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

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN **LATVIA**

IN 2005

submitted to the Network by **Ilvija PUCE** [*]

on 15 December 2005

Reference: CFR-CDF/LV/2005

The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union.

[*] In the preparation of the report the expert received contributions to various articles by Kristīne Krūma, Dr.iur.cand. (Articles 39, 40, 45, 46), Artūrs Kučs, Dr.iur.cand. (Articles 11, 13), Māris Logins, LL.B (Articles 27, 28), Irēna Kalniņa, LL.M (Articles 16, 17, 29-38).

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

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Article 2. Right to life

Euthanasia

Legislative initiatives, national case law and practices of national authorities

In October 2005, public discussion about legalising euthanasia arose when the non-governmental organisation *Alfa & Omega* was founded by 35 members consisting of terminally ill patients, their relatives, friends and supporters. The organisation aims to establish a group for psychological support of oncology patients and their relatives, to provide financial support and legal assistance to oncology patients, to initiate public discussion about euthanasia, and promote legalisation of euthanasia in Latvia.
The President of Latvia, Vaira Vīķe-Freiberga, admitted that in some situations euthanasia might be permissible, e.g., in cases where someone's condition is beyond hope of recovery, or where a person suffers excruciating pain that is not and will not be possible to eliminate by any medical means. Oncologists, in their turn, expressed the view that it is necessary to develop palliative care and provide terminally ill patients with adequate assistance instead of discussing euthanasia.
Alfa & Omega is contacting similar organisations in the Netherlands, where euthanasia is allowed by law, for assistance in elaborating legislative proposals for legalisation of euthanasia.[1]

Domestic violence

Legislative initiatives, national case law and practices of national authorities

In 2005, a new *Criminal Procedure Law*[2] was adopted. For the first time this marks out domestic violence as a specific crime in Latvia, at least to some extent. While the previous *Criminal Procedure Code* prescribed that if a victim of minor bodily injuries brought a private claim before the court then the pre-trial investigation in such cases should be abandoned, the new *Criminal Procedure Law* stipulates that if minor bodily injuries are caused as a result of domestic violence, then public prosecution should follow the victim's report to the police.[3]
The *Criminal Procedure Law* also introduces a protection order. This forbids a suspect or accused from coming closer to a particular person or place than as may be decided by an investigator, prosecutor or court, as well as from contacting the particular person physically or visually and by use of any means of communication or transfer of information for establishing contact with that person.[4]

[1] Information provided by Oskars Krūmiņš, Chair of the Board of *Alfa & Omega*, on 16 November 2005.
[2] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005.
[3] Ibid., Section 7.
[4] Ibid., Section 253.

Reasons for concern

The *Criminal Law* contains no material norms specifically related to domestic violence against women (in such cases, the general provisions of the *Criminal Law* are applied, e.g., causing minor bodily injury, rape).

Reliable statistical data on domestic violence against women are not available, because neither the police nor the courts distinguish this from other types of violence. According to information provided by the *Skalbes* crisis centre, every year domestic violence causes the death of about 35 women. This constitutes one-sixth of all homicides committed in the country. Allegedly, about half the reported cases of violence against women are cases of domestic violence.[5]

Annually, around 300-400 women who have suffered domestic violence seek support at the *Skalbes* crisis centre. Victims of violence usually do not seek help from law enforcement and judicial institutions, as police and court systems tend to downplay the seriousness of the crime. Police officers are reported to frequently try to persuade women not to file complaints on spousal or partner violence; prosecutors' offices close cases because of lack of evidence.[6]

True, aspects of work particularly with victims of domestic violence are included in the *Phare 2003 National programme Training for Police*. However, in 2005 only a single training item included the issue of attitudes towards victims of domestic violence. This was a seminar on 17 and 18 January provided by a trainer from the UK on interpersonal skills for officials responsible for instructing different police services.[7]

In 2003, the HRC noted that "The state party should adopt the necessary policy and legal framework to combat domestic violence, as envisaged *inter alia* by the draft programme on the implementation of gender equality. Furthermore, the Committee recommends that the State party establish crisis centre hotlines and victim support centres equipped with medical, psychological, legal, and emotional support".[8] However, still no shelters exist in Latvia especially for women who have suffered domestic violence. In 2005, the State financed four shelters to provide social rehabilitation for children who have suffered violence.[9] No governmental strategy or action plan exists to eliminate domestic violence against women.[10] Although the issue of domestic violence is included in the *National Action Plan on Gender Equality*, no financing for implementing of any activities is foreseen, with exception of 2900 Lats (4130 EUR) for raising awareness among experts on the issue of domestic violence and risks related to it.[11]

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[5] Information provided by Dace Beināre, Director of *Skalbes* Crisis Centre, 25 November 2005.

[6] Cooperation Network of Latvia's Women Organisations. Shadow report for the joint initial, second and third periodic report on the *Convention of 18 December 1979 on the Elimination of Any Form of Women's Discrimination* in the Republic of Latvia, Riga: 2004, http://www.politika.lv/index.php?id=109499&lang=lv, visited on 4 November 2005.

[7] Information of the State Police Bureau of Press and Public Relations http://www.vp.gov.lv/index.php?sadala=183&id=7747

[8] CCPR/CO/79/LVA (2003), Section 13.

[9] Krāslavas bērnu sociālās rehabilitācijas centrs *Mūsmājas*, Talsu ev.lut. draudzes uzņēmums b/o *Talsu sieviešu un bērnu krīžu centrs*, Centrs pret vardarbību *Dardedze*, Allažu bērnu un ģimenes atbalsta centrs.

[10] In order to develop an integrated policy on protecting children against violence, the *National Programme for the Prevention of Sexual Violence Against Minors* was implemented from 2000 to 2004, while in 2004 the programme *Latvia Fit for Children 2004-2007* was elaborated. Apart from other issues, the programme includes protecting children against violence.

[11] Information available at website of the Ministry of Welfare http://www.lm.gov.lv

Article 3. Right to the integrity of the person

Breaches of the right to the integrity of the person

Legislative initiatives, national case law and practices of national authorities

Although few developments concerning the right to integrity of the person took place in Latvia in 2005, an essential one is that people who consider that their right to integrity is infringed more frequently turn to the courts for redress.

