agencies as well as non-governmental organisations, to organise seminars, to collect and collate materials on gender equality issues and trends of development in this area; to co-operate with international organisations and their experts on matters pertaining to gender equality; to formulate proposals and projects related to gender equality issues.

75. On 16 October 2001 the Cabinet of Ministers adopted Concept on implementation of gender equality, which incorporates the main directions of activities for addressing gender equality issues. They are creation of institutional mechanism, education of civil servants and information of society on gender equality issues, improvement of existing legal acts on gender equality and supervision of the above process.

76. Women in Latvia involve in addressing problems of gender equality directly and indirectly. Conferences are organised for the discussion of this issue. Women-writers, philosophers, actresses, business women and women-politicians, when publicly expressing their

views and attitude to life, assert the intellectual abilities of women and the diversity of opinion on the gender equality issue. In May 2000 the first national conference “Women and men - co-operation and competition” was held.

77. In the two national television channels of Latvia and two large commercial television channels the majority of journalists working in the news service, cultural and art programmes, family programmes are women. Broadcasts presented by both types of television channels for families emphasise the equal responsibility and care of both parents for their family, equal opportunities in developing a professional career. Neither can any special contra-position of men and women be felt in broadcasts presented by the Latvia National Radio and commercial radio stations; it can be observed that professional qualities of the woman and her career development success are emphasised. More frequently in discussions of public issues, radio broadcasts recognise the right of the woman to freedom of choice to be a value.

78. Since the submission of the initial report of Latvia on the implementation of the Covenant courts of Latvia have several times applied the Convention of 1979 on Elimination of All Forms of Discrimination against Women in order to decide the issue on the existence of the fact of gender discrimination. For example, court referred to the above 1979 Convention, the Constitution and the Labour Code when it passed the conclusion that the refusal to hire a woman to work as a prison warden, justifying it by the fact that the applicant was a woman and the work of a prison warden involved difficult physical conditions and specific requirements, was a violation of the fundamental right of the applicant to freely choose her occupation and place of work. In another case court ruled that the establishment of a lower salary to a woman in comparison with other employees, who were men, did not comply with the prohibition of discrimination and the right to receive equal remuneration for work of equal value. The above court practice shows that gender equality in such a relevant area as employment relations is guaranteed not only in texts of legal acts but also by court practice which ensures the genuine application of the equality principle.

#### **Article 4 of the Covenant**

79. The situation mentioned in Article 4 of the Covenant is regulated by the Law of 1992 “On State of Emergency”. Under this Law the Cabinet of Ministers may proclaim a state of emergency if the country is threatened by an external enemy or internal riots have broken out or are about to break out in the country or in its part that jeopardise the existing public system. The law prescribes that the Saeima (Parliament) must be notified about the state of emergency within 24 hours and if within 48 hours the Saeima (Parliament) does not give its approval to the state of emergency, it must be revoked. The state of emergency may be proclaimed for a definite period of time that does not exceed 6 months and the Secretary General of the United Nations must be informed about the fact and causes of proclaiming a state of emergency.

80. The above law stipulates that upon declaring a state of emergency the following restrictions can be imposed:

(a) a special procedure for entry and departure from the country as well as restrictions on movement;

- (b) reinforced protection of public order and of specific objects;
- (c) prohibition to organise meetings, rallies, street marches and manifestations as well as other mass events;
- (d) prohibition of strikes;
- (e) restrictions on the movement of transport vehicles and the inspection of transport vehicles.

If the state of emergency has been proclaimed in view of internal riots that have broken out or are about to break out in the country or in its part, the following restrictions can be imposed in addition to the above mentioned:

- (a) to establish the curfew;
- (b) to subject mass media to censorship or to suspend their publication, to seize the production of mass media, their printing and multiplication equipment;
- (c) to suspend the operation of political parties and other non-governmental organisations if they incur obstacles to the implementation of the state of emergency;
- (d) to examine documents of individuals; to conduct an inspection of individuals and the property in their possession if there is information that these individuals have weapons;
- (e) to prohibit or restrict the sale of weapons, highly effective chemical and poisonous substances and alcoholic beverages as well as to seize temporarily weapons, highly effective chemical and poisonous substances and alcoholic beverages and remove them from natural and legal persons;
- (f) to expel violators of public order who are not permanent residents of the area, district or city/town from this area, district or city/town where the state of emergency has been proclaimed.

81. The Law "On State of Emergency" guarantees compliance with the most essential human rights during the state of emergency, stipulating that activities of the state of emergency must be undertaken at a scale that is necessary for the normalisation of the situation and the state of emergency cannot serve as grounds for the restriction of the authority of public and administrative agencies, political parties, non-governmental institutions, human rights and freedoms in areas, districts or cities/towns where the state of emergency has been proclaimed. In the event of a state of emergency criminal and administrative proceedings are effected in compliance with the procedure prescribed by the Latvia Criminal Procedure Law and the Latvia Administrative Procedure Law and it is prohibited to establish special investigation and court institutions. Besides the law stipulates that activities during the state of emergency must comply with international commitments that the Republic of Latvia has assumed in the area of human rights.

82. The proclamation of a state of emergency does not repeal the operation of those laws that regulate the application of physical force, special means and firearms against natural persons. Officials and other person are criminally, administratively and disciplinary liable in compliance with the procedure prescribed by the law for violations of laws and the abuse of the state of emergency. Oversight over compliance with laws during a state of emergency is exercised by the Prosecutor General of the Republic of Latvia and prosecutors subordinated to the Prosecutor General.

83. It must be emphasised that the state of emergency has never been proclaimed in Latvia since the restoration of independence.

### **Article 5 of the Covenant**

84. Article 89 of the Constitution of Latvia prescribes that “the State shall recognise and protect fundamental human liberties under the present Constitution, laws and international treaties binding for Latvia”. On its turn, Article 116 of the Constitution defines permissible restrictions of human rights protected by the Constitution. Under the said Article, the right of an individual to the inviolability of privacy, residence and correspondence, the right to free movement in the territory of Latvia and to choose one’s domicile, the right to freely leave Latvia, the right to freedom of speech and opinion, the right to have free access to information and to disseminate it, the right to freedom of association and meetings, the right to freely choose one’s occupation and the right to strike may be restricted in cases provided by law with the purpose of protecting the rights of other persons, the democratic public system, public security, welfare and morality. The above Article of the Constitution stipulates that the expression of one’s religious conviction may also be restricted on the basis of these provisions.

85. Alongside with Article 116, Article 105 of the Constitution provides restrictions on the right to property. The said Article stipulates, “everybody shall have a right to property. The property must not be used contrary to the interests of society. The right to property may be restricted solely in compliance with the law. Coercive expropriation of the property for public needs shall be permissible only in exceptional cases on the basis of a separate law for fair compensation”.

86. Article 78 of the Criminal law prescribes liability for the violation of national or racial equality and the restriction of human rights. Under the given Article the commission of an act knowingly directed towards promoting national or racial hatred or enmity, knowingly restricting directly or indirectly, economic, political, or social rights of individuals or creating, directly or indirectly, privileges for individuals based on their racial or national origin, is punished by deprivation of liberty for a term of up to three years or a fine of up to sixty times the minimum monthly wage. The commission of the same act, if it is associated with violence, fraud or threats, as well as if committed by a group of persons, a public official or a responsible employee of an enterprise (company) or organisation, is punished by deprivation of liberty for a term of up to ten years.

### **PART III**

#### **Article 6 of the Covenant**

87. Article 93 of the Constitution stipulates “the right of every person to life shall be protected by law “. This right is protected by the Criminal Law prescribing liability for the intentional unlawful murder of another person.

88. Article 37 of the Criminal Law, enacted in 1998, stipulated, “capital punishment - death by shooting may be imposed only for murder in particularly aggravating circumstances. The death penalty shall not be applied to persons who by the time of the commission of the crime have not attained eighteen years of age and to women.”

89. On 1 June 1999 the 6th Protocol to the European Convention for the Protection Human Rights and Fundamental Freedoms, providing the abolishment of capital punishment, became binding for Latvia. To ensure compliance of legal acts of Latvia to the Protocol, Article 37 of the Criminal Law was amended, stipulating “capital punishment shall be applicable only if the crime has been committed during wartime”. It must be emphasised that in 1996 moratorium on capital punishment was declared. In Latvia capital punishment was executed for the last time in 26 January 1996, the person who was executed had been sentenced for the commission of nine crimes provided by the Criminal Code, among them also murder.

90. Moreover, amendments to the Criminal Law have been drafted harmonising the provisions of the Second Optional Protocol to the Covenant on the abolition of death penalty and the provisions of the Criminal Law in order to implement the prohibition to apply death penalty. Currently the said amendments are debated in the Parliament.

91. Thus Paragraph 22 of the Proposals and Recommendations approved by the Committee in 26 July 1995 has been implemented.

#### **Article 7 of the Covenant**

92. Article 95 of the Constitution stipulates that torture, other cruel or degrading treatment of a person is prohibited likewise nobody may subjected to cruel or degrading punishment. As of 14 July 1992 the 1984 United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment is binding for Latvia.

93. On 11 September 1997 the 1987 European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Protocols to the said Convention were ratified.

#### **Effective legal acts defining torture or cruel or degrading treatment and prescribing liability for such actions**

94. The Supreme Court gave its explanation for the term “torture” in its Plenary Decision “On Application of Criminal Laws in Cases for Infliction of Intentional Bodily Injuries”, approved in 1 March 1993, where it indicated that “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 (for example, whipping with rods, pinching, influence by thermal factors, pricking with sharp objects etc.)". It must be emphasised that international agreements binding for Latvia form part of the legal system of Latvia, thus the definition of "torture" provided by the United Nations Convention of 1984 against Torture and other Cruel, Inhuman or Degrading Treatment is directly applicable in Latvia.

95. The prohibition of torture has been prescribed by several other legal acts in force. An overview on these legal acts is provided in Paragraphs 100-108 of the present Report.

96. In its turn, the Criminal Law prescribes liability for crimes, involving the use of violence or torture - Article 74 of the Criminal Law prescribes that war crimes, that is, violation of provisions and customs regarding the conduct of war, prohibited by international agreements that are binding for Latvia, which has been manifested by the murder, torture, robbery, deportation or assignment to coercive labour of civilians, hostages and prisoners of war of the occupied territory, the unjustified destruction of cities and other entities, are punished by life imprisonment or deprivation of liberty for a term of three to twenty years.

97. Articles 125 and 126 of the Criminal Law prescribe liability for the infliction of an intentional serious bodily injury or an intentional moderate bodily injury if they have had the character of torment or torture. Article 125 prescribes deprivation of liberty for a term of three to twelve years, while Article 126 prescribes punished by deprivation of liberty for a term of up to eight years. Under Article 130 of the Criminal Law "Intentional Slight Bodily Injury" regular beating that has the nature of torture or any other kind of torture, provided these actions have not had the consequences set out in Section 125 and 126 of the Law, are punished by deprivation of liberty for a term of up to three years or custodial arrest, or community service, or a fine in the amount of up to sixty minimum monthly salaries.

98. Article 317 of the Criminal Law states that exceeding official authority - intentional acts, committed by a public officer that evidently exceed limits of rights and authority granted to the public officer by law or their assigned duties, if substantial harm has been caused thereby to public authority or administrative order or personal rights and interests protected by law - is criminally punishable. The possible penalty is deprivation of liberty for a term of up to five years, or a fine in the amount of up to hundred minimum monthly salaries. If the same acts have incurred serious consequences, or if they have involved violence or threatened violence, or if they have been committed with an avaricious purpose, they are punishable by deprivation of liberty for a term of up to ten years, or a fine in the amount of up to two hundred minimum monthly salaries.

### **Prohibition of torture or cruel or degrading treatment in specific areas**

99. Effective legal acts of Latvia consolidate the principle that it is prohibited to use a testimony that has been acquired through torturing a person as evidence.

100. Thus Article 19 of the Criminal Procedure Code stipulates that only the evidence that has been gained, reviewed and assessed under the procedure prescribed by law may be used for establishing circumstances of a case. Under Article 49 of the Criminal Procedure Code, evidence in a criminal case is any facts used as the basis by the investigating agency, the prosecutor, the judge and court in compliance with the procedure prescribed by the law for determining the presence or absence of *corpus delicti* - constituent elements of a criminal offence, the guilt of the person who has committed the said offence and other circumstances that are significant in the appropriate adjudication of the case. These facts are established with the help of testimonies of witnesses, the testimony of the victim, testimonies of the suspect, testimonies of the accused person, expert statements, material evidence, records of investigation and courts and other documents. Information acquired during operative activities on facts as well as information recorded with the help of technical means, may be used as evidence only if it is possible to verify them under the procedure prescribed by the above Code.

101. Under Article 294, compelling to testify at an interrogation, if it involves violence, a threat of violence, humiliation of the interrogated person or has been committed in any other way, and if it has been committed by the pre-trial investigator, is punished by deprivation of liberty for a term of up to ten years. According to the information provided by the Ministry of Interior during the period since 1995 only in 2001 one offence provided by Article 294 of the Criminal Law has been registered.

102. Article 338 “Violence against a Subordinate” of Chapter XXV of the Criminal Law “Criminal Offences Committed during Military Service” prescribes liability for the infliction of intentional moderate bodily injury to a subordinate as well as of other acts, which have the nature of torture. The penalty for such acts is deprivation of liberty for a term of up to eight years. According to the information provided by the Ministry of Interior, during the period since 1995 only in 2001 the commission of the crime provided by Article 338 of the Criminal Law has been registered and three crimes of the kind had been disclosed. Under Article 340 a person is criminally liable for the battery and torture of a military serviceman. The maximum penalty for such acts if they involve the infliction of serious bodily injury is deprivation of liberty for a term of three to twelve years. The table presents an overview on registered and detected crimes provided by Article 340 of the Criminal Law.

	1995		1996		1997		1998		1999		2000		2001	
Article of CrL	Reg.	Dis.												
340	5	2	31	17	36	30	26	22	16	9	16	7	18	9

103. The Law “On Police” prescribes that a police officer must not commit or support any acts that involve torture or other cruel, inhuman, degrading treatment and punishment. No police officer may refer to the order of a senior officer or such emergency situations as martial law or a threat of a war, a threat to national security, the national domestic political instability or extraordinary circumstances in order to justify torture or other cruel, inhuman or degrading treatment and punishment. Likewise the Law stipulates that the police officer is liable for unlawful action under the procedure prescribed by law and service regulations. Instructions for officers of the police service include norms prohibiting inhuman or degrading treatment.

Disciplinary regulations prescribe the disciplinary liability of officers for various violations of service discipline. Heads of structural entities bear personal liability for compliance with the service authority of the personnel.

104. The Penal Law stipulates that upon the execution of any criminal penalty, guarantees provided by law for the convicted person against torture and inhuman or humiliating application of punishment must be respected, that the objective of the execution of the penalty is not to cause physical suffering or to degrade the human dignity, or to exclude the person from the community. Discrimination of convicts on the grounds of race, nationality, language, gender, social and material status, political views, religious affiliation and other criteria is not permissible, all convicts are equal before the law.

105. The Education Law defines rights and obligations of the pedagogue and students. Thus Article 51 of the Law stipulates that the duty of the pedagogue, *inter alia*, is to respect norms of professional ethics, to respect rights of the child, as well as to be responsible for his/her work, methods, techniques and results. Article 55, in its turn, provides rights of students to free expression and defence of their thoughts and opinion during the study and educational process, the right to conditions that are safe for their life and health at the educational institution and activities organised by the said institution, etc. These norms apply to all educational institutions, including special educational institutions providing general practical and vocational education to students with mental and physical development disorders and special needs.

106. Under Article 66 of the Criminal Law and the Law of 1993 “On Application of Educational Corrective Measures to Minors”, court may, taking into account the particular circumstances of a criminal offence and information received regarding the personality of the offender, which mitigate their liability, release a minor from the punishment adjudged imposing educational corrective measures. One of the possible measures is to place the minor in an educational and corrective institution or an educational institution of social correction, which is an institution of general education where educational programmes of social or pedagogical correction are implemented, ensuring access to education or improving its quality, undertaking pedagogical work with children from risk families as well as juvenile delinquents. The operation of these institutions is regulated by the above Education Law, including also the above Articles on rights and duties of the pedagogue and the student.