Rights of the patients

Legislative initiatives, national case law and practices of national authorities

In 2005, discussions continued on the draft *Law on Patients' Rights*. This has been at the draft stage for several years and has twice been returned to the Ministry of Health for re-elaboration. On 22 February 2005 the draft law was accepted by the Cabinet of Ministers and submitted to the Parliament (*Saeima*). However, it was severely criticised by lawyers, local NGOs, and the National Human Rights Office, as well as by the WHO Expert who was asked by the WHO *Euro* and its Latvian liaison office in Riga, to comment on the draft *Law*, and found that it needs improving before it can be accepted by the Parliament. His criticisms in general were, *inter alia*, lack of consistency with several repetitive issues[12], lack of structure, and drafter's lack of knowledge of patients' rights.[13]
However, the draft *Law* was adopted at the first reading[14], and a working group was established in the Parliament to improve it for the second reading.

Positive aspects

One of the most positive developments in protection of patients' rights is raising the effectiveness of the work of the State Inspection for Control of Medical Care[15] (MADEKKI). This controls and supervises the quality of professional health care in medical institutions, irrespective of their ownership and subordination, and examines claims of breaches of patients' rights and inadequate treatment. Between January-June 2005 MADEKKI received 571 claims, compared with 486 claims for the whole of 2003.

Reasons for concern

The main reason for concern remains the delay in elaborating and adopting an effective law to protect the weaker party in the doctor/patient relationship, namely the patient. The law should be clear, easy to use and understand, and should cover relevant areas in need of legal protection.

In practice, a great problem is patients' rights to access to information about health care, beginning with non-accessible tariff lists in medical care institutions, and finishing with

[12] One example was the fundamental issue of protecting confidentiality when using health services. Although the issue was covered in three sections, several important gaps needed to be filled in protection of individual patients.
[13] The full text of the comment on the draft *Law on Patients' Rights* by Lars Falberg, WHO Technical Expert,is available on the webpage of the Ministry of Health
http://www.vm.gov.lv/index.php?sadala=72&id=953
[14] *Likumprojekts Pacientu tiesību likums* [*Draft Law on Patients' Rights*], Reg. No. 1137, adopted at the first reading on 5 May, 2005.
[15] Medicīniskās aprūpes un darbspējas ekspertīzes kvalitātes kontroles inspekcija.

access of patients to medical documentation containing information about their diagnosis and course of treatment.[16]

Conditions in the Central Prison Hospital, which is the only prison hospital in Latvia, are extremely bad and have been regularly criticised by domestic and international inspection bodies, including the CPT. In 2005, MADEKKI carried out a planned inspection to the Central Prison Hospital and issued a warning to eliminate breaches, requiring reconstruction of buildings or renovation of equipment within 10 months and other breaches to be remedied within three months, otherwise the Central Prison Hospital should be closed.[17]
Additionally, access to a doctor of one's choice by prisoners (remand and convicted) is severely limited. Even if a person with health problems has the financial means, and the medical institution or practitioner agrees to consult the person, prison administrations use formal reasons for denying such consultations, despite themselves being unable to provide services of qualified medical practitioners and use of necessary equipment.[18]

As the medical care system is still in a critical state because of structural problems and lack of necessary financing, the government has taken some unpopular decisions, which essentially affect the right to access to health care, particularly of those with low incomes. Since 1 April 2005, a fee for an unfounded call for an emergency ambulance was introduced in many locations in Latvia.[19] A call is considered founded where a person's life is endangered. In Riga, the fee can vary from 6 to 48 lats (8.5 to 68 EUR), and no exemptions or reductions are foreseen for particular groups, while the average salary in Latvia is 173 lats (246 EUR), and the average pension is 68.83 lats (98 EUR)[20]. After the fee was introduced, a number of complaints were lodged on charging a fee where a patient suffered acute health problems, as well as on refusal to provide emergency aid, in some cases allegedly leading to the death of the patient. In several cases the control institutions found misconduct. Since 15 November, cases of emergency are defined in more detail, so as to avoid such situations.[21]

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

Conditions of detention and external supervision of the places of detention

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International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

On 10 May 2005 the CPT Report on its 2nd periodic visit to Latvia from 25 September to 4 October 2002 was made public.[22]

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[16] Information provided by Sandra Garsvāne, Head of the NGO Latvian Patients' Rights Bureau on 15 November 2005.
[17] LR Veselības ministrijas Medicīniskās aprūpes un darbspējas ekspertīzes kvalitātes kontroles inspekcijas 2005. gada 7. aprīļa Brīdinājums Nr.7-28/53-11/1624/1625.
[18] Information provided by Laila Grāvere, lawyer of the Latvian Centre of Human Rights and Ethnic Studies on 15 November 2005.
[19] Ministru Kabineta *Noteikumi Nr. 1036 Veselības aprūpes organizēšanas un finansēšanas kārtība* [*Regulation issued by the Cabinet of Ministers on Order of organization and financing of Health Care*], adopted on 21 December 2004, in force since 1 April 2005.
[20] Data of Central Statistical Bureau of Latvia on 2005.
[21] Ministru Kabineta *851. Noteikumi Grozījumi Ministru kabineta 2004. gada 21. decembra noteikumos Nr.1036 Veselības aprūpes organizēšanas un finansēšanas kārtība*, [*Regulation issued by the Cabinet of Ministers No 851*] adopted on 8 November 2005, in force since 17 November 2005.
[22] The full text of the CPT Report is available on the website of the CPT http://www.cpt.coe.int/documents/lva/2005-08-inf-eng.htm

The CPT emphasized in its report that in the course of the visit, the CPT delegation received a considerable number of credible allegations of physical ill-treatment by the police throughout Latvia.
The CPT noted that the legal standards for provision of living space to prisoners in Latvia had recently been slightly increased to 2.5 m² per person for male adult prisoners and to 3.5 m² per person for female and juvenile prisoners; however, the new standards still do not offer a satisfactory amount of living space. The CPT recommended that the legal standards be raised as soon as possible, so as to guarantee at least 4 m² per prisoner in multiple-occupancy cells, and that official capacity and occupancy levels of cells in Latvian prisons be revised accordingly.
Already in its report on the 1999 visit, the CPT emphasised that the solution to the problem of overcrowding afflicting the Latvian prison system was to be found not so much in developing the prison estate but rather in reconsidering current law and practice in relation to remand detention as well as sentencing policies.
The CPT considers that the inspection of police detention facilities by an independent authority can make an important contribution towards preventing ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, such visits should be both frequent and unannounced, and the authority concerned should be empowered to interview detained persons in private. Further, it should examine all issues related to the treatment of persons in custody: the recording of detention; information provided to detainees on their rights and the actual exercise of those rights; compliance with rules governing the questioning of criminal suspects; and material conditions of detention.[23]
The report on the CPT *ad hoc* visit to Latvia, (the CPT's third visit to Latvia) carried out from 5 to 12 May 2004, has not yet been made public. The main purpose of the visit was to review measures taken by Latvian authorities to implement the recommendations made by the Committee after its 2002 visit. Particular attention was paid to the treatment of persons detained by the police and conditions of detention in police establishments and prisons. The delegation also examined the regime and security measures applied to life-sentence prisoners.[24]

Legislative initiatives, national case law and practices of national authorities

During 2005, different policy initiative documents in regard to improvement of the prison system were elaborated or begun. Thus, the *Concept on Development of the Prison Estate* was approved by the Cabinet of Ministers in April 2005, aimed at improving prison physical infrastructure; the *Concept of Sentence Execution* and the *Concept of Health Care of Prisoners* are under elaboration.[25] The *Project of General Approach to the Enforcement of Detention and Imprisonment of Juveniles for 2006-2010* was elaborated under the project *Work with Juveniles Under Detention* of the MATRA Pre-Accession Programme, funded by the Netherlands Ministry of Foreign Affairs, and implemented in co-operation with the Latvian Ministry of Justice.[26] The working group was established by the Minister of Justice to elaborate policy documents for organising education and professional education in prisons.
These policy initiative documents contain important and necessary strategies. For example, the *Concept of Health Care of Prisoners* envisages the transfer of prison health services under the authority of the Ministry of Health; in the *Concept on Development of the Prison Estate* the State for the first time clearly admits the overcrowding of prisons, estimating lack of place

[23] Ibid.
[24] Information is available on the website of the CPT http://www.cpt.coe.int/documents/lva/2004-05-17-eng.htm
[25] *Ieslodzījuma vietu attīstības koncepcijas kopsavilkums* [*Summary* of Concept *on Development of the Prison Estate*], newspaper *Latvijas Vēstnesis*, 5 May 2005.
[26] Information available on the website of the Ministry of Justice http://www.tm.gov.lv/lv/jaunumi/tm_info.html?news_id=387.

for about 2100 inmates. However, the concept plans to deal with prison overcrowding by expanding three prisons to 700 prisoners each.
Unfortunately, the approach to development of the prison system by elaborating a number of policy initiative documents for different areas can be considered as fragmented and lacking an overall view on the issue. The actual need is for a comprehensive concept of prison development.

External supervision of places of detention is carried out by both governmental and non-governmental institutions.
The Internal Security Bureau of the State Police is the institution responsible for examining claims about police misconduct. However, suspicions about the independence of this complaints body still remain, as the Bureau is a structural unit of the State Police, not an autonomous institution. The same concern applies to the investigative process on ill-treatment by prison staff, as this is generally carried out by the security service of the prison.
The National Human Rights Office is the State institution that, among other activities, carries out planned general inspections at places of detention, as well as visiting places of detention in reaction to individual complaints. However, the conclusions of the NHRO are not legally binding.
The State Inspection for Control of Medical Care[27] (MADEKKI), which controls and supervises the quality of professional health care in medical institutions, provides planned inspections to places of detention (police, prisons), as well as reacting to complaints. (See also Article 3.)
The role of the Prosecutor's office as the supervisory institution is weak. Generally, it reacts only to particular complaints, and does not carry out regular inspections at places of detention.

Positive aspects

Significant development is being achieved in protecting detained persons against ill-treatment. This includes the Criminal Procedure Law of 2005 provision that clearly lays down the rights of detainees, e.g., access to defence counsel, notification of custody, provision of written information about rights and duties and a copy of the detention protocol to the detainee. However, the right of access to a doctor is not included in the list.[28]

At the end of 2005, a new building for Police Headquarters came into use in Liepaja.[29] This is the first newly-built Police Headquarters in the country since many years ago. The conditions in previous premises were seriously criticised by the CPT.

Until late 2005, the Law on the NHRO did not specify explicitly that the NHRO has unrestricted access to places of detention. In practice, the NHRO always notified authorities of their visits. In 2005, the Law on the NHRO was amended by adding a provision stipulating that NHRO officials may visit closed institutions without special permission, to inspect all premises and to meet detainees without the presence of officials from the place of detention.[30]
Additionally, the draft Law on Ombudsman's Bureau which is in process of adoption in the Parliament and is planned to replace the Law on the NHRO, stipulates that the ombud as well as officials from the Ombudsman's Bureau may visit closed institutions at any time without

[27] Medicīniskās aprūpes un darbspējas ekspertīzes kvalitātes kontroles inspekcija.
[28] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005. Section 63.
[29] National News Agency LETA, 27 December 2005.
[30] *Likums Grozījumi Likumā par Valsts Cilvēktiesību biroju* [Law *Amendments to the Law on the National Human Rights Office*], adopted 15 December 2005.

special permission, freely move within the territory of the institution, visit all premises and meet detainees without the presence of other people.[31]

NGOs working on issues related to closed institutions have been allowed to visit places of detention (short-term police detention places, prisons, the *Olaine* camp for illegal migrants, mental hospitals, and care homes) after prior notification without objections from authorities.

Good practices

Research *Examination of Claims and Police Accountability* by Ilze Ruķere, a researcher from the *Providus* public policy centre, was published in 2005, providing information on police complaints bodies in Latvia, on models of mechanisms for examining complaints in other countries, and on international standards and reports of international organisations on Latvia. The research also contains recommendations on improving the mechanism for examining claims, on informing members of society about their rights; on possible establishing of an independent mechanism for examining claims about the police.[32]

In order to promote understanding among custodial staff about suicide-related problems, and develop skills in providing first aid in cases of suicide attempts in prisons, on May 18 2005 the NGO Latvian Centre for Human Rights and Ethnic Studies (LCHRES) in cooperation with the Social Rehabilitation Department of the Latvian Prison Service organised a training seminar *Suicide Prevention in Prisons*. One of the aims of the seminar was to inform participants about the *Guidelines for Prison Staff in Dealing with Prisoners Posing a Suicide Risk*, to assist custodial staff in identifying and assessing suicide risk and in providing help to prisoners, as well as dividing responsibilities among various prison units.
The seminar led to publication of the first official statistics on prison suicides and attempts at self-harm in prisons. According to data of the Suicide Prevention Service of the National Mental Health Agency, Latvia remains one of five countries in the world with the highest suicide rate. Until mid-May 2005, suicides and suicide attempts committed in prisons were not included in the official statistics. However, as elsewhere in the world, suicide and suicide attempt rates are notably higher in prisons than among the general public.[33]

In 2005, the NGO Latvian Centre for Human Rights and Ethnic Studies (LCHRES), implementing the *Mental Disability Advocacy Programme*, surveyed clients of psychiatric institutions (140 from care homes, and 267 from hospitals), in order to assess patient satisfaction with medical and social care services, conditions in particular institutions, as well as their opinion on possible existence of violations of human rights there. The results of the research will be presented to the Ministry of Welfare and the Ministry of Health, which are responsible for mental health care policy in the State.[34]

Reasons for concern

The conditions at Daugavpils and Ventspils Police Headquarters, which were criticised by the CPT in immediate observations after their visit in 2002, have not improved and should be considered as dilapidated and inhuman.