107. The 1997 Medication Law stipulates that a patient has a right to quality, kind and respectful medical treatment and care. The Medication Law particularly emphasises that all civil, political, economic and social rights prescribed by law must be guaranteed also to persons with psychic disorders and mental diseases, and that psychic disorders or a mental disease must not be the cause of a person’s discrimination. The Law also stipulates that mental patients have the right to receive medical assistance and care of the quality that corresponds to the accepted general medical standards.

108. Article 155 of the Criminal Law, in its turn, prescribes liability for illegal confinement of a person in a psychiatric hospital. The possible penalty for such acts is deprivation of liberty for a term of up to two years, or custodial arrest, or a fine in the amount of up to forty minimum monthly salaries, and deprivation of the right to a specific occupation for a term of up to five years. During the period since 1995 no crime provided by Article 155 of the Criminal Law has been registered.

109. At the end of 2001 the Constitutional Court announced its judgement in the case on compliance of the Provisional Regulations “On Procedure for Keeping Suspects, Accused Persons, Defendants and Convicted Persons at Remand Prisons”, approved by the Ministry of Justice to Article 95 (prohibition of torture, inhuman or degrading treatment) and Article 111 (the right to health and guaranteed minimum of medical assistance) of the Constitution. According to the opinion of the submitters of the constitutional complaint, the prohibition of the prescribed food parcels is contrary to the above Articles of the Constitution. In its judgement the Constitutional Court stated that the Internal Rules of Remand Prisons, issued on the basis of the above Regulations, were contrary to the Constitution in the part on the prohibition of food parcels.

### **Activities for the elimination of torture, cruel or degrading treatment; education and training**

110. A person who has become a victim of torture, has the right to demand compensation in compliance with Article 110 of the Criminal Procedure Code, which prescribes that a person who has suffered material losses through a criminal offence, may submit a civil claim within the frame of the criminal case against the defendant of a person who bears material responsibility of actions of the defendant. The same Article also stipulates that a person who has not submitted a civil claim in a criminal case as well as person whose civil claim has not been reviewed due to the fact that the criminal case has been dismissed or a judgement of acquittal has been passed, has a right to submit this claim under the civil procedure.

111. The Civil Law, in its turn, prescribes the duty of the person whose action has been unlawful and who has inflicted bodily injuries to another person, to compensate medical costs to the victim. The victim has a right to demand also the compensation of the unearned profit. If the victim has lost his/her ability for work or has been mutilated, the guilty party must in addition compensate also for the profit that the victim would have acquired in future, as well as compensate for the mutilation.

112. The Civil Law also prescribes that the person who is guilty of causing the death of another person, has the duty of compensating medical treatment and funeral costs to the heirs of the deceased. Besides, the Civil Law prescribes the duty of the guilty party to pay indemnity to persons who have been dependants of the deceased.

113. Since the restoration of independence in 1991 educational institutions are paying increasing attention to studies in the area of human rights. The basic course on human rights, including norms on the prohibition of torture and inhuman treatment has been included in the curriculum of the University of Latvia, the Police Academy of Latvia.

114. Information on norms prohibiting torture is presented to students of the Police Academy of Latvia in several academic courses. The course “Tactics of Interrogation” discusses in detail the inadmissibility of torture and any other physical or mental violence. The course “Tactics of Detention and Custodial Arrest” includes an explanation on the admissibility of the application of physical force and firearms only and solely with the purpose of overcoming the resistance of the person to be detained or arrested. The course “Criminal Persecution” explains the norm of the Law “On Operative Activity” that prohibits any operative activities and the application of any means if they pose a threat for human life and health. The course “Professional Physical

Training”, inter alia, discusses also ways of the practical implementation of norms that are contained in the Convention, for example, in order to comply with requirements of legal acts in these matters, prior to taking the academic course on the application of special means in the detention of an offender, the legal requirements concerning the application of these means are explained to students, emphasising that degrading and cruel, inadequate action by a police officer is impermissible. Course “Law of the Execution of Criminal Penalties” and “Rights of the Police” discuss rights and duties of employees of the police, penitentiaries and border guards, emphasising their duty to respect the human rights of every individual.

115. An integral component of the study programmes at educational institutions of the National Police as well as for the personnel of structural entities, training programmes, service training programmes and upgrading programmes is information and education of police officers on service authority, the procedure of interrogation, detention and custodial arrest, the inadmissibility of the unjustified application of physical force, special means and weapons and cruel, inhuman or degrading treatment.

116. Since 1999 the Police Academy of Latvia and the School of the National Police have introduced a subject “Police and Human Rights” where the syllabus includes issues that are related to the elimination of torture, cruel or degrading treatment at the place of service. Every year trainings are organised by order of the Head of the National Police at places of service (twice a month) where the training programme includes the above issues with the discussion of specific cases encountered in practice and discussions with employees of the National Human Rights Office.

117. The training of employees for the State Border Guard for work on the border and professional education are provided by the School of Border Guards in Rēzekne where students study within the frame of the training programme requirements of the effective legal acts - the Code of Administrative Violations, the Criminal Law, the Criminal Procedure Code, among them also requirements concerning actions upon the detention, arrest and interrogation of persons.

### **Prohibition of medical and research experiments**

118. Latvia has signed the Council of Europe 1997 Convention on Protection of Human Rights and Human Dignity in Biology and Medicine, as well as the 1998 Protocol to the said Convention, prohibiting the cloning of human beings. Both these documents are currently read at the Saeima (Parliament) and they are expected to be ratified in the near future.

119. Article 139 of the Criminal Law prescribes liability for the illegal removal of tissue or organs from a living or dead human with the purpose of using them in medicine, if it has been committed by a medical practitioner. The possible penalty for such acts is deprivation of liberty for a term of up to five years, depriving the person of the right to engage in the practice of medical treatment for a period of up to five years.

120. In compliance with the Medication Law the Central Committee of Medical Ethics has been established and operates; it is a collegiate advisory body that reviews ethical issues of bio-medical progress that apply to social problems - a set of moral values and norms in biomedicine that applies to the protection of human rights and human dignity in genetic, gender

selection, transplantation and other research. The task of this Committee, *inter alias*, is to stimulate in co-operation with medical educational institutions of Latvia that issues of medical ethics are included in the curricula of social medicine, psychology and communication at the said institutions, to provide consultations to public administration institutions, local governments, medical and medical educational institutions as well as other agencies on compliance of normative acts issued by the above institutions and agencies to norms of medical ethics, it is also to review any complaints and applications of natural or legal persons, as well as to issue statements, respecting confidentiality, in the area of the ethics of bio- medical progress at the request of medical ethics committees of medical institutions and associations of medical professionals.

121. The 1992 Law “On Scientific Activity” stipulates that the duty of the scientist is to terminate scientific research, if, according to the scientist’s opinion, they can pose threat to the humanity, society or nature and inform the society about it. The law prescribes the establishment of the Scientific Council of Latvia, which is entrusted with the task of formulating criteria for the ethics of scientific research.

### **Article 8 of the Covenant**

122. Article 106 of the Constitution provides that forced labour is prohibited, however it is specified, that involvement in the prevention of disasters and liquidation of their consequences as well as employment in compliance with a court judgement are not deemed as forced labour.

#### **Liquidation of consequences of disasters; compulsory military service**

123. Rights and obligations of individuals in prevention of disasters and in liquidation of their consequences are regulated by Civil Defence Law. The liquidation of consequences of disasters must be considered to be a case of emergency and under Article 66 of the Latvia Labour Code, effective at present, employees may be involved in the prevention or liquidation of natural disasters also on their days off with the consent of the employee’s trade union.

124. The compulsory military service is regulated by the Compulsory Military Service Law that was enacted in 1997. The above Law prescribes that all men - citizens of Latvia - at the age of 19 to 27 are drafted into the compulsory military service. In their turn, women - citizens of Latvia, as well as men at the age of 18 to 27 may enter the service on voluntary basis. If a citizen applies for service as a volunteer, the person has a right to choose the place of service, provided the person’s health condition is suitable for the chosen place of service. The Law provides several cases when the draft into the compulsory military service is postponed or the person is not drafted into the compulsory military service. Persons are drafted into the compulsory military service to ensure the number of military personnel prescribed by the Saeima (Parliament) for the National Armed Forces and other military units. The length of the compulsory military service is 12 months in the units of the National Armed Forces or in the Guard Regiment of the Ministry of Interior.

**Employment in compliance with a court judgement**

125. Since 1 April 1999 when the new Criminal Law took effect, a person who has been found guilty of the commission of a crime, may be sentenced to forced community service. Under Article 40 of the Criminal Law, forced community service is forced involvement in activities necessary for society that the convicted person serves as punishment by doing work assigned by the local government in the area where he/she resides, during free time outside regular employment time or studies and without remuneration. Forced community service is determined for a term of forty to two hundred and eighty hours and this type of penalty is not applicable to persons with no working ability and military servicemen.

**Prohibition to hold in servitude**

126. Several Articles of the Criminal Law prescribe liability for criminal offences committed against a person who depends on the offenders. For example, Article 116 of the Criminal Code prescribes liability for sexual intercourse with a person who has not attained the age of sixteen and who is in material or other dependence on the offender. Under Article 173, a person is criminally liable for knowingly causing the inebriation of a minor or for involving a minor in the non-medical use of therapeutic or other drugs, which are not narcotic or psycho-tropic substances however they cause intoxication, if the minor is financially or otherwise dependent on the offender.

127. Article 164 prescribes criminal liability for engaging a person in prostitution, by taking advantage of the person's dependence on the offender; and Article 165 prescribes liability for taking advantage of a person who is engaged in prostitution for purposes of material gain. Article 251, in its turn, stipulates penalty for inducing a person who is materially or otherwise dependant on the guilty party, to use narcotic or psychotropic substances.

**Article 9 of the Covenant**

128. Article 94 of the Constitution stipulates, "every person shall have a right to freedom and personal inviolability. Nobody shall be deprived of liberty or his/her freedom shall not be restricted otherwise than only in compliance with law." Article 3 of the Law "On Judiciary" stipulates that every person has the right to protection by court against the endangerment of the person's freedom.

129. Several Articles of Chapter XV "Criminal Offences Against Personal Liberty, Honour and Dignity" of the Criminal Law, effective at present, prescribe liability for illegal deprivation of liberty and the violation of the right to personal inviolability.

130. Article 152 prescribes liability for illegal deprivation of liberty, i.e., for illegal acts depriving a person of the possibility to freely determine where he/she may be. The possible penalty for such acts is custodial arrest, or a fine in the amount of up to thirty minimum monthly salaries. The same acts, if committed in a manner dangerous for the life or health of the victim, or if they involve causing physical suffering to the victim, or if they have continued for more than a week, or they have been committed repeatedly, or they have been committed by a group

of persons pursuant to a prior agreement, are punished by deprivation of liberty for a term of up to three years. Illegal deprivation of liberty, if it has resulted in serious consequences, is punished by deprivation of liberty for a term of up to ten years.

131. Article 153 stipulates that the kidnapping of a person, i.e., the seizing of a person, using violence or threats, or of the abduction of a person by fraud for the purpose of vengeance, avarice or blackmail, is punishable by deprivation of liberty for a term of up to ten years, with or without the forfeiture of property. The penalty for the same acts, if committed repeatedly, is deprivation of liberty for a term of five to twelve years, with or without the forfeiture of property. In its turn, the kidnapping of a person if it has incurred serious consequences is punishable by deprivation of liberty for a term of five to fifteen years, with the forfeiture of property.

132. Article 154 stipulates that seizing or detaining a person as a hostage, if it involves threats of murder, infliction of bodily injuries or further detainment of the said person with the purpose of compelling a state, an international organisation, a natural or legal person or a group of persons to undertake some action or refrain from any action, setting this out as a condition for the release of the hostage, is punishable by deprivation of liberty for a term of three to twelve years, with or without the forfeiture of property. The same acts, if committed against a minor or if committed repeatedly, or if they have been committed by a group of persons pursuant to a prior agreement, or they have incurred serious consequences, are punishable by deprivation of liberty for a term of five to fifteen years, with the forfeiture of property.

133. Article 155 prescribes liability for the knowingly illegal confinement of a person to a psychiatric hospital. The penalty for such acts is deprivation of liberty for a term of up to two years, or custodial arrest, or a fine in the amount of up to forty minimum monthly salaries and deprivation of the right to specific occupation for a term of up to five years.

134. In compliance with legal acts, effective at present, a person may be deprived of liberty or the person's liberty can be restricted in the following cases:

(a) when a person is apprehended since he/she is suspected of having committed a crime or a security measure involving the restriction of the person's liberty is imposed on the person;

(b) when a person is convicted and sentenced to deprivation of liberty or custodial arrest;

(c) when the person is prescribed coercive medical treatment;

(d) when the person is detained in view of the execution of the order of departure from the country.

### **Security measures**

135. Article 120 of the Criminal Procedure Code stipulates that a person suspected of having committed a crime entailing imprisonment may be apprehended by the investigator or prosecutor, if this person has been caught at the moment of crime or immediately after that; if

eye-witnesses, among them victims, directly indicate this person as the offended; or if obvious traces of criminal offence have been found on the clothes of the suspect, on his/her body, at his/her possession or in his/her residence. If there are other factors giving reasons to suspect the person of having committed a crime, this person may be apprehended if he/she tried to flee or has no permanent residence, or the identity of the suspect is not established. Apprehension in relation to suspicions that the person has committed a crime is not permissible for more than seventy-two hours, counting from the moment of actual apprehension. Before this term expires, investigator or prosecutor has to decide either on the application of security measure - detention, or this person has to be released.

136. Under Article 68 of the Criminal Procedure Code, if there are sufficient grounds to assume that the convict or the defendant, while free, will evade investigation and court or will obstruct the establishment of the truth in a criminal case, or will commit a criminal offence, as well as in order to ensure the execution of the judgement, the investigator, the prosecutor and court (judge) have the right to impose a security measure on the accused person or the defendant.

137. Of security measures prescribed by the Criminal Procedure Code the freedom of a person is restricted by detention and home arrest. If the home arrest is applied to a person as a security measure, the person's freedom of movement is restricted in a coercive manner, determining that the person must stay in his/her house (apartment), that the person is not allowed to communicate through means of communication, correspondence or intermediaries with persons mentioned in the decision on the imposition of the security measure.

138. Detention as a security measure may be applied in the event of the commission of a criminal offence that is punishable by deprivation of liberty under the Criminal Law. Detention as a security measure may be applied to minors only in exceptional cases if it is necessary in view of the severity of the committed criminal offence, the personality of the minor or the repeated commission of the criminal offence.

139. In compliance with Sections 3 and 4 in Article 76 of the Criminal Procedure Code of Latvia, it is allowed to apply detention as a security measure, prescribed by the above Sections, only by a decision taken by a judge on the basis of the materials presented by the prosecutor or the investigator in the presence of the detained person, his/her representative, as well as in the presence of the legal representative in cases provided by law. The judge (court), having studied materials on the criminal case and having heard the opinion of the prosecutor, the investigator, the detained person, his/her representative, as well as the opinion of the legal representative in cases provided by law, examines if there are lawful grounds for the detention of the said person and takes a reasoned decision.

140. In compliance with Article 78 of the Criminal Code, the investigator, the prosecutor or court immediately notifies the place of work, the educational institution and the family of the suspect, the accused or the defendant about the selection of the security measure. A copy of the decision on detention is sent to the penitentiary. If the suspect, the accused person or the defendant is a citizen of a foreign country, a copy of the decision is sent also to the Ministry of Foreign Affairs of the Republic of Latvia.