Overcrowding and lack of funding are also reasons for poor physical conditions in prisons. For example, under the report of the National Human Rights Office, prisoners are living in

[31] *Likumprojekts Tiesībsarga biroja likums* [Draft *Law on Ombudsman Bureau*], Reg.No. 858, adopted at the second reading on 15 December 2005, Sections 12(3), 20.
[32] Full text of the research is available on website http://web30.deac.lv/index.php?id=111122&lang=lv
[33] Information about the seminar is available on website of LCHRES http://www.humanrights.org.lv
[34] Information provided by Ieva Leimane-Veldmeijere, the LCHRES *Mental Disability Advocacy Programme* director.

inhuman and critical conditions in Pārlielupe Prison, where the majority of HIV-positive prisoners are placed. However, the *Concept on Development of Prison Estate* foresees repair of Pārlielupe Prison only in 2011.

The CPT in its report expressed serious concerns about the frequent occurrence of inter-prisoner violence (fights, threats, extortion, etc.) at Daugavpils Prison and Rīga Central Prison. However, inter-prisoner violence continues to take place in Latvian prisons. In March 2005, a 16 year-old boy was killed by two other juveniles in Cēsis prison for convicted juvenile boys, and in July 2005, a prisoner was killed by other inmates in Valmiera Prison.[35] A homicide also occurred in Valmiera Prison in 2004.[36]

In July 2005, after the killing of a prisoner by other inmates, a search was conducted in Valmiera Prison by special task forces, after which prisoners lodged a claim with the National Human Rights Office (NHRO) alleging ill-treatment: beating with batons, kicking, being forced to lie on asphalt for hours without moving. Moreover, according to the information provided to the NHRO, they did not receive immediate medical treatment for injuries sustained. The Prison Department denied the violation of rights of prisoners during the search. In August, at a meeting between representatives of the NHRO, the Ministry of Justice, and the Prosecutor's Office, agreement was reached on the need to elaborate proposals for eliminating possible violations during searches in prisons. The activities of special task forces in prisons are not regulated by law.

Although the *Concept of Health Care of Prisoners* envisages the transfer of prison health services under the authority of the Ministry of Health, at present the provision of health care in Latvian prisons falls under the responsibility of the Ministry of Justice. However, this does not help to ensure optimum health care for prisoners, nor implementation of the general principle of the equivalence of health care in prison with that in the outside community.
Conditions in the Central Prison Hospital were considered insufficient by the CPT in 2002, as well by MADEKKI in 2005 (see also Article 3).

Although the *Law on the NHRO* and the draft *Law on the Ombudsman* provide that the State human rights institution is allowed to visit closed institutions without special permission, the new *Law on Order of Detention* requires representatives of State and international human rights institutions to give advance warning of visits to the head of the respective police department.[37] This provision also contradicts the obligations that the State has undertaken in regard to visits of the CPT.

Amendments to the *Sentence Enforcement Code* came into force at the very end of 2004[38], stipulating that correspondence of sentenced prisoners with UN bodies, the Parliamentary Human Rights Committee, prosecutors' offices, courts, sworn advocates, the National Human Rights Office, and, in the case of foreign prisoners, the relevant diplomatic or consular mission, is not to be subject to censorship, and with the exception of sworn advocates, postal expenses are to be borne by the prison authorities. However, some prisons do not acknowledge this provision, censoring correspondence to these institutions and even attaching

[35] National News agency LETA, 8 March 2005, 24 July.
[36] National News Agency LETA, 22 May, 2004.
[37] *Aizturēto personu turēšanas kārtības likums* [*Law on Order of Detention*], adopted 13 October 2005, in force since 21 October 2005. Section 5(6).
[38] Likums *Grozījumi Sodu izpildes kodeksā* [*Law Amendments to the Sentence Enforcement Code*], adopted 11 November 2004, in force since 9 December 2004.

their own explanations on matters mentioned in the submissions of convicts. Also correspondence from these institutions was subject to censorship in some prisons.[39]

Centres for the detention of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The CPT has recommended that steps be taken to provide a better range of activities for foreign nationals held at the *Olaine* Detention Centre. The longer the period for which persons are detained, the more developed should be the activities offered to them. Further, specific measures should be taken to ensure that children and juveniles are offered activities suitable to their age. Although some detained aliens spend a long period in the *Olaine* camp, their possibility to carry any activities is seriously limited. The only place where detained aliens can spend time outside the premises irrespective of the season is a small asphalt backyard.

Reasons for concern

A serious shortcoming of legislation concerning detention of aliens in Latvia is lack of provisions regulating the detention regime: in fact, the law contains no provision as to where and how detained persons should be guarded, e.g.: whether they have a right to meet their relatives or other persons during detention, and if so – whom and for how long; whether they have a right to leave the territory of the camp, if so – for what reasons; whether children have a right to continue to attend school. While the fundamental rights of individuals may be restricted only by law, currently the regime imposed on those detained in the *Olaine* camp is governed by the order issued by the State Border Guard. Restrictions placed on *Olaine* detainees, including contacts with family members, approximate to those for prison detainees.

Fight against the impunity of persons guilty of acts of torture

Reasons for concern

The lack of independent authority for investigating police misconduct still raises concern. No separate statistics are identified on deaths in police custody.

Recent years have seen cases where police officers have unlawfully caused bodily injury that even led to deaths. However, investigating and hearing these cases was slow and ineffective. Thus, in 2003 four police officers were charged with intentionally causing serious bodily injuries to a Romani man resulting in his death, and were found not guilty by the first instance court due to lack of evidence. However, by the end of 2005 the hearing in the second instance court was postponed several times and the date of the next hearing was not even set.[40] On the evening of 8 February 2005, two young men were detained by police officers of Riga 29 Police Department for robbery of mobile phones from teenagers, and in the early morning of the next day one of the detainees died from shock and liver damage. However, it was only on 11 March 2005 that four police officers were detained for causing bodily harm.

[39] Valsts Cilvēktiesību birojs. *Aktuālie cilvēktiesību jautājumi Latvijā 2005. gada 3. ceturksnī*. [National Human Rights Office. *Main Issues on Human Rights in the 3rd quarter of 2005*], available on the website of the NHRO http://www.vcb.lv/index.php?open=cetzinojumi&this=181105.190

[40] Information provided by the Riga Regional Court on 2 December 2005.

Protection of the child against ill-treatments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The CPT stated in its report that the delegation received a considerable number of credible allegations of physical ill-treatment by the police throughout Latvia. It would appear that juveniles are particularly at risk in this respect.

Reasons for concern

The only prison for convicted juvenile boys (at Cēsis) remains seriously overcrowded. On 1 April 2005, 184 juveniles were being held in the prison with an official capacity of 140 places. Conditions in the pre-trial section of the prison remained appalling and could only be described as inhuman and degrading.[41]

In 2005, the Prosecutors Office initiated criminal proceedings for physically mistreating children at the *Annele* orphanage in Bauska. According to the director of the orphanage, the bus terminal security guards were attending the orphanage on their own initiative in the mornings and evenings to help children to prepare for school and to provide educational discussions. On the evidence provided by children, in the mornings the security guards were pulling from their beds those who had not got up and used to physically mistreat those who misbehaved during the day. According to the prosecutor, the children from the orphanage were had turned to the Orphans Court for the help; however, the only reaction was a phone call to the orphanage recommending to stop the violence, after which the security guards dealt with the claimants. The head of the security service was a husband of a teacher at the orphanage.[42]

Article 5. Prohibition of slavery and forced labor

Fight against the prostitution of others

Legislative initiatives, national case law and practices of national authorities

The *Criminal Law* provides liability for violation of regulations restricting prostitution[43], if it has occured repeatedly within a one-year period, as well as for compelling others to practise prostitution; for involving others in prostitution by misuse of confidence or by fraud, or by taking advantage of the dependence of others on the offender or of their state of helplessness; for inducing or compelling a minor to practice prostitution or providing premises to minors for the purposes of prostitution; for compelling preteens to practise prostitution. The liability is foreseen also for procuring or controlling prostitution, and a more severe penalty is foreseen if it is commited by a group of persons by prior agreement or in respect to minors or preteens.[44]
In September 2005, fourty-four organisations defending rights of women, e.g., the Latvian Union of Catholic Women, *Skalbes* Crisis Centre, the Women's Club of the political party *Latvijas ceļš*, the Family Support Centre, published an open letter stating that liability for

[41] Latvijas Cilvēktiesību un etnisko studiju centrs. *Cilvēktiesības Latvijā 2004. gadā*. [Latvian Centre for Human Rights and Ethnic Studies. *Human Rights in Latvia in 2004*].
[42] National News Agency LETA, 7 December 2005.
[43] MK 2001. gada 22. maija *Noteikumi Nr.210 Prostitūcijas ierobežošanas noteikumi*. [*Regulation No.210*], adopted 22 May 2001, in force since 25 May 2001.
[44] *Krimināllikums* [*Criminal Law*], adopted 17 June 1998, in force since 1 April 1999, with amendments announced to 22 December 2005. Sections 163, 164, 165.

persons who buy sexual services should be foreseen in the *Criminal Law*, otherwise the state is not able to control prostitution.[45]

Trafficking in human beings

Legislative initiatives, national case law and practices of national authorities

The *National Action Plan to Combat Trafficking in Human Beings 2004-2008* was approved on 3 March 2004.[46] The most important effort in 2004 and 2005 was made in the field of harmonising legislation. The *National Action Plan* also foresees providing information and performing analysis, improving the work of law enforcement institutions, education and support services to the victims of trafficking (rehabilitation).

The provision of the *Criminal Law* on human trafficking was changed at the end of 2004. Previously, it contained a sanction for trafficking in human beings abroad. By the amendments the words 'to a foreign country' were deleted, thus also making the provision applicable for trafficking within the country.[47]

The *Criminal Law* was also amended in 2005 with a chapter providing punitive measures[48] to legal persons in private law, where a natural person has committed an offence foreseen in the *Criminal Law* in the interests of a legal person.[49]

No official statistics exist on trafficking. By the approximate data of the International Organisation for Migration, every month about 100 individuals from Latvia become victims of trafficking in human beings.
In the first 11 months of 2005, 16 criminal cases were initiated on the basis of the provision in the *Criminal Law* against sending a person for sexual exploitation[50], and 5 cases on the basis of the provision against trafficking in human beings.[51]

Positive aspects

A regulation on the order of providing social rehabilitation services for victims of trafficking in human beings and requirements as to providers of social rehabilitation services[52] was adopted by the Cabinet of Ministers in 2005. The services are to be provided by State means and for no longer than 6 months to any one person. Up to now, rehabilitation services could be provided only by NGOs and local government.

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[45] National News Agency LETA, 26 September 2005.
[46] Full text of the *National Action Plan to Combat Trafficking in Human Beings 2004-2008* is available on the website of Ministry of the Interior
http://www.iem.gov.lv/iem/images/modules/items/item_file_1176_33iem_020304_valsts_progr_cilv_tirdzn_noves_2004-2008.doc
[47] Likums *Grozījumi Krimināllikumā* [Law *Amendments to the Criminal Law*], adopted 16 December 2004, in force since 11 January 2005.
[48] Liquidation; restriction of rights; confiscation of property; levy of money; and confiscation of property and compensation for damage as additional punitive measures.
[49] Likums *Grozījumi Krimināllikumā* [Law *Amendments to the Criminal Law*], adopted 5 May 2005, in force since 1 October 2005.
[50] Under this provision, sending is any action with a person's consent that contributes to legal or illegal departure from the State or entry into the State, transit or residence in a foreign state.
[51] Information provided by the State Police on 15 December 2005.
52 MK Noteikumi Nr. 88 *Par kārtību, kādā cilvēku tirdzniecības upuri saņem sociālās rehabilitācijas pakalpojumus, un prasībām sociālās rehabilitācijas pakalpojumu sniedzējiem* [Regulation No.88], adopted 22 November 2005, in force since 1 January 2006.