141. Article 77 of the Criminal Procedure Code prescribes the procedure for extending the term of detention (it applies also to the security measure - the home arrest), if it is not possible to complete the pre-trial investigation and the prosecutor has no grounds for changing the security measure. The judge may prolong the above term to one year and six months (in compliance with Article 77.1 - in cases of minors the said term must not exceed six months) on the basis of the application that has been submitted by the prosecutor and on the basis of materials presented on the case, if necessary - by inviting the person under arrest, his/her representative as well as the legal representative in cases provided by law. It should be emphasised that on 20 June 2001 amendments to the Criminal Procedure Code were adopted, according to which the judge may prolong the detention for no more than two months on each occasion. No further prolongation of the term is permissible; after the expiry of the term the detained person must be released without delay.

142. Under Article 83 of the Criminal Procedure Code the imposed security measure is revoked if it has been applied unlawfully or if it is not required any more or it is changed, substituting it by a stricter or more lenient measure, if required by circumstances of the case.

143. The security measure is revoked or changed by the decision of the investigator, the prosecutor or the judge (court) who has jurisdiction over the criminal case, while the security measure imposed unlawfully by the investigator or the prosecutor may be revoked also by a senior prosecutor. The security measure (home arrest or detention) imposed by a judge (court) during pre-trial investigation is revoked or changed only by a reasoned decision of a prosecutor.

144. Article 222.1 of the Criminal Procedure Code prescribes a specific case when the security measure that has been imposed by a judge (court) is revoked by court itself, i.e., the suspect, the accused, their representative or the counsel for defence have a right to appeal the decision of the judge on the imposition of a security measure - detention or home arrest - and on the prolongation of the term of its application. Court of a higher level takes a decision on such a complaint in the presence of the applicant and the prosecutor and the decision taken is final and is not subject to appeal.

### **Criminal penalties**

145. A person who has committed a criminal offence provided by the Criminal Code may be sentenced to deprivation of liberty that is the forced detention of a person in prison. Deprivation of liberty is established for a term of six months to fifteen years, for a term of up to twenty-five years for particularly serious crimes. In special cases provided by the Criminal Law deprivation of liberty may be established for life (life imprisonment).

146. The arrest that is a short-term forced detention of a person in prison may be imposed as a penalty on a person who has been found guilty of the commission of a crime. It is established for a term of three days to six months. During the arrest the person may be involved in performing community service established by the local government. Military servicemen spend the period of arrest in the guardhouse (*virssardzē*). The arrest is not imposed on pregnant women and mothers who have the care of a child less than one year of age.

**Coercive medical treatment**

147. Under Article 68 of the Criminal Law, the following coercive medical measures may be imposed on persons, who have committed offences provided by the Criminal Law, but who suffer from mental disorders and have been found to be lacking capacity or of diminished capacity:

- (a) out-patient medical treatment at a medical institution;
- (b) medical treatment at a psychiatric hospital (ward) general type;
- (c) medical treatment at a specialised psychiatric hospital (ward) under guard.

148. If according to the character of the committed offence and the mental condition it is not dangerous for the public, court may entrust the person in the charge of those relatives or other persons who take care for sick people, and under the supervision of a medical institution at the person's place of residence. Persons, who have been found to have diminished capacity, may be assigned medical treatment also at penitentiaries appropriate for them.

149. Under Article 69 of the Criminal Law, court may impose the above-medical measures on persons who have committed offences provided by this Law, being in a condition of incapacity, or, after the commission of the offence or after the rendering of the judgement they have become ill with a mental illness, which has deprived them of their ability to understand their actions or to manage them, if these persons by the character of the committed offence and their mental condition are dangerous for the public. Court determines the coercive medical treatment and the type of the medical institution depending on the mental illness the person concerned has developed and the nature of the offence committed by the person. When determining treatment at a psychiatric hospital (ward), the medical institution selects its type.

150. The imposition of coercive medical measures are terminated or altered by court on the basis of the opinion given by the medical institution, if the person concerned has recovered or the nature of the illness has changed to such a degree that it is not necessary to apply such measures. If after the recovery of the person punishment is adjudged, the period during which coercive medical measures have been applied is included in the term of the punishment.

151. Article 70 of the Criminal Law stipulates the possibility of applying coercive medical measures also to persons of diminished capacity. Coercive medical measures may be applied also to persons who have committed criminal offences while being in a state of diminished capacity. If such person is sentenced to deprivation of liberty, medical treatment is provided at penitentiaries appropriate for the person. If such person is sentenced without deprivation of liberty, court imposes upon the person the obligation to undergo medical treatment at a psychiatric medical institution at the person's place of residence.

**Detention in view of the execution of a departure order**

152. Norms contained in the Law "On Entry and Stay of Foreigners and Apatrides in the Republic of Latvia" and the practice of their application in relation to the detention of persons upon their forced expulsion is described in Paragraph 187 of the present Report.

**Right to appeal a decision that results in the deprivation or restriction of a person's liberty;  
the right to receive compensation for unjustified deprivation or restriction of liberty**

153. Under the effective Criminal Procedure Code, any person to whom the security measure of detention has been imposed, has a right to appeal the decision irrespective of the fact if the arrest has been applied during the pre-trial investigation or during the examination of the case in court. The right of the person to appeal their placement in the Accommodation centre for illegal immigrants is explained in paragraph 187 of the present Report.

154. Under Article 106.1 of the Criminal Procedure Code, in cases when a criminal case is dismissed as no criminal offence has been committed, the offence has no *corpus delicti* (constituent elements of crime) or the participation of the person in the commission of the criminal offence has not been proved, as well as in the case of a judgement of acquittal, investigation bodies, the Prosecutor's Office and court has the duty of explaining the procedure to the person under which the person may restore his/her violated rights and receive compensation for incurred damages. A special law prescribes provisions and the procedure for the compensation of damages.

155. A law of the kind - the Law "On Compensation of Damages Incurred by the Unlawful or Unjustified Actions of the Investigator, the Prosecutor or the Judge" - was enacted in 28 May 1998. It prescribes the size and the procedure for compensating damages that have been incurred to natural persons as a result of an unlawful or unjustified action by the investigator, the prosecutor or the judge, while performing their service duties, as well as the procedure to ensuring the violated social and labour guarantees of these persons. Under Article 2 of the above Law, the legal basis for the compensation of incurred damages is a court judgement of acquittal irrespective of the motives of acquittal; the dismissal of a criminal case due to circumstances rehabilitating persons; the recognition of the administrative arrest to be unlawful and the dismissal of administrative proceedings.

156. Human Rights Institute in its comments to the Report indicate existing problems regarding the exercise of the right to appeal due to generally difficult situation in the Latvian court system (see paragraphs 229-233 of the present Report). For example, if a request to alter or revoke security measure - detention, and such request has been made in the period between receipt of the case-file in the court and decision of bringing the accused before the court, repeated request to alter or revoke security measure may be submitted only at the court sitting where the examination of the criminal case is commenced. In practice quite often examination of the criminal case is commenced several months after decision of bringing the person before the court, and during this period the person does not have right to request review of the necessity of the detention. This problem is particularly important since the Criminal Procedure Code does not prescribe for maximum term of detention for the period between receipt of the case-file in the court and the beginning of the examination of the case by the court.

**Article 10 of the Covenant**

157. The procedure and regime for serving imprisonment sentences in Latvia is regulated by the Penal Code of Latvia, which establishes that the task of the execution of penalties is execution of a criminal penalty, so that convicts are not only penalised for the crime they have committed, but also reformed. The purpose of the execution of a penalty is not to cause physical

suffering or to humiliate human dignity. The main means for the correction and reformation of convicts are compliance with the regime, labour and education. Convicts have duties and rights prescribed by law, complying with restrictions in respect of convicts prescribed by the law, court and the penitentiary regime.

158. Under Article 8 of the Penal Code the main means for the correction and reformation of convicts are the regime of the penitentiary, community service, educational activities, general educational and vocational training. Means of correction and reformation are applied, taking into account the nature of the committed crime and its degree of danger for the general public, the personality of the convict as well as the convict's behaviour and attitude to work.

159. Under Article 9 of the Penal Code, persons serving their sentences have duties and rights prescribed by law, as well as restrictions that laws prescribe for convicts as well as restrictions that ensue from the court judgement and regime, that is established for serving the sentence by the above Code.

160. Article 70 of the Penal Code provides penalties that can be applied to the convicts for the violation of the regime of the penitentiary: to issue a warning; to express a reprimand; to prohibit to buy food products for a period of up to one month; to prohibit the current parcel; to deny the current meeting; convicts who serve sentences at correctional institutions may be placed in the penal solitary confinement unit for a period of up to fifteen days; convicts that serve their sentences at correctional institutions for minors, may be placed in the disciplinary solitary confinement unit for a period of up to ten days. Women who stay in prison with infants, as well as pregnant women may not be placed in a penal solitary confinement unit.

161. Persons who have been penalised for outright or systematic violation of regime requirements, are punished by placement in the penal solitary confinement unit or the disciplinary solitary confinement unit; they have no right to meetings, to receive parcels and book - post deliveries; to purchase food products, to send letters and to use table games; they are prohibited to smoke. Convicts, who are kept in penal solitary confinement units, are denied walks. Convicts who are kept in disciplinary solitary confinement units are allowed one - hour long walk every day. Convicts who are kept in penal solitary confinement units and who are taken to work, work separately from other convicts.

162. Conditions of imprisonment as well as the treatment of convicts (men and women) or detained persons at penitentiaries are systematically inspected and controlled by the Prosecutor's Office on Penitentiaries. The Penal Code of Latvia provides the right of convicts to submit complaints to the prosecutor. The administration of penitentiaries is not allowed to see complaints addressed by convicts to the Prosecutor's Office.

163. Complaints of persons kept at penitentiaries are examined by one of the senior officers of the personnel assigned by the manager of the administration of the prison. In-service investigation is conducted on all known facts of the abuse of the power and service authority, circumstances that have stimulated the offence are clarified. If necessary, the respective regulations are amended and amplified.

164. The criminological description of persons sentenced to deprivation of liberty allows to draw the conclusion that in prisons of Latvia there is a large proportion of persons tried for serious crimes: intentional murder - 13.32%; robbery - 15.82%; theft - 44.37%; infliction of serious bodily injuries - 9.68%; hooliganism - 4.26%. Therefore special institutions with enhanced security have been established where the most dangerous criminals for the surrounding community are kept (at prisons of Grīva, Valmiera, Daugavpils, Jelgava).

165. On the whole, the system of penitentiaries in Latvia consists of 15 prisons and the Methodological Training Centre. The system of prisons consists of 8 closed prisons, 2 partially closed prisons, 2 open prisons, correctional institutions for minors and 2 remand prisons.

166. Under the Penal Code, the closed and partially closed prisons have three penal regime levels (the lowest, the middle and the highest level). The administrative commission has the right to move the convict from one regime level to another, to transfer the convict to another prison and to propose the release of a convict on parole. The English progressive system for serving sentences is being taken over in Latvia. Under the above system convicts at closed and partially closed prisons start to serve their sentences at the lower regime level and after a certain period of time they are transferred to the middle regime level and finally to the highest regime level. After they have reached the highest level they have the possibility to be released on parole.

167. Under legal acts of Latvia, persons serving sentences at penitentiaries must be provided living conditions that comply with the established sanitary and hygienic regulations. The living space per convict must not be less than 2.5 square meters for men and 3 square meters for women and minors. Each convict must be provided with an individual berth and bedding, three hot meals per day and he/she is provided medical assistance.

168. The renovation of prisons continues in compliance with the Law "On Progressive Penal System". The introduction of the progressive system required the renovation of prisons and the placement of convicts in cells according to European standards: 4 - 8 convicts per cell. The programme for the renovation of prisons has been approved and renovation is undertaken on the basis of the projected investment funds. A total of 3840 cells have been renovated and put to use in prisons. Currently renovation is under way at the Central Prison, the Matīsa, Liepāja and Jelgava Prisons, designs are prepared for the opening of a tuberculosis hospital in the territory of the Olaine Prison. If investments are allocated, renovation is to be completed by 2003.

169. Men sentenced to life imprisonment are segregated from other prisoners in an isolated wing of the Jelgava Prison while women are kept at the Iļģuciems Prison. At present 9 people have been sentenced to life imprisonment (eight men and one woman).

170. Under Article 13 of the Latvia Penal Code, juvenile convicts are separated from adult prisoners; underage men are separated from underage women. As of 1994 isolated remand wards have been established for minors: the educational institution for minors in Cēsis, at the Daugavpils Prison, the Liepāja Prison, the Brasa Prison.

### **Article 11 of the Covenant**

171. In Latvia neither any law nor any other normative act prescribes imprisonment as a penalty for the inability to fulfil contractual obligations.

### **Article 12 of the Covenant**

172. Article 97 of the Constitution stipulates “everyone who legally stays in the territory of Latvia, shall have the right to freedom of movement and freedom to choose his/her residence”. Article 98 of the Constitution stipulates, “everyone shall have the right to freely leave Latvia. Everyone who has the Latvian passport, shall be under the protection of the state outside Latvia and he/she shall have the right to return to Latvia”.

173. Under normative acts, in effect until now, upon choosing residence, every person had the duty of registering at this place of residence. This “registration system” has been recognised to be obsolete, moreover, because the Civil Law allows one person to have several residences. Thus the Law “On Declaration of Residence” has been drafted that is at present reviewed by the Saeima (Parliament) and in compliance with the above Law a person will have to declare his/her residence, so that the person could be reached in legal relations with the state. On 1 February 2002 Regulations of the Cabinet of Ministers “On Provisional Procedure for Registration and Deletion of the Registration of Residence” will become effective, stipulating new basis for registering residence. The above Regulations presume the person’s right to several residences, one of which, at the person’s discretion, must be his/her registered residence that considerably amplify the right to freely choose one’s residence till the enactment of the Law “On Declaration of Residence”.

174. Under the Law of 27 August 1998 “On Register of Population” there are four categories of persons in Latvia who receive personal identification and travel documents in Latvia: a citizen of Latvia, a non-citizen of Latvia, a stateless person (apatride) and a refugee. On the basis of the Constitution, the Law of 22 July 1994 “On Citizenship”, the Law of 12 April 1995 “On Status of former USSR Citizens who have neither the citizenship of Latvia nor of any other country, the Law of 19 July 1997 “On Asylum Seekers and Refugees in the Republic of Latvia” and the Law of 18 February 1999 “On Status of a Stateless Person (Apatride) in the Republic of Latvia” Latvia ensures the issue of personal identification documents to the above categories of persons and guarantees them free departure and return to the country at any time.

175. Persons who do not belong to any of the above categories need a visa or a residence permit in order to enter Latvia and to have their stay recognised as legal on the basis of the Law “On Entry and Stay of Foreigners and Stateless Persons (Apatrides) in the Republic of Latvia”. Citizens of countries that have concluded agreements with Latvia on the introduction of visa - free entry, do require visas. At present bilateral agreements have been concluded with 33 countries. Latvia has unilaterally established a visa-free entry for citizens of the United States of America, the Holy See holders of diplomatic or service passports of United Nations and the European Commission.

176. The procedure for the issue non-citizen's passports and their use has been prescribed by Regulations of the Cabinet of Ministers No. 42 "On Passports of Non-citizens of Latvia" (of 30 January 2001). By 1 January 2002 Latvia had issued 590 274 non-citizens' passports (in 1997 - 78 448, in 1998 - 252 465, in 1999 - 174 612, in 2000 - 62 204 and in 2001 - 22545). Non-citizens' passports contain more information than citizens' passports. They indicate the colour of the person's eyes and the person's height, besides these passports have a machine read part that reduces the possibility of forging non-citizens' passports.

177. The status of a stateless person (apatride) and the right to receive personal identification documents is prescribed by Law "On Status of a Stateless Person (Apatride) in the Republic of Latvia". The said Law particularly emphasises that stateless persons are free to leave Latvia and to return to Latvia. The procedure for the issue of a document confirming the identity of a stateless person (apatride) - the certificate of a stateless person (apatride) - is established by Regulations of the Cabinet of Ministers No. 297 "On Sample of the Document Confirming the Identity of a Stateless Person (Apatride) and the Procedure for the Issue and Return of the Document Confirming the Identity of a Stateless Person (Apatride)" (of 24 August 1999). In 1 January 2002 there were 80 persons who have been recognised stateless persons (apatrides) in Latvia.