Good practices

The NGO *Marta* Resource Centre for Women provides rehabilitation and re-integration services for women who are victims of trafficking in human beings, helping with a short-term place of residence, practical and psychological support. In the first 11 months of 2005, 20 victims of trafficking in human beings received rehabilitation services.[53]

Reasons for concern

Although it was foreseen in the *National Action Plan* that 222 572 Lats (317 054 EUR) in 2005 and 468 144 Lats (666 872 EUR) in 2006 would be allocated for the purpose, lack of funding remains one of the most important problems in implementing the *National Action Plan*. In 2005 only the Ministry of Welfare after amendments to the 2005 budget received funding for 2006 in the amount of 21 000 Lats (29 915 EUR) for social rehabilitation services (for 6-month rehabilitation of 14 persons), while 7 000 Lats (9972 EUR) were received for training courses for specialists working with victims of trafficking in human beings.[54]
One of the tasks of the *National Action Plan* was a significant enlargement of the Juvenile Matters Inspection Service of the State Police in 2005. Unfortunately, this task was not implemented, since the necessary funding (180 000 Lats or 256 410 EUR) was not provided.

Protection of the child

Legislative initiatives, national case law and practices of national authorities

On 28 November 2005, a draft *Law on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* was submitted to the Parliament.[55]
Additionally, the process of ratifying *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* has started. It is at the stage of approval by the Cabinet of Ministers, although has still not been submitted to the Parliament.[56]

Reasons for concern

Although discussion has arisen about the impact of growing sex tourism to Latvia, especially its capital Riga, no reliable data exist on child prostitution and trafficking abroad, as well as within the country.

[53] Information provided by the State Police on 15 December 2005.
[54] Information provided by an official of the Ministry of the Interior on 8 December 2005.
[55] Likumprojekts *Par Konvencijas par bērna tiesībām papildu protokolu par tirdzniecību ar bērniem, bērna prostitūciju un bērna pornogrāfiju* [Draft *Law on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*], Reg.No 1450.
[56] Likumprojekts *Par Konvenciju par bērnu darba ļaunākajām formām* [Draft *Law on Worst Forms of Child Labour*], Reg.No VSS-1254, TA-2977.

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention.

Legislative initiatives, national case law and practices of national authorities

The new *Criminal Procedure Law*, in force since 1 October 2005, provides stricter rules for imposing pre-trial detention, and introduces specific time limits for pre-trial detention, depending on the gravity of the crime.
The previous *Criminal Procedure Code* provided that pre-trial detention for adults while the case was pending should not exceed 18 months, although extension was possible in cases of particularly grave crimes involving violence or threat of violence. The time-limit for examination of cases in the first instance court was another 18 months, with a similar possibility of extension. A person had to be released if the length of pre-trial detention exceeded the maximum time limit of the penalty provided by the *Criminal Law* for the respective offence.[57]
The new *Criminal Procedure Law* distinguishes time limits for pre-trial detention until the decision of the first instance court depending on the gravity of the crime. In cases of criminal violation[58], this period should not exceed 3 months, in cases of less serious crimes – 9 months, in cases of serious crimes – 12 months, and in cases of particularly serious crimes – 24 months. In cases of serious crimes, the investigating judge can prolong detention for 3 months during the pre-trial procedure. A higher level court may also do so for 3 months during trial, if the investigator has not delayed the process and defence counsel has not deliberately retarded the process, or due to the complexity of the case. In cases of particularly serious crimes, the same order for extending detention is applied, if the above criteria exist, and a higher level court can additionally extend the term for another 3 months during trial if the investigator has not delayed the process and it is not possible to guarantee security of society by using some other restrictive measure.[59]

The *Criminal Procedure Law* provides a new concept of investigating judges. Previously, the same judges who took decisions on pre-trial detention also heard the cases. However, now the investigating judge decides on pre-trial detention, after assessing the reasons and grounds[60]

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[57] *Kriminālprocesa kodekss* [*Criminal Procedure Code*], adopted 6 January 1961, in force from 1 April 1961, with amendments announced to 10 June 2005, repealed as of 1 October 2005. Section 77.
[58] Under the *Krimināllikums* [*Criminal Law*], adopted on 17 June 1998, in force since 1 April 1999, with amendments announced to 6 October 2005, Section 7, a criminal violation is an offence for which the Law prescribes deprivation of liberty for a term not exceeding two years, or a lesser penalty. A less serious crime is an intentional offence for which the Law prescribes deprivation of liberty for a term exceeding two years but not exceeding five years, or an offence which has been committed through negligence and for which the Law prescribes deprivation of liberty for a term exceeding two years. A serious crime is an intentional offence for which the Law prescribes deprivation of liberty for a term exceeding five years but not exceeding ten years; a particularly serious crime is an intentional offence for which the Law prescribes deprivation of liberty for a term exceeding ten years, life imprisonment, or the death penalty.
[59] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005. Section 277.
[60] *Kriminālprocesa likums* [*Criminal Procedure Law*], Section 272, provides that pre-trial detention can be imposed only in cases where particular information or facts create a reasonable belief that the accused has committed an offence for which the law prescribes a custodial penalty, and other measures cannot ensure that the accused would not commit a further offence, disturb or avoid the investigation, trial, or execution of sentence. If an individual is suspected or accused of a particularly grave crime,

for it, and reviews the need for this measure every two months, if the person concerned has not applied for earlier review. The task of investigating judges is to control the observance of human rights during criminal procedure.[61]

Concerning alternatives to pre-trial detention, the *Criminal Procedure Law* provides for 10 restrictive measures not related to deprivation of liberty, whereas the previous *Criminal Procedure Code* provided only 7. It is too early to judge about use of alternatives to pre-trial detention under the new *Criminal Procedure Law*, since this came into force only recently. However, no reliable statistics were available on the use of alternatives to pre-trial custody. In fact, two of these alternative restrictive measures were mainly applied - police supervision, and a promise to notify the authorities about one's whereabouts.

The *Law on Order of Detention* was adopted at the end of 2005[62], regulating the order for detaining persons in line with the *Criminal Procedure Law* in specially accommodated police premises – places for short-term detention.

Positive aspects

At the beginning of 2005, about 35% of all imprisoned persons were pre-trial detainees (about 5% less than in the previous year)[63], while after adoption of the new *Criminal Procedure Law* the proportion of pre-trial detainees has been falling. At the end of the year it was estimated at about 30% of the overall number of those in prison.

The new regulation on pre-trial detention laid down by the *Criminal Procedure Law* considerably shortens the time limits for pre-trial detention. Now the time limit is laid down for the whole period of detention until the court of first instance delivers sentence. The law also marks out the maximum time limit until submission of cases to the court.

Under the previous *Criminal Procedure Code*, a monetary deposit as a restrictive measure was applied infrequently, mostly for economic offences. The sum required was at the discretion of the investigator, the judge or the court. Criteria to be taken into account included: the gravity of the offence, the amount of financial loss caused by the offence, the severity of the likely penalty, and the financial situation of the provider of the monetary deposit. Moreover, in any event it was not less than 50 minimum wages as set by the government. [64]
Now, the minimum monetary deposit limit is not set by law, and room for wider application of this restrictive measure is provided for.

Reasons for concern

The number of investigating judges is still not sufficient. Situations occur where only one investigating judge covers a whole district (covering 5-6 regions) during weekends or holidays.[65] The work overload of investigating judges can lead to the practice of not carefully evaluating the grounds and reasons for detention before applying this restrictive measure.

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then pre-trial detention can also be applied if the victim is a minor or person dependent on the suspect or accused, or has been unable to defend their rights because of age, sickness, or for other reasons, or if the suspect or accused is a member of an organised group, or his identity is not ascertained, or he has no permanent place of residence or work, or has no permanent place of residence within the country.
[61] *Kriminālprocesa likums* [*Criminal Procedure Law*]. Sections 40, 272, 274, 281.
[62] *Aizturēto personu turēšanas kārtības likums* [*Law on Order of Detention*], adopted 13 October 2005, in force since 21 October 2005.
[63] National News Agency LETA, 9 July 2005.
[64] *Kriminālprocesa kodekss* [*Criminal Procedure Code*]. Section 75.
[65] National News Agency LETA, 22 November 2005.

The *Criminal Procedure Law* does not provide time limits for the period of detention after the sentence of the first instance court in case of appeal. A person who appeals retains the status of pre-trial detainee. This involves the pre-trial detention regime, which is more restrictive and limits contacts with the outside more significantly than that applied for convicted persons. As appeal waiting times are generally long, this situation can lead to violation of rights to liberty and security.

Pre-trial supervision remains poor as it is carried out by the police. Although the probation service has been functioning in Latvia since 2003, its work does not cover bail supervision.

Detention following a criminal conviction

Legislative initiatives, national case law and practices of national authorities

During recent years, about one-fourth of offenders have received a prison sentence, while the average length of imprisonment is about 4,5 years for adult males.[66]

Reasons for concern

In practice, uniformity is absent for release on parole. It is not infrequent that decisions on release on parole are taken arbitrarily, basing the decision on the personal relationship between the prison administration and the convicted person. Even if the court under the administrative procedure cancels the decision of the prison's administrative commission not to release a person on parole as ungrounded, it cannot impose an obligation to release the person, but merely to issue a new decision, which in most cases is no different from before.
Over the last three years, only 29-30% of convicted prisoners eligible for early release were released on parole, while the remainder served their full sentence.

Deprivation of liberty for juvenile offenders

Legislative initiatives, national case law and practices of national authorities

At the beginning of 2005 there were 229 juvenile prisoners, aged 14-18, and of those 134 were pre-trial detainees (58,5%), while 95 were convicted.[67]

The new *Criminal Procedure Law* also sets different time limits for pre-trial detention depending on the gravity of the crime for juvenile offenders (under 18 years). The maximum time limit in cases of criminal violation is 45 days, in cases of less serious crimes 4 months 15 days, in cases of serious crimes 6 months, and in cases of particularly serious crimes 12 months. Pre-trial detention can be extended by 3 months but only in cases of particularly grave crimes and then by a higher level court, if the crime has lead to the death of another person, or is committed using guns or explosives.[68]

Since 1 January 2005, the *Law On Application of Compulsory Measures of a Correctional Nature to Children* came into force[69], replacing the *Law On Application of Compulsory Measures of a Correctional Nature to Minors*. The new law provides for more compulsory measures not involving deprivation of liberty. Compulsory measures of a correctional nature

[66] Information provided by the Ministry of Justice, 2005.
[67] Latvijas Cilvēktiesību un etnisko studiju centrs. *Cilvēktiesības Latvijā 2004. gadā* [*Human Rights in Latvia in 2004*]. Page 14.
[68] *Kriminālprocesa likums* [*Criminal Procedure Law*]. Section 278.
[69] *Likums Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem* [*Law On Application of Compulsory Measures of a Correctional Nature to* Children], adopted 31 October 2002, in force since 1 January 2005, with amendments announced to 24 March 2005.

may be applied to an 11 to 18 year old child who has committed a criminal offence, and whom the court has released from the sentence imposed; a criminal offence, and the court has given a suspended sentence; an offence provided for in the Criminal Law with regard to which a prosecutor has taken a decision regarding refusal to initiate a criminal case or a decision on termination of the criminal case and sending the materials to a court; a violation with regard to which a decision has been taken regarding sending the administrative violation case or materials to a local government administrative commission for the application of compulsory measures of a correctional nature.
Compulsory measures of a correctional nature which may be applied to children, are: a warning; a duty to apologise to the victims if they agree to meet with the guilty party; placing a child in the custody of parents or guardians; a duty to eliminate through work the consequences of the harm caused; a duty to reimburse the harm caused, where a child has reached the age of 15 and has income; specific behaviour restrictions; a duty to perform community service; or placing a child in an educational establishment for social correction. In addition, a duty to undergo treatment for alcohol addiction, narcotic, psychotropic or toxic substances or other addictions may be imposed.
A duty to eliminate through work the consequences of harm caused may be applied if a child has reached the age of 15 (or if it is permissible to employ children under the age of 15 in particular work) and if the work does not involve an increased risk to security, health, morals, and development.
When applying compulsory measures of a correctional nature, the following are taken into account: the purposes, nature and causes of the offence and violation; the child's age and living conditions; the degree of participation in the offence; and behaviour in an educational institution or place of employment and in domestic activities.

Positive aspects

Two NGO-funded pilot projects on bail supervision for juvenile offenders have been launched in Rēzekne and Liepāja, two of the larger cities in Latvia. The first has been developed by the municipality in cooperation with the local department of the probation service, while the other is implemented by the NGO.

At the end of 2005, the project *Work with Juveniles Under Detention* of the MATRA Pre-Accession Programme, funded by the Netherlands Ministry of Foreign Affairs, and implemented in co-operation with the Latvian Ministry of Justice, was finished. The aim of the project was to help the Ministry of Justice and the Prison Department to improve the situation related to detention of juveniles, fostering conformity with international standards binding on Latvia, as well with the recommendations of the Council of Europe. As an outcome of the project, the *Project of General Approach to the Enforcement of Detention and Imprisonment of Juveniles for 2006-2010* was elaborated.[70]

Andrejs Judins, a researcher from the public policy centre *Providus*, presented research, *The Legal Status of Detained Juveniles and Recommendations on Achieving International Standards*, in which he concluded that presently the re-socialisation of detained juveniles either plays a secondary role or lacks attention altogether. He suggests humanizing the detention system, emphasizing that correction of behaviour, education, and psychological aid have to become the most important elements of enforcement of sentence, so that isolation should be only a means for achieving the aim of rehabilitation.[71]

[70] Information available on the website of the Ministry of Justice http://www.tm.gov.lv/lv/jaunumi/tm_info.html?news_id=387.
[71] Full text of the research is available on the portal politika.lv, http://www.politika.lv/polit_real/files/lv/nepilng_iesl.pdf

Reasons for concern

Although the *Law On Application of Compulsory Measures of a Correctional Nature to Children* has been in force since 1 January, 2005, the court has very infrequently imposed a duty to perform community service.