178. At present there are 8 refugees in Latvia who have been granted the right to naturalise under the general procedure in compliance with the Citizenship Law. The right of refugees to choose their residence are provided by Regulations of the Cabinet of Ministers of 20 January 1998 No. 19 "On Procedure under which Refugees may choose their residence in Latvia". A refugee may choose their residence in Latvia according to the list of the Administrative Unit on Local Government Affairs at the Ministry of Environment Protection and Regional Development, which has been compiled on the basis of information provided by local governments on vacant residential premises available at the respective local government. If a refugee chooses his/her residence that has not been indicated in the list, the refugee needs the consent of the Centre on Refugees' Affairs at the Board on Citizenship and Migration Affairs. The administration of the Centre for Placement of Asylum Seekers introduces the refugee with the list within three days after its receipt. Within seven days after the refugee has seen the list, he/she chooses his/her residence and confirms by his/her signature that he/she agrees to live in the respective place. Payment for the rent and utilities or for the stay at boarding schools and care institutions is guaranteed from the state benefit allocated to refugees. The Centre on Refugees' Affairs has the right to issue a permit to a refugee to stay at the Centre for Placement of Asylum Seekers till the time when the refugee has chose his/her residence from those given in the list.

179. At present the government has approved the draft Law "On Identification Cards and Passports". The draft Law prescribes the following documents confirming the person/s identity and the legal status: identification cards and passports. The citizen's passport and the non-citizen's passport as well as the travel document of a stateless person (apatride) and a refugee are travel documents that will issues at the request of the person or parents of a minor. It will be possible to use identification cards as travel documents abroad as well if it is stipulated by international agreements that are binding for the Republic of Latvia. All necessary measures have been adopted so that immediately after the law becomes effective it would be possible to begin the issue of new travel documents that would correspond to contemporary requirements to citizens, non-citizens, stateless persons (apatrides) and refugees as well as foreigners who have

received residence permits. It would considerably facilitate the right of persons to leave and to return to the country. The Law "On Identification Cards and Passports" is currently debated in the Parliament and its adoption is planned until May 2002.

### **Article 13 of the Covenant**

180. Legal acts, effective at present, prescribe two types of procedures for the expulsion of persons.

181. Under Article 36 of the Criminal Law expulsion from Latvia is one of the possible additional penalties imposed on a person found guilty of the commission of a crime. The application of this penalty is regulated by Article 43 of the Criminal Law that stipulates that a citizen of another country or a person who has a permanent residence permit of another country, may be expelled from the Republic of Latvia if court finds, that, taking into consideration the circumstances of the case and the personality of the offender, his/her stay in Latvia it is not permissible. The same Article also stipulates that this penalty - expulsion from the country - is adjudged as an additional penalty effected only after the primary penalty has been served.

182. 179. The Law "On Entry and Stay of Foreigners and Stateless Persons (Apatrides) in the Republic of Latvia" (Article 38) regulates the expulsion of foreigners and stateless persons (apatrides) in cases when the foreigner or the stateless person (apatride) stays in the country without a valid visa or a residence permit or if the person has otherwise violated the visa regime, or if the residence permit issued to the foreigner or the stateless person (apatride) has been annulled due to the following reasons:

(a) the person has submitted knowingly false information to the Board on Citizenship and Migration Affairs; has violated rules of the immigration regime or has lost legitimate grounds for staying in Latvia;

(b) the person has been found guilty of the commission of a crime by a court judgement that has become effective;

(c) competent public agencies have grounds to suspect that the said person causes threat to public order and safety or national security;

(d) the person has no legal source of livelihood;

(e) the person is active in a totalitarian, terrorist or other organisation using violent methods that does not recognise the public system of the Republic of Latvia or is a member of any secret anti-government or criminal organisation;

(f) the person has entered the military or other public service of a foreign country, except cases when it is provided by international agreements;

(g) the person has repeatedly failed to comply with regulations for the registration of the residence permit;

(h) the person has entered into fictitious marriage with a citizen or non-citizen of Latvia or a foreigner or a stateless person (apatride) who has a permanent residence permit, with the purpose of forming grounds for the receipt of a permanent residence permit;

(i) the person has terminated studies or training which has been the grounds for the issue of a fixed term residence permit;

(j) the person has terminated employment relations which have been the grounds for the receipt of a residence permit;

(k) the person has divorced a citizen or non-citizen of Latvia or a foreigner or a stateless person (apatride) who has received a permanent residence permit;

(l) the person has been hired without an appropriate permit;

(m) the person has received compensation for leaving Latvia to permanent residence abroad irrespective if the said compensation has been paid by public or municipal institutions of Latvia or international (foreign) foundations or institutions.

183. Article 40 of the Law stipulates that a person must leave Latvia on voluntary basis within seven days' time since the issue of the departure order if the person has not exercised his/her right to appeal the said order to a senior-ranking official, in the event of an unfavourable decision - to court.

184. In cases when the person has neither executed the departure order on voluntary basis nor appealed the decision, the person may be expelled in a coercive manner. Coercive expulsion is effected by the Border Guard Troops within the frame of their authority.

185. The decision on the coercive expulsion of a person from the country is not subject to appeal only in those cases when there is a necessity to react without delay to violations of the visa regime, thus under the Law "On Entry and Stay of Foreigners and Stateless Persons (Apatrides) in the Republic of Latvia", the Head or the Deputy Head of the Territorial Board of the National Border Guard has the right to take a decision on the coercive expulsion of a foreigner in view of the fact that the person has entered the country illegally. This fact is stated by officials of the National Border Guard on the border.

186. In the case when the decision on the coercive expulsion of a foreigner has been taken by the Head of the Board on Citizenship and Migration Affairs or a head of a territorial office, because the said person has not left the country according to the departure order that has been served to the person and has been made known in advance, has not appealed the decision or has appealed the decision but the appeal has been rejected, the person has no right to appeal the decision on coercive expulsion as it has not exercised this right earlier or has not exercised it at all or the departure order has been left in effect also after the appeal procedure (thus it must be executed).

187. The Law also allows to detain a person in order to execute the decision on coercive expulsion, at the same time prescribing that as of the moment of detention the person has a right to receive the services of a sworn attorney. The National Police or the National Border Guard has a right, exercising the right prescribed by the Law and taking into account cases provided by

the Law, to detain a person before the decision on the person's expulsion has been received. The National Police and the National Border Guard have the duty of notifying without delay officials of the Board on Citizenship and Migration Affairs about the detention of the person, who must take the decision if the detainee is to be expelled from the country coercively. If officials of the Board take the decision on the person's coercive expulsion, the said person has the right to receive the legal assistance of an attorney as well as the National Police or the National Border Guard must report to a prosecutor about the detention of a person in excess of three days. The person himself/herself or through the attorney may submit a complaint about detention to the prosecutor. The prosecutor has the right in compliance with the authority prescribed by the Law "On Prosecution Office" to take a decision without delay on the release of the person if the prosecutor states that the decision on detention has been unlawful.

188. Under the international obligations of Latvia that ensue from Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and from Article 3 of the 1984 United Nations Convention on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, a foreigner who has stayed in Latvia illegally, however is not expelled if torture, cruel or degrading treatment or punishment endanger the person in the receiving country.

189. At present in compliance with Article 2 of the Law "On Asylum Seekers and Refugees in the Republic of Latvia" persons who are afraid of persecution due to their race, religion, nationality, social affiliation or political conviction may apply for the status of an asylum seeker or a refugee, and under Section 2 of Article 22 of the Law only a person who has been granted the refugee status, cannot be extradited to a country where the above threat of persecution exists. If a person is not granted the status of a refugee by the decision of the Centre on Refugees' Affairs of the Board on Citizenship and Migration Affairs, the person still is not expelled to a country where the person is subjected to the threat of torture, referring directly to Article 3 of this Convention and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In practice these persons are issued residence permits. In order to establish a precise procedure for the protection of the above persons, a new Law "On Asylum" has been drafted, prescribing the granting of the alternative status to persons who are under the threat of a death penalty or a corporal punishment, torture, inhuman or degrading treatment or humiliating punishment. In the event of granting the alternative status the person is to receive a residence permit.

190. It must be recognised that in the Law "On Entry and Stay of Foreigners and stateless persons (Apatrides) in the Republic of Latvia", effective at present and enacted already in 1992, there are some imperfections and norms that can be interpreted in various ways. Already a new Law "On Immigration" has been drafted in order to eliminate these imperfection as well as to harmonise legal acts of Latvia with the requirements of the European Union.

191. In accordance with information provided by the Ministry of Interior, in 1995 603 people were expelled from the country, in 1996 - 732, in 1997 - 342, 1999 - 222, in 2000 - 237, 2001 - 198, while in January 2002 11 persons have been expelled from the country.

## **Article 14 of the Covenant**

### **Right to equality before court**

192. The equality of all residents of Latvia before court is guaranteed by legal acts, effective in Latvia, that prescribe the principle of the prohibition of any discrimination as well as the principle of equality. Thus Article 91 of the Constitution stipulates “all people in Latvia shall be equal before the law and court. Human rights shall be exercised without any discrimination”. Identical norms have been included also in the Law “On Judicial Power”, where Article 4 prescribes that “(1) all individuals shall be equal before the law and court, that any individual, they shall enjoy equal rights to the protection of law. (2) Court shall pass judgement irrespective of the person’s origin, the social and material status, race or nationality, gender, education, language, religious affiliation, type and nature of occupation, place of residence, political or other views.”

193. Article 13 of the Criminal Procedure Code “Adjudication on the basis of the equality of persons before the law and court” stipulates that “Criminal cases shall be adjudicated on the basis of the equality of persons before the law and court, irrespective of the person’s origin, the social and material status, race or nationality, gender, education, language, religious affiliation, type and nature of occupation, place of residence, political and other circumstances.”

194. Article 1 of the Civil Procedure Law “Right of a Person to Protection of Court” guarantees the right of every natural and legal person to the protection of their violated or disputed civil rights or interests protected by law in court. Article 9 of the said Law stipulates that parties in a civil procedure enjoy equal procedural rights and that court ensures equal possibilities for parties to exercise the rights granted to them for the protection of their interests.

### **Right to a public hearing of the case**

195. Article 11 of the Civil Procedure Law states that all cases are examined publicly. At the same time the said Article provides that persons under the age of 15 are not allowed in the courtroom, unless they are parties to the case or witnesses, and that following a reasoned decision by the court a civil case may be heard in closed session in order to conceal intimate details of the life of participants in the case, as well as in order to protect state secret, secret of adoption, professional, manufacturing of commercial secrets. However, the judgements are to be pronounced publicly. In cases that have been heard in closed sessions only the resolution of the judgement is pronounced. In adoption cases the resolution of the judgement is pronounced only if the person who has adopted the child agrees.

196. Article 17 of the Criminal Procedure Code stipulates that a public hearing of a case is held in courts, except cases when it is contrary to interests of the protection of state secrets. Following a reasoned decision of court cases on crimes committed by persons under the age of 16, cases on sexual crimes and other cases are allowed to be adjudicated in a closed court hearing in order not to disclose the intimate details of the life of participants in the case as well as in cases when it is necessary to ensure the safety of participants in the case or their relatives.

197. The above Article of the Criminal Procedure Code stipulates that a court judgement is always read out publicly, while in cases that have been reviewed in a closed or partially closed court hearing, the introductory part of the judgement and its resolution are announced in a public court session. After that the motivation part of the judgement is read out in a closed court session.

### **Right to be presumed innocent until proved guilty according to law**

198. Article 92 of the Constitution stipulates, “every person shall be presumed innocent proved guilty according to law”. Article 23 of the Law “On Judiciary” and Article 19.1 of the Criminal Procedure Code contain similar norms. They stipulate that no person can be found guilty of the commission of a criminal offence and penalised until the person’s guilt has not been proved in compliance with the procedure prescribed by law and recognised by a court judgement that has become effective.

199. The above Article of the Criminal Procedure Code prescribes that the burden of proof is with the counsel for prosecution and that the accused person (defendant) is not to prove his/her innocence. A condemning judgement must be based on evidence reviewed in a court hearing that confirm the guilt of the defendant in committing the crime. All doubt that cannot be eliminated must be interpreted in favour of the accused person (defendant). Doubt that arises in the process of interpreting and applying criminal laws and criminal procedure laws is to be assessed in the same way.

### **Procedural rights**

200. Rights of persons mentioned in Section 3 of Article 14 of the Covenant are guaranteed by the Criminal Procedure Code, effective at present.

201. The information of the accused person about the nature and cause of charges against him/her is regulated by Article 150 of the Criminal Procedure Code. It stipulates that person must be presented with the charges not later than within 48 hours from the moment the decision has been taken about bringing criminal charges against the accused person but not later than the date of the arrival or the coercive delivery of the accused person. The above term for presenting charges is terminated if the accused person is hiding from investigation or has not arrived following the summons of the prosecutor.

202. It must be emphasised that in order to promote a more accurate execution of requirements of the law concerning the formulation and presentation of charges as well as drawing up the writ of indictment in criminal cases, the Prosecutor General’s Office of Latvia has made a summary of the procedural practice in these issues and has developed methodological recommendations for prosecutors.

203. Article 96 and Article 121 of the Criminal Procedure Code guarantee the right of the person in criminal proceedings to invited a counsel for defence from the moment when the said person has been declared the suspect in the case in compliance with the procedure prescribed by law.

204. In those cases when the counsel for defence that has been chosen by the suspect, the accused person or the defendant, cannot participate in the case, the case officer may propose that another counsel for defence is invited or himself/herself ensure the participation of a counsel for defence in compliance with the procedure prescribed by law. The case officer, who has the jurisdiction over the case, as well as the Council of Sworn Attorneys of Latvia have the right to free the person from the payment for legal assistance under the procedure prescribed by law, covering the costs of the attorney's fees from the national budget.

205. Article 98 of the Criminal Procedure Code provides cases when the participation of the counsel for defence in the adjudication of a case by first instance court is mandatory. Under the above Article, the counsel for defence is mandatory in cases on criminal offences committed by minors; in cases on deaf, dumb, blind and other persons who due to their physical or mental defects are unable to exercise their right to defence; in cases on person who do not know the language used in the criminal proceedings; in cases on crimes that can have a death sentence and if there are conflicts in the interests of the defendants and if at least one of them has a counsel for defence; the case officer, the prosecutor or court must ensure the participation of a counsel for defence in the case, if the counsel has not been chosen by the suspect, the accused person, the defendant himself /herself or by another person authorised by him/her.

206. In compliance with Article 99 of the Criminal Procedure Code the suspect, the accused person and the defendant have a right to waive a counsel for defence. Such a waiver is permissible only at the initiative of the suspect, the accused person or the defendant and is no obstacle for the participation of the public counsel for prosecution and counsels for defence of other suspects, accused persons or defendants. If a counsel of defence is waived by a minor, as well as a suspect, an accused person and a defendant who due to his/her physical or mental defects is unable to use their right to a counsel for defence, this waiver is not binding for the case officer, the prosecutor and court.

207. In order to ensure a timely participation of a counsel for defence in the criminal proceedings the Council of Sworn Attorneys has established on-duty shifts of attorneys to ensure, whenever necessary, the participation of a counsel for defence in a case without delay.

208. Article 247 of the Criminal Procedure Code stipulates that a case is tried in a court hearing in the presence of the defendant, except cases when the person is beyond the borders of the country and evades presenting himself/herself in court.

209. Article 16 of the Criminal Procedure Code stipulates that if a participant of proceedings does not know the language used in court, the case officer must ensure his/her right to submit applications, to testify, to submit requests, to read materials in the case as well as to speak in court in the language that the person has perfect command of and to use the services of an interpreter. The same Article stipulates that procedural documents that are to be presented to the accused person, the defendant or other participants of the proceedings who do not command the language used in the proceedings, must be translated in the language that these persons have perfect command of. In compliance with Articles 92 and 94 of the Criminal Procedure Code amounts of money paid to interpreters are to be included in court expenditures that are collectible in the event of a condemning judgement from the convicted person.

210. In compliance with Article 247 of the Criminal Procedure Code the defendant has extensive procedural rights, including the right to request court to invite witnesses and like other participants of the proceedings the defendant has the right to participate in their interrogation by asking questions. The suspect, the accused person and the defendant do not have the duty of testifying themselves, however it is their right and thus the law does not prescribe their liability for refusal to testify.

211. The Criminal Procedure Code does not contain the norm about obligation to help a detained foreign citizen to contact the representative body of his/her country or if the detained person is a stateless person (apatride) - to contact the representative body of his/her country of domicile. However Latvia has acceded to the 1963 Vienna Convention on Consular Contacts that stipulates that a detained person has the right to contact the representative body of the country of his/her citizenship or domicile. In practice requests of detained foreign citizens and stateless persons (apatrides) to provide assistance in contacting the representative body of the respective country are fulfilled.

### **Hearing of cases if the defendant is a minor**

212. Article 11 of the new Criminal Law that became effective as of 1 April 1999, lowers the age at which criminal liability applies for crimes committed by them, i.e., from the age of 16 to the age of 14. It can be, in most part, explained by the more rapid maturing of minors as well as the considerable growth of criminality among minors.

213. However, taking into account peculiarities of minors, the Criminal Law mitigates liability for criminal offences committed by minors. Chapter 7 of the Criminal Law "Special Nature of Criminal Liability of Minors" does not allow applying to persons who by the commission of the criminal offence have not attained eighteen years of age, deprivation of liberty for a term exceeding 10 years, except deprivation of liberty for particularly serious crimes. A person, who has committed a criminal offence before attaining eighteen years of age, may be conditionally released from punishment if the person has served half of the term of the A fine is applicable only to those minors who have their own income. Criminal record for a criminal offence, i.e., an offence that under the present Law is punishable by deprivation of liberty for a term not in excess of two years or a less severe punishment, is deemed to be deleted after the above sentence has been served.

214. Taking into account the special circumstances of the commission of the criminal offence and the information received about the personality of the indicted person, court may release the minor from the adjudicated penalty, imposing educational correctional measures prescribed by law: to turn over the minor on the surety; to place in an educational correctional institution, to impose the obligation to eliminate the consequences of the incurred damage by own work etc.

215. The Criminal Procedure Code, in its turn, provides additional guarantees to minors during the proceedings, prescribing the mandatory participation of the counsel for defence in cases of minors (Article 98); the participation of legal representatives of the minor in the court hearing (Articles 105. 251); the imposition of special security measures on minors - turning them over to the supervision of their parents (Article 76 - 77.1); special terms for the adjudication of the case (Article 264).

## **Right of appeal**

216. The right of appeal in Latvia is guaranteed by the existing three-tier court system, prescribed by the Law "On Judiciary". The Criminal Procedure Code, in its turn, regulates the procedure for the exercise of the right of appeal.

217. In compliance with Article 433 of the Criminal Procedure Code the defendant, the acquitted person, their counsels for defence and legal representatives, the victim, the civil claimant, the civil defendant and their representatives have the right to appeal a court judgement that has not yet taken effect with the purpose of having the case reviewed again in point of fact due to factological as well as legal reasons.

218. Article 438 of the Criminal Procedure Code stipulates that the submission of an appeal suspends the execution of the judgement in full in respect of all defendants in the given case. At the same time the Code specifies that the appeal of a judgement of acquittal does not suspend the execution of the judgement in the part about the release of the defendant from arrest, home arrest or police supervision and that the appeal that has been submitted only concerning the hearing of a civil claim in court, does not suspend the execution of the judgement in the part on the criminal liability of the convicted person.

219. Article 448 of the Criminal Procedure Code allows to appeal a judgement passed by court of appeal and that has taken effect, under the cassation procedure at the Department of Criminal Cases of the Senate of the Supreme Court. Under Article 449 of the Criminal Procedure Code, the review of judgements under the cassation procedure is permissible only in the case when the judgement is based on a violation of the Criminal Law or a relevant violation of the Criminal Procedure Law.

220. In compliance with Article 454 of the Criminal Procedure the cassation complaint suspends the judgement taking effect in respect of all defendants in the given case. The cassation complaint on a judgement of acquittal does not suspend the execution of the judgement in the part on the release of the defendant from arrest, as well as in the part on the revocation of home arrest or police supervision.

221. Moreover, Criminal Procedure Code provides for possibility of repeated examination of the case where judgement has already entered into force, if new facts have been discovered. According to the Criminal Procedure Code, new facts are:

(a) wilfully provided false testimony or expert's conclusion on which the judgement was based, or falsification of other evidences, if it has been established by a judgement in force;

(b) criminal malice on behalf of judges, prosecutor or investigator, if it has been established by a judgement in force;

(c) other circumstances, which were not known to the court at the moment of judgement or decision and which alone or taken together with circumstances established previously prove that convict was no guilty or has committed less or more serious crime than the one he/she was convicted for, or proves the guilt of acquitted or person against whom the criminal case was terminated.

**Right to compensation in the event of unjustified conviction**

222. Article 106.1 of the Criminal Procedure Code stipulates that in the event of dismissing a criminal case because no criminal offence has been committed, the offence has no corpus delicti (constituent elements of a crime) or because the participation of the person in the commission of the criminal offence has not been proved, as well as in the event of passing a judgement of acquittal, the duty of investigating agencies, the Prosecutor's Office and court is to explain to the person the procedure under which the person can be restored to his rights and receive compensation for the incurred damage. Conditions and the procedure for the compensation of damages are prescribed by the Law of 28 May 1998 "On Compensation of Damages Incurred as a Result of the Unlawful or Unjustified Action Taken by the Investigator, the Prosecutor or the Judge". The above Law is applicable to all persons for whom the legal grounds for the compensation of damages and cases of compensation have set in after 21 August 1991.

223. The Law establishes the amount and the procedure for the confirmation of damages incurred to natural persons as well as the procedure for ensuring the compensation of damages incurred to them - the lost salary, benefits, scholarships, the value of the seized or forfeited property, an unjustified fine and money collected upon the execution of an unjustified court judgement, expenditures on legal assistance within the amount of fees, the profit that has not been gained etc.

224. The Law also provides social and employment guarantees - the unjustified period of the deprivation of liberty is to be included in the length of in-service time or the term of service while the time for which the person is entitled to the compensation of damages, is to be included also in the social insurance period in cases provided by the law, paying the compulsory social insurance contributions from the national budget.

225. At the same time the above Law stipulates that a person is not eligible to a compensation of damages if it is proved that the person has knowingly assumed the guilt of another person in the case or otherwise has deliberately caused the appearance of losses.

226. In compliance with the Law the Ministry of Justice reviews applications for the compensation of damages submitted by persons who have been acquitted or whose criminal cases have been dismissed in compliance with a court judgement and judicial proceedings in an administrative case have been terminated. In their turn applications in the event of the criminal case being dismissed during the pre-trial investigation stage are reviewed by the Prosecutor General's Office.

**Prohibition of a repeated trial for the same crime**

227. Rights provided by Section 7 of Article 14 of the Covenant, are guaranteed by Sections 9 and 10 of Article 5 of the Criminal Procedure Code, which stipulate that criminal proceedings cannot be started but the initiated case must be dismissed against a person who has been tried on the same charges and the judgement or the court decision on dismissing a case on the same grounds has already become effective, as well as against a person who has a decision of the

investigating agency or the Prosecutor on the dismissal of the case on the same charges and the said decision has not been revoked, except cases when court that has jurisdiction over the criminal case has considered the beginning of criminal proceedings necessary.

228. Provisions of a similar character that do not permit criminal proceedings have been included in Article 5 of the draft Criminal Procedure Code of Latvia.

### **Current problems in the court system and measures taken to eliminate these problems**

229. One of the most serious problems of the court system in Latvia is the overload of courts that results in lengthy court proceedings, in particular when reviewing criminal cases, thus jeopardising the right of persons to timely hearing of the case. According to the statement made by the work group on drafting the new Criminal Procedure Code in the concept of the draft law, this problem has several causes. First, the 1961 Criminal Procedure Code of the Latvia SSR with its many amendments is still in effect and it has been renamed into the Criminal Procedure Code of Latvia. Due to the many amendments and the soviet origin it is not unified. Second, the procedure prescribed by the Criminal Procedure Code is very labour-consuming therefore also expensive and long. Third, all early decision-making methods that would allow to apply means alternative to the criminal penalty to the guilty person have been removed from the procedure. Fourth, the rapidly growing technical opportunities have not been used for the stimulation of the procedure. Besides the Criminal Procedure Code establishes the principle of uninterrupted examination of cases - a judge has no right to start the review of another case in point of fact at a time when there is another case in his jurisdiction. This principle may make the process ineffective either as at the time when, for example, time-consuming expert examinations take place or any of the participants of the proceedings is unable to participate in the proceedings due to his/her health condition, the judge cannot review another case.

230. In order to solve this problem Latvia has taken number of measures - new buildings for the courts are under construction (for example, since 2000 Riga region court works in new premises, new premises are being built for the Riga District court as well as the Riga city Latgale region court); new Criminal Procedure Law is drafted, where existing irregularities are eliminated and mechanism for examination of cases within reasonable period strengthened.

231. In January 2000 UN Resident Co-ordinator, Minister of Justice, Chairman of the Supreme court and Chairman of the Constitutional court signed agreement on the implementation of project "Support for court system in Latvia". The project envisages promotion of independence of judiciary in Latvia, to raise qualification of lawyers as well as to ensure the possibility for poor to receive legal aid. In order to achieve these goals, within the framework of the project it is planned to draft new Law on judiciary and strategy for development and management of the qualification of courts' employees as well as to assist Judge Training Centre, which provides continued education for judges and other courts' staff-members. It is also planned to initiate dialogue with private providers of legal services in order to ensure free legal aid for members of vulnerable groups of Latvian society.

232. 260 thousands USD are provided for support for court system. The project will be implemented by UNDP in co-operation with the Ministry of Justice, Supreme court, Constitutional court and Judge Training Centre.

233. Human Rights Institute draws attention to the fact that the issue of access to judgement for persons who are not parties to the respective case is not settled in the legal acts of Latvia. Institute indicates that currently only judgements of the Constitutional court and records of proceeding before the Constitutional, as well as judgements in criminal cases of Kuldīga region court are available on the Internet free of charge, while other judgements can be accessed in the chancelleries and archives of the respective courts provided the court's chairperson agrees.

#### **Article 15 of the Covenant**

234. Under Article 5 of the Criminal Law that is effective at present, the criminality and punishability of an offence (act or omission) are determined by the law applicable at the time when the said offence was committed. The same Article also stipulates that the law that recognises an offence as not punishable, mitigates the penalty or otherwise is favourable for a person, if not provided otherwise by the respective law, has retroactive effect, i.e., it applies to offences that have been committed prior to the applicable law becoming effective, as well as to a person who is serving a sentence or has served a sentence but whose criminal record has remains in effect.

235. The above Article of the Criminal Law does not restrict the effect of the law in respect of persons who have committed an offence against the humanity, an offence against peace, a war crime and have participated in genocide. Latvia has recognised the 1948 Convention on the Impermissibility of Genocide and Punishment for Genocide as well as the 1928 Convention on Non-application of Limitation to War Crimes and Crimes against the Humanity. Thus the Criminal Code specifically provides that such persons are punishable irrespective of the time when the crime has been committed.

236. In practice this Article has been complied with when calling to criminal liability persons who have participated in genocide against the local population in Latvia before and after World War II as well as for participation in war crimes.

#### **Article 16 of the Covenant**

237. In compliance with the dominant legal doctrine in Latvia, a person enjoys legal capacity since birth while legal capability is acquired upon attaining majority. Article 1408 of the Civil Law contains an additional provision that persons who have been placed under guardianship due to immoral or extravagant life and the mentally sick have no capability either.

238. Under Article 219 of the Civil Law, the minority of persons of both genders continues until they attain the age of 18. In exceptional cases and in view of particularly serious reasons when guardians and the closest relatives of the minor confirm that minor's behaviour is faultless and he/she can independently protect and defend his/her rights and fulfil his/her responsibilities, the minor may be declared to have attained majority also before the person has reached the age of 18 but not earlier than the person has reached the age of full sixteen years. Majority before this age is declared by the respective custody court and its decision is approved by court. A person, who has entered into marriage before the age of eighteen in compliance with the procedure prescribed by law, is deemed to have attained majority.

239. Private laws norms (Article 8 of the Civil Law) stipulate that the legal capacity and capacity of a natural person is to be established according to the rule of the person's residence. If the person has several residences, one of them being in Latvia, the legal capacity and capacity of the said person as well as the legal consequences of action must be discussed in compliance with the law of Latvia. A foreigner who does not have legal capacity but who could be recognised as having legal capacity and capacity is bound by his/her legal activities that were undertaken

#### **Article 17 of the Covenant**

240. Article 96 of the Constitution provides that "everybody shall have the right to the inviolability of privacy, home and correspondence".

241. Article 143 of the Criminal Law prescribed liability for illegal entry into a residence against the will of the person residing there. Under the given Article, the possible punishment is deprivation of liberty for a term of up to two years, or custodial arrest, or coercive community service, or a fine of up to forty minimum monthly salaries. The same acts if committed applying violence, threats or arbitrarily appropriating the designation of a public official, is punished by deprivation of liberty for a term of up to four years or a fine in the amount of eighty minimum salaries.

242. Article 144 of the Criminal Law provides that the intentional violation of the secrecy of personal correspondence or information transmitted over telecommunications networks, as well as the intentional violation of the secrecy of such information and software provided for use in connection with electronic data processing, is punishable by coercive community service or a fine of up to five minimum monthly salaries. The same acts, if committed for an avaricious purpose is punishable by deprivation of liberty for a term of up to three years or custodial arrest, or coercive community service, or a fine of up to sixty minimum monthly salaries, depriving of the right to engage in a particular occupation for a period of up to five years or without it.

243. Under Article 156 of the Criminal Law, intentional defamation or degrading of the dignity of a person orally, in writing, or by action is criminally punishable. Likewise the Criminal Law prescribes liability for the intentional distribution of knowingly false fictions, defamatory of another person in a printed or otherwise reproduced material, as well as orally, if it has been done publicly (Article 157 of the Criminal Law) as well as liability for bringing a person into disrepute and defamation in mass media (Article 158 of the Criminal Law).

244. The Code of Administrative Violations of Latvia also prescribes liability for the violation of rights guaranteed by Article 17 of the Covenant, i.e., on the unlawful disclosure of confidential information gained during the process of medical treatment (Article 45.3); on the use of mass media for interference in privacy (Article 201.4); on the disclosure of the secret of the source of information (Article 201.8).

245. The Criminal Procedure Code provides an exhaustive list of situations when public agencies have a right to interfere with the right of a person to the inviolability of the privacy and family life, residence and correspondence, complying with the procedure prescribed by the

above Code. The Law provides the following procedural activities - search, body search of the person, seizure, inspection, observation, seizing the property, seizing the post and telegraph correspondence, tapping telephone conversations and acquiring information from technical means, investigation experiment and the verification of testimonies on site.

246. The search is conducted if the investigator or the prosecutor has sufficient grounds to believe that instruments of a criminal offence or assets acquired through criminal activities as well as other objects and documents that might be relevant for the case are located in some room or other place or with some person. The seizure, in its turn, is performed if it is necessary to remove instruments of a criminal offence, assets acquired through criminal activities as well as other objects and documents that might be relevant for the case and if there is accurate information where or with who they might be. The search and the seizure are effected on the basis of a motivated decision taken by the investigator or prosecutor. The search can be performed only on the basis of a decision by judge. In urgent cases the search can be executed with the consent of the prosecutor, without the decision taken by the judge, however the judge must be notified about it within 24 hours.

247. The body search of a person is performed in compliance with the above general order. It can be performed without a special decision: 1) upon detaining a person or placing a person under arrest; 2) if there are sufficient grounds to believe that the person who is either in the same premises or the place where the search or the seizure is performed, is hiding on himself/herself objects or documents that may be relevant for the case.

248. The inspection is performed to detect traces of a criminal offence and other substantial evidence, to determine the conditions of the event as well as other circumstances that are relevant for the criminal case. The investigator or the prosecutor inspect the place of the event as well as perform other inspections - of the neighbourhood, the premises, objects and documents.

249. The investigator or the prosecutor have a right to make an inspection of the accused person, the suspect, the witness or the victim if it is necessary to establish traces of a criminal offence or specific features on their body however not forensic examination is required. The decision on the inspection of a person is taken by the investigator or the prosecutor. The decision on the personal inspection is compulsory for the person to whom it applies. If the suspect or the accused person refuses to under the inspection, the investigation or the prosecutor has a right to perform the inspection in a coercive manner, indicating it in the record.

250. The seizure of the property means that in order to secure the civil claim or the potential forfeiture of the property, the investigator or the prosecutor must seize the property of the accused person or the suspect, or of those person who under the law bear material liability for their actions, or the property of other person who keep the property acquired through criminal activities. The property can be seized simultaneously with the search or the seizure or independently. A motivated decision on the seizure of property is prepared by the investigator or the prosecutor.

251. The seizure of correspondence and its execution at post and telegraph offices can be performed only when investigating serious and particularly serious crimes and on the basis of a decision taken by a judge or court. After the receipt of the decision of the judge or court for the

seizure of correspondence the investigator or the prosecutor sends the decision on seizure to the respective post and telegraph office, issuing an order for the detention of the correspondence and inform them about the time of their arrival for the performance of seizure.

252. It is allowed to tap conversations over the telephone and other means of communication of the suspect or the accused person on the basis of a decision of court or a judge in the specific criminal case on crimes, if there are sufficient grounds to believe that tapping conversations or the acquisition of information through technical means can provide information that are relevant in the case. It is also allowed to gain information from the technical means that are used by the suspect or the accused person. The decision on tapping conversations or the acquisition of information through technical means is sent to the police for execution. If the threat of violence, extortion or other illegal acts have been directed against the victim, the witness or other persons participating in the case, conversations of these persons over the telephone or other means of communication can be tapped without a decision by court or a judge, following the application submitted by these persons and with their consent.

253. In order to establish if some event or act that are relevant for the case might have taken place under certain circumstances and in a certain way, as well as to review data acquired during the investigation, the investigator or the prosecutor may perform an investigation experiment. It is prohibited to perform an investigation experiment that degrades human dignity, endangers the person's health and life, violates the public order and moral standards or that may incur a significant loss to the public and community property and the property of the person. A record is drawn up on the investigation experiment; if necessary, the investigator or the prosecutor takes a respective decision.

254. The investigator or the prosecutor may conduct an on-site review of testimonies of the accused person, the suspect, the victim or the witness in their presence. The review is performed by comparing testimonies with conditions on location. The respective activities are allowed provided they do not degrade the dignity of participants and other persons and do not cause any harm to their health. A record is drawn up about the on-site review of testimonies.

255. The Law "On Operative Activity" as well as the Criminal Procedure Code, includes norms that do not permit an arbitrary and unjustified interference in the right of a person to the inviolability of residence and correspondence. Under Article 8 of the above Law the operative control of correspondence, the operative acquisition of information from technical means, the operative tapping of non-public conversations (also over the telephone, electronic and other means of communication) and the operative entry is to be performed with the approval of judges. The permission to perform these operative activities may be issued for a period of up to three months and in the event of justified necessity it may prolonged however only for the period of time while the operative proceedings concerning the person are undertaken. In exceptional cases, i.e., when there is a need of acting without delay to prevent a threat to vital public interests, an act of terrorism or subversive activity, a murder or some other serious crime, as well as if there is actual threat for the life, health or property of a person or the person's close relatives, the above operative activities can be performed without the judge's approval. The prosecutor must be notified about them within 24 hours, while the judge's approval must be received within 72 hours. Failing to do it, the performance of operative activities must be

terminated. Besides, Article 5 of the above Law stipulates that if a person holds the opinion that the subject of the operative activity has violated by his/her activities the person's lawful interests and freedoms, the said person has the right to submit a complaint to the prosecutor who after a review issues a statement on the compliance of officials of the subject of operative activities to law or the person may submit a claim in court.

256. The person's right to the inviolability of privacy, residence, the secrecy of correspondence as well as to the protection of honour and dignity is prescribed by several other legal acts regulating public relations in specific areas.

257. Article 7 of the Law "On Press and Other Mass Media" stipulates that is prohibited to publish the content of correspondence, telephone conversations and telegraph messages without the consent of the addressee and the author or their heirs; it is also prohibited to publish information that insults the honour and dignity of natural and legal persons and slanders them. Likewise it is prohibited to publish information about a person's health condition without the person's consent.

258. Article 252 of the Medication Law stipulates that the information about the medical treatment, the diagnosed disease of a patient as well as the forecast, the information that medical professionals have acquired about the private life of the patient and his/her closest relatives during the process of treatment is confidential. Article 45.3 of the Code of Administrative Violations prescribes liability for the violation of this provision, the penalty being a fine of up to 250 Lats for the unlawful disclosure of confidential information acquired during the process of medical treatment.

#### **Article 18 of the Covenant**

259. The right of all persons to freedom of thought and conscience is guaranteed by the Constitution, its Article 99 stipulating that "every person shall have a right to freedom of thought, conscience and religion. The church shall be separated from the state". Article 150 of the Criminal Law prescribes liability for the direct or indirect restriction of the rights of a person, the creation of any preferences for persons depending on the attitudes of these persons to religion. Likewise the Criminal Law (Article 151) prescribes liability for intentional interference with religious rituals, if the said rituals are not in violation of the law and are not related to the violation of personal rights.

260. In 1995 a new Law "On Religious Organisations" was enacted with the purpose of regulating public relations that developed upon the exercise of freedom of conscience. The purpose of the above Law is to guarantee the right of the population of Latvia to freedom of religion that includes the right to freely express one's attitude to religion, to adopt a religion individually or in community with others or not to adopt any religion at all, to freely change one's religious or other affiliation, to conduct religious activity as well as to manifest one's religion, complying with effective legislative acts. Under the law the faithful belonging to one denomination or religion unite in a congregation on voluntary basis. Persons who have adopted a religion or belief in community, by practising the religion, by performing religious or ritual ceremonies and preaching the teaching, are not under the obligation of registering the religious organisation with a public agency.

261. The Law "On Religious Organisations" stipulates that the state recognises the right of parents and guardians to bring up their children in conformity with their religious conviction. This provision is also complied with in the event of young persons under 18 years of age desiring to join a congregation as the law requires the written permission of parents or guardians and the Christian faith is taught at public and municipal schools. The application of a minor about the desire to study the Christian faith is submitted together with the written consent of parents or guardians. If the minor is under the age of 14, the application on behalf of the minor is submitted by parents or guardians.

262. At present there are various religious minorities in Latvia, i.e., Judaists, Moslems, Buddhists, Hare Krishna followers, etc. The right of persons belonging to these religious minorities to practice their religion and to perform their rituals is not restricted. In this respect the rights of believers belonging to religious minorities do not differ in rights from believers belonging to religious denominations that have traditionally existed in Latvia. Only congregations of those denominations and religions that start their activities in Latvia for the first time must undergo annual re-registration during the first ten years so that the public agency could ascertain of the loyalty of the respective congregations towards the state of Latvia and their compliance with legislative acts.

263. By 31 August 2001, the Ministry of Justice and the Board on Religious Affairs had registered 1093 religious organisations (1077 congregations, 13 religious unions and 3 dioceses) as well as 14 institutions of religious organisations (14 institutions, 9 monasteries and 1 society). 5 religious organisations were denied registration as their registration documents did not comply with the law, one of the above five organisations has already eliminated all failings indicated and has been registered. No religious organisation has been excluded from the Register of Religious Organisations.

264. It must be acknowledged that at present there is no legal regulation for specific aspects of exercising religious freedom. In order to address the situation that has developed, several inter-sectoral work groups have been established entrusted with the task of drafting the necessary legal acts.

265. On 1 November 2000 the Minister of Justice issued an order thus establishing a work group that was to draft Regulations "On Chaplains' Service" The working group included representatives of the Board of Religious Affairs at the Ministry of Justice, the Ministry of Defence, the Board on Penitentiaries, the Association of Physicians as well as various denominations. At present the draft Regulations of the Cabinet of Ministers have been submitted to the government for review.

266. On 18 October 2000 the Cabinet of Ministers issued an order for the establishment of a work group on the formulation of legal acts necessary for the implementation of the alternative service. The work group has formulated and submitted the draft Law "On Alternative Service" as well as draft amendments to other legal acts (for example, amendments are required in the Code of Administrative Violations of Latvia, the Criminal Law, the Law "On Compulsory Military Service") related to the above Law to the Cabinet of Ministers. According to the draft, the purpose of the Law "On Alternative Service" is to establish the procedure for serving in the alternative service and to guarantee the freedom of thought, conscience and religion, relating them to the duties of a citizen towards the state.

267. The discussion continues to be topical on demands put forward by specific denominations to grant state holidays at the most important religious celebrations of these denominations as well as on the necessity to simplify the process of registration for religious associations.

### **Article 19 of the Covenant**

268. Article 100 of the Constitution stipulates, “everyone shall have the right to freedom of expression that includes freedom to receive, retain and impart information, to express one’s opinion. Censorship shall be prohibited.”

#### **Freedom of expression and opinion**

269. Article 1 of the Law “On Press and Other Mass Media” stipulates that any person, any groups of persons, institutions of public agencies and all types of enterprises and organisations has the right to free expression of their opinion and viewpoints, to disseminate statements in the press and other mass media, to receive information through them about any issue that is of interest for them or public life. The same Article also stipulates that the censorship of the press and other mass media is not permitted, as well as that no monopoly of the press and other mass media is allowed.

270. Article 19 of the Law “On Meetings, Processions and Pickets” prescribes that freedom of expression exists at meetings, processions and pickets. At the same time the same Law stipulates that “it shall be prohibited during the said undertakings (meetings, processions and pickets) to turn against the independence of the Republic of Latvia, to express proposals on the violent change of the public system of the State of Latvia, to call to non-compliance with laws, to advocate violence, national and racial strife, blatant ideology of fascism or communism, to conduct propaganda of war as well as to extol or incite to commit criminal offences and other violations of the law”.

271. Human Rights Institute emphasises that on 13 December 2001 the Law “On Press and other Mass Media” was amended. Until then the Law stipulated that mass media have to disclose their sources of information if so requested by prosecutor or judge. The new amendments, in their turn, provide that as of 1 July 2002 in the light of the proportionality principle only the court would have right to demand disclosure of the source of information and only when it is required in order to protect other persons or important interests of society.

#### **Right to free access and dissemination of information**

272. In 1998 the Law “On Openness of Information” was enacted; the purpose of the law is to ensure public access to information that is at the disposal of public administrative agencies and municipal institutions for the performance of functions prescribed by normative acts. According to the principle incorporated in the above Law, information is publicly accessible in all cases if not provided otherwise by law. Article 5 of the Law stipulates that information on business secrets, on the person’s private life, on exams, certification and tenders as well as information intended for the in - service use by an agency as well as information where the law prescribes restricted access (for example, information containing state secrets in compliance with the Law “On State Secret”) is information of restricted accessibility.

273. Article 7 of the above Law “On Press and Other Mass Media” provides that “it shall be prohibited to publish information that is a state secret or any other secret specifically protected by law that incited to violence and the turnover of the existing public system, advocates war, violence, racial, national or religious supremacy and intolerance, incites to some crime”.

#### **Article 20 of the Covenant**

274. Article 77 of the Criminal Law prescribes liability for public incitement to commence a war of aggression or a military conflict. Such acts are punishable by deprivation of liberty for a term of up to eight years.

275. Article 78 of the Criminal Law, in its turn, prescribes liability for acts knowingly directed towards promoting national or racial strife or enmity as well as the intentional direct or indirect restriction of economic, political, or social rights of individuals or the creation of direct or indirect privileges for individuals on the basis of their racial or national origin. The penalty for such acts is deprivation of liberty for a term of up to three years or a fine in the amount of up to sixty minimum monthly salaries. Persons may be sentenced to deprivation of liberty for a term of up to ten years for the above acts if they are associated with violence, fraud or threats, as well as if they have been committed by a group of persons or a public official, or a senior employee of an enterprise (company) or organisation.

276. Article 71 of the Criminal Law prescribes the penalty - life imprisonment or deprivation of liberty for a term of three to twenty years - for genocide, i.e., intentional acts for the purpose of annihilating in whole or in part any group of people identifiable as such by nationality, ethnic origin, race, social class or a defined collective belief or faith, by killing members of the group, inflicting physical injuries hazardous to life or health or by causing their mental illness, intentionally creating conditions of life for them which in whole or in part result in their physical annihilation, applying means aimed at preventing the birth of children in such a group, or by delivering children coercively from one group of people into another.

277. Article 7 of the Law “On Press and Other Mass Media” provides that “it shall be prohibited to publish information that is a state secret or any other secret specifically protected by law that incited to violence and the turnover of the existing public system, advocates war, violence, racial, national or religious supremacy and intolerance, incites to some crime”.

278. Article 10 of the Law “On Meetings, Processions and Pickets” stipulates that “it shall be prohibited during the said undertakings (meetings, processions and pickets) to turn against the independence of the Republic of Latvia, to express proposals on the violent change of the public system of the State of Latvia, to call to non-compliance with laws, to advocate violence, national and racial strife, undisguised ideology of fascism or communism, to conduct propaganda of war as well as to extol or incite to commit criminal offences and other violations of the law”.

279. Article 17 of the Law “On Radio and Television” provides that broadcasting organisations (radio, television) must not include in their programmes episodes that unnecessarily emphasise violence, pornography, incitement of national or racial strife or enmity, to the degradation of national honour and dignity, an incitement to cause war or a military conflict.

280. Latvia has expressed its attitude towards the impermissibility of expounding ideas that are based on racial superiority or hatred or incite to racial discrimination also in the Law "On Citizenship" where Article 11 provides that "Latvian citizenship shall not be granted to persons who after 4 May 1990 have propagated ideas of fascism, chauvinism, national socialism, communism or other totalitarianism or have incited to national or racial strife or enmity if it has been stated by a court judgement".

### **Article 21 of the Covenant**

281. The right to organise peaceful meetings has been established in Article 103 of the Constitution that stipulates that "the state shall protect the freedom of peaceful meetings and processions as the freedom of pickets that have been announced in advanced". Article 3 of the Law "On Meetings, Processions, Pickets" provides that "under the present Law every person shall have the right to organise peaceful meetings, processions and pickets as well as to participate in them." The said Article stipulates that "the exercise of the said rights shall not be subjected to any restrictions other than those that are prescribed by law and are necessary in a democratic society in order to protect interests of national and public security, not to permit disorders or crimes, to protect public health and morals as well as the rights and freedoms of other people. The state shall not only provide the possibilities of assembly but shall also ensure that the assembly shall not be disturbed".

282. In order to organise the undertaking its organiser must receive a reference from the respective local government confirming that the local government has not objections to the organisation of the event. Only those meetings, processions and pickets are not allowed that have been organised, ignoring requirements contained in the law. The leader of the meeting, procession or picket and his/her assistants are responsible for compliance with the said law and for maintaining order during the event. They maintain order personally as well as with the assistance of people specifically assigned to it.

283. Under the above Law it is prohibited to turn against the independence of Latvia during the events, to express proposals on the violent change of the public system of Latvia, to call to non-compliance with laws, to advocate violence, national and racial strife, undisguised ideology of fascism or communism, to conduct propaganda of war as well as to extol or incite to commit criminal offences and other violations of the law". Likewise it is prohibited during the organised undertakings:

- (a) to carry weapons or other objects that by their nature are intended or can be used for inflicting bodily injuries to people or damaging the property;
- (b) to be supplied with means of passive protection (helmets, bullet-proof vests etc.);
- (c) to hide one's face under a mask;
- (d) to be dressed in a uniform or any other garment to express definite political views;
- (e) to use flags, coats-of-arms and anthems of the former USSR, the Latvia SSR and fascist Germany;

(f) to perform acts that are contrary to morality;

(g) to behave in a manner that causes threat for the safety and health of participants of the meeting, procession or picket or other persons.

284. Article 226 of the Code of Administrative Violations prescribes administrative liability for violations of the procedure for the organisation and progress of public events. Article 226 of the Criminal Law prescribes liability for the violation of procedural requirements concerning the organisation or procedure of public events, committed by the organiser of the event or another person, if it has resulted in serious consequences.

## **Article 22 of the Covenant**

### **Right to freedom of association**

285. Article 102 of the Constitution provides that “everyone shall have the right of associating in societies, political parties and other non-governmental organisations”. Article 103 stipulates “the state shall protect the freedom of peaceful meetings and processions as the freedom of pickets that have been announced in advance”.

286. The Law “On Non-Governmental Organisations” provides the procedure for the foundation of non-governmental organisations, determines the status of these organisations as well as principles of their activities. The Law also provides cases when a non-governmental organisation is not registered or its activities are terminated.

287. Article 13 of the above Law provides that non-governmental organisations and their associations are not registered if the charter or programmatic documents submitted show that the goals or the activity of the non-governmental organisation or the association of non-governmental organisations are contrary to the Constitution, laws or international agreements that are binding for Latvia. The Law also provides (Article 9) those names of non-governmental organisations and their associations, abbreviations of their names and symbols that create a positive attitude towards violence or criminal offences are prohibited.

288. Under Article 34 of the Law the activity of a non-governmental organisation or an association of non-governmental organisations may be suspended or terminated by court. The activity of a non-governmental organisation is suspended for a period of up to six months if the said non-governmental organisation continues illegal activity after it has received a warning about the termination of such an activity or within a year’s time since the date when it has received a warning about the termination of such an activity, repeatedly violates the Constitution, laws or other normative acts.

289. Court may terminate the activity of a non-governmental organisation if the said non-governmental organisation or its territorial unit permits the following violations of the law:

(a) fails to comply with the court decision on the suspension of its activity or fails to eliminate the violation of the law for which its activity has been suspended within the period prescribed by court;

(b) intentionally permits the commission of criminal offences;

(c) incites inhabitants of Latvia or its membership not to comply (to violate) laws and other normative acts or to commit criminal offences;

(d) uses names, abbreviations of names or symbols mentioned in Article 9 of the above Law;

(e) propagates ideas of racial, national or religious strife, extols, supports criminal offences or expresses a positive attitude towards them in public places, in the press or other published materials intended for dissemination in the community, in other mass media or at open meetings.

290. There has been a significant increase in the number of newly founded non-governmental organisations since 1993. Thus in 2000 897 new non-governmental organisations were registered in Latvia, while during the first half of 2001 - already 551.

### **Right to found trade unions and to join them**

291. Under Article 108 of the Constitution employees have a right to a collective agreement as well as the right to strike. The same Article stipulates that the state protects the freedom of trade unions. Article 229 of the Labour Code prescribes the right to associate in professional organisations of employees according to the professional, industry and territorial principle or other principles. Latvia is also a member state of the 1948 Convention of the International Labour Organisation on the Protection of Freedoms and Rights of Associations Uniting Trade Unions.

292. General issues related to the foundation and operation of trade unions is regulated by the Law "On Trade Unions". The Law "On Trade Unions" consolidates the right to establish trade unions whose main goal is to represent and protect labour and other social and economic rights and interests of their membership.

293. The new Labour Law also provides that employees as well as employers have the right to associate in organisations and to join them to protect their social, economic and professional rights and interests. Under Article 8 of the Law "On Labour", the affiliation of an employee to the said organisation or the employee's desire to join them cannot serve as grounds for the refusal to conclude an employment contract, the termination of an employment contract or any other restriction of the employee's rights.

294. In the understanding of the Labour Law trade unions are a type of the representation for the protection of rights and interests of employees and they enjoy the following rights:

(a) to demand and to receive from the employer information about the economic and social situation of the enterprise;

(b) to timely receive information and to consult the employer prior to the employer takes decisions that may affect interests of employees, in particular decision that may have a significant impact on the remuneration, working conditions and employment at the enterprise. Consultations in the understanding of the above Law are an exchange of opinion and a dialogue between representatives of employees and the employer;

- (c) to participate in determining and improving terms of remuneration, the working environment, working conditions as well as in the protection of the safety and health of employees;
- (d) to enter the territory of an enterprise as well as to have access to work places;
- (e) to hold meetings of employees in the territory and premises of the enterprise;
- (f) to exercise oversight how normative acts, the collective agreement and rules of the work place are complied with in employment relations.

295. In 1999 the Law “On Organisations of Employers and their Associations” was enacted, defining the legal status of employers’ organisations and their system, rights and duties in relations with trade unions, public and municipal institutions. Under the above Law the tasks of employers’ organisations is to represent interests of their membership in relations with trade unions and public and municipal institutions. The Law specifies that employers’ associations must not directly or indirectly restrict the right of employees to associate in trade unions or to influence their activities.

296. Under the Law “On Organisations of Employers and their Associations” there can be the following types of associations of employers’ organisations:

- (a) Association of Employers’ Organisations of Latvia;
- (b) association of employers’ organisations of the industry;
- (c) territorial association of employers’ organisations.

297. Taking into consideration the above classification, Article 11 of the Law defines relations of employers’ organisations and their associations with trade unions. In compliance with the said Article the Association of Employers’ Organisations of Latvia conducts negotiations, concludes collective agreements and master agreements on behalf of its membership, agree on general principles of co-operation, conducts negotiations on resolving conflict situations with the association of employers’ organisations of industries and the association of professional trade unions that represent the largest number of employees in the country. Employers’ organisations of industries and their associations conduct negotiations, conclude agreements with industry trade unions, stimulate the resolution of conflicts caused by strikes and the prevention of other conflicts at the industry level. Territorial employers’ organisations and their associations conduct negotiations, conclude agreements with territorial trade unions, stimulate the resolution of conflicts caused by strikes and the prevention of other conflicts at the territorial level.

### **Article 23 of the Covenant**

298. Article 110 of the Constitution stipulates that “the state shall protect and support matrimony, the family, the rights of parents and children”.

**Right to enter into marriage**

299. The Civil Law includes the general principles for entering into marriage - the free will of both persons, equality in rights, monogamy. Obstacles imposed by the Civil Law for marriage apply only to the age and the legal status of the person opposite the other person whom he/she is going to marry. The Civil Law and the Law "On Civil Status Deeds" stipulate that no marriage can be contracted without the free and full consent of persons entering into marriage. The said norm of the law has been incorporated as compulsory in the ritual of entering into marriage and no violations of the norm have been detected at any registry office.

300. The Civil Law allows to register marriage starting with the age of 18, however in exceptional cases a person who has reached the age of 16 may enter into marriage with the consent of parents or the guardian if the person enters into marriage to a person who has reached majority. If parents or guardians deny their consent without any valid reason, the consent may be given by the custody court at the place where parents' or appointed guardians live.

301. In order to ensure the protection of the state for matrimony and the family as well as to form grounds for the development of stable marital relations, the part on Family Law in the Civil Law and the Law on "Civil Status Deeds" prescribe compulsory conditions for entering into marriage, which, if ignored, serve as grounds for declaring marriage invalid. The said conditions that have been defined in the Civil Law as "obstacles to entering into marriage" are minimum requirements to ensure the development of the basis for wholesome marital relations, entering into marriage with full and free consent, compliance with the principle of monogamy. The above conditions are compulsory for public registry offices, consular and diplomatic institutions of Latvia that register marriage as well as priests who have the right to register marriage. The said obstacles to entering into marriage are incapacity, close kinship, relations of adoption, the prohibition of bigamy, and the prohibition of marriage between persons of one gender.

302. Marriage can be registered at a registry office and in church if future spouses belong to the denomination of Evangelical Lutherans, Roman Catholics, Orthodox, Old Believers, Methodists, Baptists, the Seventh Day Adventists and Judaists.

303. Since the submission of the initial report several significant amendments have been made to legal acts regulating the right to enter into marriage. Thus, for example, Article 15 of the Law "On Civil Status Deeds" has been amplified, its Section 3 providing that a foreigner or a stateless person (apatride) in Latvia may enter into marriage to a foreigner or a stateless person (apatride) if at the moment of registering marriage both spouses have valid permanent residence permits or if one of the spouses has a permanent residence permit while the other spouse stays legally in Latvia at the moment of registering marriage.

**Equality of spouses**

304. Article 85 of the Civil Law provides that "both spouses shall enjoy equal rights in arranging the life together of the family". Likewise the Civil Law allows spouses the freedom to choose the family name of one of the spouses before marriage to be their common family name or to retain his/her name before marriage without assuming a common married family name.

305. Under Article 180 of the Civil Law, if the marriage is dissolved or declared null and void and parents fail to reach an agreement whom the children will stay with, the issue is resolved by court, taking into account the best interests of the children and as far as possible listening to the wishes of children if they have reached the age of seven. Besides, prior to taking a decision, custody courts and civil parish courts conduct an examination of the respective family and present a statement to court in the best interests of the child.

306. Article 181 of the Civil Law prescribes conditions for the exercise of parental power if parents have divorced. Article 182 of the Civil Law, in its turn, stipulates that each of the parents may meet with children who have been left in the care of the other parent, except cases when such meetings may be detrimental for the child. The time and the way of exercising the said right, if parents fail to reach an agreement, are established by custody court. In the event of a failure to execute the decision of custody court, the dispute is resolved by court.

#### **Article 24 of the Covenant**

307. Article 110 of the Constitution stipulates, “the state shall protect and support matrimony, the family, the rights of parents and children. The State shall provide special assistance to disabled children, children deprived of parental care or victims of abuse” Likewise the 1989 UN Convention on Rights of the Child is binding for Latvia.

308. In 1998 the Law “On Protection of Children’s Rights” as adopted, aimed at establishing rights, freedoms of the child and their protection, taking into account the fact that the child as a physically and intellectually immature person required special protection and care. The Law also includes the basic provisions to be complied with in controlling the child’s behaviour and defining the child’s responsibility; the Law regulates rights, duties and the responsibility of parents and other natural and legal persons as well as the state and local governments in respecting rights of the child.

309. Article 3 of the Law provides that rights and freedoms of the child is guaranteed by the state to all children without any discrimination - irrespective of the race, nationality, gender, language, party affiliation, political and religious conviction, national, ethnic or social origin, the material and health condition, birth or other circumstances of the child, his/her parents, guardians, family members.

310. In order to promote observance of the rights of the child in the country, in 1995 the National Centre for the Protection of the Rights of the Child was established under the supervision of the Ministry of Education and Science. The task of the Centre is to supervise compliance with laws and other normative acts in the area of the protection of the rights of the child, to formulate proposals on amendments to normative acts required for ensuring the protection of the rights of the child as well as to co-ordinate activities of public and municipal institutions in the area of the protection of the rights of the child. The Centre also has the task of presenting a report once in five years on the execution of the 1989 UN Convention on Rights of the Child in Latvia.

311. In January 2001 the UN Committee on the Rights of the Child reviewed the initial report of Latvia on the implementation of the 1989 UN Convention on Rights of the Child. In its Final Conclusions the Committee on the Rights of the Child, inter alia, gave a positive evaluation to

activities undertaken in harmonising national legal acts with principles of the 1989 Convention, taking particular note of amendments to the Citizenship Law enacted by the referendum in 1998. At the same time the Committee on the Rights of the Child expressed several proposals and recommendations for a more comprehensive implementation of norms contained in the 1989 Convention, for example, to continue activities within the frame of the policy for promoting the health of children and teenagers, to assess effective laws and the practice of their application to juvenile delinquents as well as to all minors who were participants of court proceedings in any capacity.

312. Information on recommendations and proposals of the Committee on the Rights of the Child was submitted to the Saeima (Parliament) and the Cabinet of Ministers which in 27 March 2001 requested the National Centre for the Protection of the Rights of the Child to submit comments of Latvia on specific items in recommendations and proposals to the Committee on Children's Rights. The Cabinet of Ministers also requested the National Centre for the Protection of the Rights of the Child to provide information about the implementation of the above recommendations of the Committee on Rights of the Child upon the submission of the next report of Latvia on the implementation of the 1989 UN Convention to the Cabinet of Ministers for review.

313. Currently the next periodic report of Latvia on the implementation of the 1989 UN Convention is being prepared and this report will include information about the measures already taken in implementing recommendations and proposals of the Committee on the Rights of the Child.

#### **Registration of the child and the child's right to a name**

314. Article 8 of the Law "On Protection of Children's Rights" provides that from the moment of birth the child has a right to a name, a family name and the acquisition of citizenship, that the child is to be registered in compliance with the law and that the child shall have the right to retain his/her national identity.

315. The procedure for the registration of a neonate is regulated by the Law "On Civil Status Deeds"; information about the law has been presented in the initial report of Latvia (Paragraphs 122-124).

#### **Right of the child to citizenship**

316. The right of the child to citizenship is guaranteed by the Citizenship Law, enacted in 1994 and amended by the referendum in 1998. Paragraphs 20-38 of the present Report already provide information on the implementation of the Citizenship Law and the progress of naturalisation in Latvia, including the right of the child to acquire the Latvian citizenship (see in particular paragraphs 22-24).

317. According to the data of the Register of the Population of Latvia, as of 1 January 2001 24 589 children had the right to apply for the Latvian citizenship under amendments of 1998 to the Citizenship Law. 526 children of the total number have been granted

the Latvian citizenship under the procedure prescribed by Article 3.1 of the Citizenship Law. There are several reasons why a comparatively small number of children have been granted the citizenship under the said procedure. First, an increasing number of children born after 21 August 1991 are granted the citizenship, undergoing naturalisation together with one of the parents. In 1999 and 2000 1420 children were naturalised together with their parents. Second, parents are passive in exercising their right to apply for the citizenship on behalf of their children. Such passiveness can be explained by the wish to give the child the right to decide himself/herself on the citizenship upon reaching the age of 15 as well as the minimal differences in the rights of citizens and non-citizens in Latvia.

## **Article 25 of the Covenant**

### **Right to vote and to be elected**

318. Article 6 of the Constitution provides that “Saeima (Parliament) shall be elected in general, equal, direct, secret and proportional elections”. Article 8 of the Constitution stipulates that full-fledged citizens of Latvia who on the day of elections have reached the age of 18 have the right to vote. Article 9 of the Constitution stipulates that every full-fledged citizen of Latvia who on the day of elections has reached the age of 21 may be elected to the Parliament. Article 101 of the Constitution, on its turn, states that every citizen, as provided by law, has the right to participate in the work of state and local institutions.

319. Information on the criteria for acquiring citizenship mentioned in paragraph 3 of the General Comment on Article 25 of the Covenant, adopted by the Committee in 1996, is provided in paragraphs 19-24 of the present report, therefore, this section of the report presents information about the Latvian system of elections and effective legal acts regulating the exercise of the right to vote and to be elected.

320. Under the Law “On Elections of the Saeima (Parliament)”, adopted on 13 January 1995, citizens of Latvia who on the day of elections have reached the age of 18, have the right to vote, provided none of restrictions listed in Article 2 of the said Law applies to them. Article 2 stipulates that the following have no right to vote:

- (a) individuals, serving their sentences at penitentiaries;
- (b) persons who are suspects, the accused or defendants if detention has been applied to them as a measure of safety;
- (c) persons whose incapacity has been recognised in compliance with the procedure prescribed by law.

321. Under Article 4 of the above Law any citizen of Latvia, who on the day of Parliamentary elections is older than 21 years of age, can be elected to the Saeima (Parliament), provided any of the restrictions below does not apply to him/her:

- (a) persons whose incapacity has been recognised in compliance with the procedure prescribed by law;
- (b) persons, serving their sentences at penitentiaries;

(c) persons who have been sentenced for intentional serious crimes and whose criminal record has not been deleted or removed, except persons who have been rehabilitated;

(d) persons who have committed a criminal offence in a condition of limited capability or have become mentally ill after the commission of the crime, which has deprived them of the ability to be conscious of their action or to manage it, and who have been imposed a medical coercive measure in view of the disease or the case has been dismissed without the imposition of such a coercive measure;

(e) persons who after 13 January 1991 have participated in the Communist Party of the USSR (the CP of the LSSR), the International Front of Workers of Latvia, the United Council of Work Collectives, the Organisation of War and Labour Veterans, the All - Latvia Public Salvation Committee or its regional committees;

(f) persons who are or who have been staff officials of the security services, intelligence services or counterintelligence services of the USSR, the LSSR or a foreign country;

(g) persons who do not know the state language at the highest (third) proficiency level.

322. Under the Law "On Elections of City Council, Regional Council and Civil Parish Council", citizens of the Republic of Latvia who on the day of elections have reached the age of 18 have the right to elect the council, provided none of restrictions listed in Article 6 of the said Law does not apply to them:

(a) individuals, serving their sentences at penitentiaries;

(b) persons who are suspects, the accused or defendants if detention has been applied to them as a measure of safety;

(c) persons whose incapacity has been recognised in compliance with the procedure prescribed by law.

323. Under Article 8 of the Law "On Elections of City Council, Regional Council and Civil Parish Council" any citizen of Latvia, who on the day of local elections has reached the age of 21, can be elected to the local government, provided he/she has been registered in the administrative territory of the respective local government without interruption for at least the last 12 months preceding the election day, or has worked in the said territory for at least the last 6 months preceding the election day, or if the person owns real estate in the said territory and if none of the restrictions apply to the person. The Article stipulates that the following persons cannot be nominated for council elections and elected to the council:

(a) persons, serving their sentences at penitentiaries;

(b) persons whose incapacity has been recognised in compliance with the procedure prescribed by law;

(c) persons who have been sentenced for intentional serious crimes and whose criminal record has not been deleted or removed, except persons who have been rehabilitated;

(d) persons who have committed a criminal offence in a condition of limited capability or have become mentally ill after the commission of the crime, which has deprived them of the ability to be conscious of their action or to manage it, and who have been imposed a medical coercive measure in view of the disease or the case has been dismissed without the imposition of such a coercive measure;

(e) persons who after 13 January 1991 have participated in the Communist Party of the USSR (the CP of the LSSR), the International Front of Workers of Latvia, the United Council of Work Collectives, the Organisation of War and Labour Veterans, the All-Latvia Public Salvation Committee or its regional committees;

(f) persons who are or who have been staff officials of the security services, intelligence services or counterintelligence services of the USSR, the LSSR or a foreign country;

(g) persons who do not know the state language at the highest (third) proficiency level.

324. Article 90 of the Criminal Law prescribes liability for intentional interference with a person's free exercise of the right to vote and be elected by using violence, fraud, threat, and bribery or in any other unlawful manner. Such acts are punished by deprivation of liberty for a period of up to three years or a fine in the amount of up to sixty minimum monthly salaries.

325. On 15 August 2000 the Constitutional Court examined a case on the compliance of the Law "On Parliamentary Elections" and the Law "On Elections of City Council, Regional Council and Civil Parish Council" to the Constitution, the European Convention on Human Rights and Article 25 of the Covenant. Applicants held the opinion that restrictions prescribed by the above laws, prohibiting to nominate for elections persons who were or who had been staff officials of the security services, intelligence services or counterintelligence services of the USSR, the LSSR or a foreign country; or persons who after 13 January 1991 had participated in the Communist Party of the USSR (the CP of the LSSR), the International Front of Workers of Latvia, the United Council of Work Collectives, the Organisation of War and Labour Veterans, the All-Latvia Public Salvation Committee or its regional committees, were discriminatory and thus did not comply with the Constitution and the Covenant as well as the European Convention on Human Rights.

326. In its judgement the Constitutional Court stated that the right to vote and to be elected "is not absolute" as it "is to be exercised in a manner prescribed by law". Likewise the Constitutional Court also stated that "Article 25 of the Covenant although it emphasises the impermissibility of discrimination in respect of the implementation of the norms of the given rights, recognises the possibility of restricting this right, emphasising that "every citizen shall have the right and the opportunity, without ... unreasonable restrictions ..." Thus the establishment of reasonable restrictions in respect of norms contained in Article 25 of the Covenant is permissible". In assessing if restrictions had been (1) imposed by a law enacted under the prescribed procedure, (2) justified by a legitimate aim, (3) necessary in a democratic society, the Constitutional Court concluded that the above conditions had been complied with. Further it concluded, "the disputed norms are directed against only those persons who by their

activities after 13 January 1991 in the conditions of the presence of the occupational army attempted to restore the former regime but they are not applicable to persons with a different political conviction (opinion).” On the whole, the Constitutional Court stated that the disputed legal norms complied with the Constitution, the European Convention on Human Rights and Article 25 of the Covenant.

327. On 25 July 2001 the UN Human Rights Committee examined the complaint submitted by a Latvian citizen concerning violations of Article 25 of the Covenant. According to the opinion of the applicant, her rights to free elections were violated by the decision of the Central Election Commission to delete her name from the list of candidates due to insufficient knowledge of the state language. Having examined the complaint on the merits, the Human Rights Committee concluded that the decision of a language inspector that had been taken some days before the elections and differed from the level of the state language proficiency recorded in the language proficiency certificate issued to the author of the complaint several years ago, was sufficient for the Central Election Commission to take a decision on deleting the author of the complaint from the list of nominees. The Human Rights Committee stated that the deletion of the author of the complaint from the list of candidates due to insufficient knowledge of the state language was not compatible with requirements contained in Article 25 of the Covenant as a repeated test of the language proficiency conducted by one inspector was not based on objective criteria and it was not proved that the said test had taken place in compliance with the procedure prescribed by the law.

328. On 6 December 2001 the Cabinet of Ministers approved amendments to Regulations “On State Language Centre” and Regulations “On Amount of the Knowledge of the State Language Required for the Performance of Professional and Official Duties and the Procedure for Testing the Language Proficiency”, thus giving effect to the Views of the UN Human Rights Committee. According to the adopted amendments, a repeated test of the state language proficiency can be held only if it is requested by the person himself/herself, while the State Language Centre is entitled to examine the authenticity of the person’s state language proficiency certificate. The adoption of these amendments has eliminated the irregularity identified by the UN Committee and ensured compliance with the principle of legal certainty - having passed the test prescribed by law and having received the state language proficiency certificate, a person may be sure that a repeated language proficiency test on merits will take place only at the request of the person himself/herself.

329. There is a current ongoing public debate concerning the need to retain in the laws regulating the enjoyment of the right to vote, the requirement that candidates must be proficient in the state language to the highest level. Supporters of this requirement believe that this protects the Latvian language and promotes the use of the language in Government institutions. On the other hand, those opposed to the requirement are of the opinion that language protection and use are regulated by other legislation, the National Language Law, Parliament Procedure Law, the Code of Administrative Violations, Bill of the Parliament’s Procedure and thus this requirement in the election laws is to be considered as unjustified. At the end of 2001 the President of Latvia asked a group of experts to assess the legal aspects of this issue and provide recommendations for possible further action. At the same time, linguists are asked to give their opinion on how to most effectively ensure protection of the State language and promote its use.

### **Right to equality in participation in public administration and equal opportunities to work in the Civil Service**

330. Article 101 of the Constitution stipulates: “every citizen of Latvia shall have a right to participate in the work of central and local government in a manner prescribed by Law as well as to work in the Civil Service.”

331. Under Article 7 of the Law “On State Civil Service”, a person who wishes to become a civil servant, must comply with the following requirements:

- (a) the person must be a citizen of the Republic of Latvia;
- (b) must have a perfect command of the Latvian language;
- (c) must have highest education;
- (d) has not yet reached the retirement age established by law;
- (e) has not been sentenced for intentional criminal offence, or has been rehabilitated or the person’s criminal record has been removed or deleted;
- (f) has not been dismissed from the post of a civil servant following a court judgement in a criminal case;
- (g) the person’s incapacity has not been recognised in compliance with the procedure prescribed by law;
- (h) is not and has not been a staff official of the security services, intelligence services or counterintelligence services of the USSR, the LSSR or a foreign country;
- (i) is not and has not been a member of organisations prohibited by laws or court judgements;
- (j) is not a relative of the manager of an institution or the direct superior (a person who is married to a civil servant, who is an in-law or a relative of the first degree as well as brothers and sisters). The Cabinet of Ministers may establish exceptions in cases when the respective institution is not able to ensure the performance of its functions in any other way.

### **Article 26 of the Covenant**

332. The equality of all residents of Latvia before court is guaranteed by legal acts, effective in Latvia, that prescribe the principle of the prohibition of any discrimination as well as the principle of equality. Thus Article 91 of the Constitution stipulates: “all people in Latvia shall be equal before the law and court. Human rights shall be exercised without any discrimination”. Identical norms have been included also in the in Law “On Judiciary”, where Article 4 prescribes that “(1) all individuals shall be equal before the law and court, that any individual, they shall enjoy equal rights to the protection of law. (2) Court shall pass judgement irrespective of the

person's origin, the social and material status, race or nationality, gender, education, language, religious affiliation, type and nature of occupation, place of residence, political or other views." Article 92 of the Constitution stipulates: "everyone may defend his/her rights and legitimate interests in fair court".

333. Article 13 of the Criminal Procedure Code "Adjudication on the basis of the equality of persons before the law and court" stipulates that "Criminal cases shall be adjudicated on the basis of the equality of persons before the law and court, irrespective of the person's origin, the social and material status, race or nationality, gender, education, language, religious affiliation, type and nature of occupation, place of residence, political and other circumstances."

334. Article 1 of the Civil Procedure Law "Right of a Person to Protection of Court" guarantees the right of every natural and legal person to the protection of their violated or disputed civil rights or interests protected by law in court. Article 9 of the said Law stipulates that parties in a civil procedure enjoy equal procedural rights and that court ensures equal possibilities for parties to exercise the rights granted to them for the protection of their interests.

335. According to Article 6 of the Administrative Procedure Law, which will enter into force on 1 June 2003, "when equal factual and legal circumstances of the case exist, the institution and the court shall adopt identical decisions regardless of the gender, age, race, colour, language, religious affiliation, political or other opinions, social origin, ethnicity, education and material status, nature of employment of the parties to the administrative process or other factors".

### **Article 27 of the Covenant**

336. Article 114 of the Constitution provides that "persons belonging to minorities shall enjoy the right of retaining and developing their language, their ethnic and cultural uniqueness".

#### **Right of minorities to retain their religion**

337. As it has already been mentioned above in the present Report (paragraphs 260-262) the Law "On Religions Organisations", effective at present, guarantees the freedom of religious conviction as well as the right of parents to bring up their children in line with their religious conviction.

338. Under the Law "On Religions Organisations", the religious creed, characteristic for the given minority, may be taught at public and municipal minority schools, taking into account the wish of pupils and their parents or guardians, in compliance with the procedure prescribed by the Ministry of Education and Science.

#### **Right of minorities to retain their language**

339. At present there are more than 200 minority schools in Latvia - 179 Russian schools, 6 Polish schools, 2 Jewish schools, one Ukrainian school, one Estonian school, one Lithuanian school and one Byelorussian school, as well as classes of Roma in several schools. Section 2 of Article 42 in the Law "On General Education" provides that "the general curriculum of secondary education in the respective area can be combined with the curriculum of minority education, including the content of studies related to the native language of minorities, the identity and integration of minorities in the society of Latvia. The Ministry of Education and

Science determines subjects within the frame of the curricula of minority education that are to be taught in the state language. The Ministry has developed four models of the curriculum for minority education that differ among themselves in respect of the proportion of the number of subjects taught in the minority language and in the Latvian language. Thus curricula of minority education provide an opportunity for representatives of minorities to learn the Latvian language and culture without losing the sense of their own national identity.

340. Libraries in Latvia have traditionally tried to include in their collections books and other publications in minority languages of Latvia. Historically a situation has developed that the dominating proportion alongside with literature published in Latvia has fallen to publications in Russian - at present they also constitute 40 - 45% of the total amount of library collections. Books in Lithuanian are more available in libraries situated in districts bordering on Lithuania, while books in Estonian - on the Estonian border, books in Russian - on the Russian border. Publications in various languages are offered to residents of Riga by specialised public libraries - the Library of Foreign Languages in the Congress Palace, the Library of Nordic Literature. Books in Hebrew are concentrated in the library of the Jewish Community of Riga. Books in other languages (English, German, French, Swedish, Danish etc.) constitute about 10% of the total number of books in library collections.

### **Right of minorities to retain their culture**

341. Information about the 1991 Law "On Free Development and Right of National and Ethnic Groups of Latvia to Cultural Autonomy", effective at present, has been provided in paragraphs 138-146 of the initial report of Latvia.

342. At present there are about 150 minority cultural societies active in Latvia, 18 publications of the press in Russian, 2 - in Byelorussian, 2 - in Lithuanian and one publication in Hebrew, Estonian, Liiv and Polish languages.

343. The state provides permanent support to the Riga Russian Drama Theatre as well as performances of the Russian company of the Daugavpils Theatre and the National Puppet Theatre. Every year approximately 25% of all State grant to the theatres is allocated for this purpose. Alongside with theatres that receive permanent support from the national budget, there are also independent private theatres and theatrical companies that stage performances in Russian, for example, the Russian Youth Theatre. Such theatres and theatrical companies have a right and an opportunity to receive funding from the national foundations. Drama clubs are active at schools and annually a school drama club festival "Russian Classics" is held with the financial support of the Foundation of Cultural Capital.

344. In 1995 "Basic Guidelines of the National Cultural Policy of Latvia" were approved, defining the basis principles of the cultural policy - the co-existence of cultures, based on mutual respect and tolerance, as well as cultural autonomy, implemented by the many cultural societies. The National Programme "Integration of Society in Latvia" also includes a chapter on culture; the Action Plan for the implementation of the Programme projects the publication of books in the native languages of the various minorities living in Latvia, the promotion of the public understanding of the significance of the cultural diversity in co-operation with the mass media as well as the organisation of other information activities. Society Integration Fund created in 2001

also financially supports ethnic integration and in 2002 about 50% of all funds available for different projects is planned for NGOs' projects in the field of ethnic integration, including support for cultural associations of ethnic minorities.

345. In 1998 a public non-profit joint stock company Cultural Capital Foundation was established; it allocates national budgetary resources for the financing of cultural projects through the tender procedure. Any person may participate in these tenders by submitting a project proposal. Many of the projects supported by the Cultural Capital Foundation promote the cultural identity as a factor stimulating mutual understanding as well as promotes the awareness and advertising of the cultural heritage of ethnic groups.

346. The National Programme "Culture" has been formulated and approved, where each of the 10 sub-programmes (in each area of culture) contains a chapter on "Integration of the Society" that projects a set of activities for advertising the cultural heritage of ethnic groups living in Latvia, thus promoting mutual understanding and the integration of the society on the whole.

347. Since its establishment in 1998 the Cultural Capital Foundation has provided financial support to several activities promoting the integration of the society - several pieces of prose by contemporary Latvian writers have been translated in Russian, poetry of Latvian authors has been translated in Ukrainian, books have been published in the Liiv, Estonian, Lithuanian, German, Polish and Byelorussian languages. The state has in part financed several projects of cultural centres, support is provided on regular basis to literary journals "Daugava", "Shpil" and "Orbita", published in Russian.

348. State support is also provided to the Song Festival, where minority amateur groups participate with a separate programme. Every second year a cultural festival of minorities "Wreath of Latvia" is organised, attended by about 600 participants from foreign countries and Latvia - amateur groups of Uzbek, Greek, Moldovian, Russian, Ukrainian, Bashkir nationalities, including amateur groups of national cultural societies of Latvia. The festival of minority schools "Ball of Golden Thread" is held twice a year, where dancers, choirs, song and folk groups of minorities of Latvia take part, thus providing an opportunity for children to retain and to cultivate their national identity.

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