The high number of detained juveniles raises concerns that the scale of compulsory measures of a correctional nature is not imposed adequately, considering that detention in a penal institution should be the last resort where a juvenile has committed a crime.

Deprivation of liberty for foreigners

Legislative initiatives, national case law and practices of national authorities

Under the *Immigration Law*, the State Border Guard has the right to detain an alien for a period not exceeding 10 days.[72] The State Border Guard has the right to detain an alien for more than 10 days only pursuant to a judge's decision. On the submission of an official of the State Border Guard, a judge should decide to detain an alien for a period of up to two months, or should refuse to detain. If it has not been possible to expel an alien within the term indicated in the judge's decision, then the judge should decide to extend the term of detention for up to two months or refuse to extend the term. The State Border Guard may apply repeatedly to extend the term, but the total period of detention may not exceed 20 months.
A judge should immediately examine the materials submitted[73], hear the information provided by the official of the State Border Guard and explanations of the alien or his or her representative, and take a decision alone, in all cases indicating the motivation for the decision.
Detainees in defence of their legitimate interests may submit a complaint to a district/city court (the first instance court), contact the consular institution of their country and receive legal assistance, as well as personally or with assistance from a representative become acquainted with the materials related to their detention.
Detainees should be assured the right to communicate in the language they understand, if necessary, using the services of an interpreter.

Positive aspects

Since the 2005 amendments to the *Immigration Law*, detention of aliens should be reviewed by a judge every 2 months instead of 6 as before.[74]

Reasons for concern

A serious problem in respect to the procedure for detention of aliens is lack of relevant court procedure. The decision on detention is taken neither under criminal proceeding, nor administrative proceedings, but as a decision of a single judge, and thus the order of court hearing and the rights of the person concerned remain undefined.

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[72] Under the *Imigrācijas likums* [*Immigration Law*], adopted 31 October 2002, in force since 1 May 2003, with amendments announced to 24 November 2005, Section 51, detention can be imposed if an alien has illegally crossed the State border or otherwise violated the procedures for entry and residence of aliens in the Republic of Latvia, or if the competent State authorities including the State Border Guard have reason to believe that an alien poses a threat to national security or public order and safety; and in order to implement a decision regarding the forcible expulsion of an alien from the State.
[73] The submission of the official of the State Border Guard, detention report, decision on forcible expulsion of an alien, and documents specifying the measures taken for ensuring the expulsion of the alien.
[74] *Likums Grozījumi Imigrācijas likumā* [*Law Amendments to the Immigration Law*], adopted 24 November 2005.

Although the *Immigration Law* provides a right for aliens to receive legal assistance, both personally or assisted by a representative to become acquainted with the materials related to the detention, these rights are poorly implemented in practice. As contacts with the outside are limited for those detained in the *Olaine* camp for detention of illegal immigrants, and they often lack the means to afford a lawyer, access to legal aid is limited. The State provides no legal assistance or exemption from fees for legal assistance for detained aliens.
In several cases, detainees have been denied the right to get acquainted with documents related to their detention, as the documentation is kept in the central office of the State Border Guard, not in the *Olaine* detention camp. Visits of State Border Guard inspectors to *Olaine* are irregular and, on occasions, the inspectors have failed to provide complete information to detainees about their case. There is also a practice not to acquaint detainees' representatives with all materials related to the detention, but only with those they explicitly request.

In 2005, the *Immigration Law* was amended with a section listing the criteria to be evaluated by the judge deciding on extension of detention or refusal to detain an alien. Eight criteria are mentioned, e.g., an alien fails to disclose identity or refuses to co-operate with an official of the State Border Guard; has no financial means to stay in the State; competent state institutions have reason to believe that an alien has committed or is planning to commit a grave or particularly grave crime. However, none of these criteria relate to considerations that can play a role in an alien's favour, e.g. an alien's private or family ties within the State.

The 2005 amendments also provide that an alien can appeal a judge's decision on detention within 48 hours after receiving it. The right to appeal the decision is extremely limited for detainees in practice, as the decision is issued in the State language (Latvian), while the Law does not explicitly require providing an alien with a translation of the decision, and legal assistance is poorly available in the detention camp for illegal immigrants.

The other important shortcoming of legislation concerning the detention of aliens in Latvia is lack of provisions for regulating the detention regime: in fact, the law nowhere provides, e.g., where and how detained persons should be guarded; whether they have a right to meet their relatives or other persons during detention, and if so – whom and how long; whether they have a right to leave the territory of the camp, and (if so) for what reasons; where children are involved, whether they have a right to continue to attend school. While the fundamental rights of individuals may be restricted only by law, currently the regime imposed on those detained in the *Olaine* camp is governed by the order issued by the State Border Guard. Restrictions placed on *Olaine* detainees, including contacts with family members, are approximate to those for prison detainees.

Article 7. Respect for private and family life

Private life

Criminal investigations and the use of special or particular methods of inquiry or research

Legislative initiatives, national case law and practices of national authorities

The new *Criminal Procedure Law*, adopted in 2005, contains a chapter on special methods of inquiry. In fact, it establishes that data obtained using special methods of inquiry may be directly used as evidence in criminal procedure, whereas previously such methods might be used only under the *Investigatory Operations Law*, and data obtained in such a way became evidence after verification in accordance with the requirements of the *Criminal Procedure*

Code[75]. The *Criminal Procedure Code* previously allowed only phone tapping and acquisition of information by technical means, as well as arrest and collection of correspondence.[76]
Now 11 different types of special methods of inquiry similar to those provided by the *Investigatory Operations Law* are included in the *Criminal Procedure Law*[77]. Their use is permissible only for investigating a serious or particularly serious crime and following a ruling by the investigating judge, or in urgent cases by consent given by the prosecutor (in such a case the decision of the investigating judge must be obtained no later than on the next working day).[78]
If secretly recorded expressions or activities of a person are used as evidence, then the person must first be interrogated on the evidence. Then, once the person is acquainted with facts obtained secretly, he/she must be informed about the use of a special method of inquiry insofar it directly concerns him/her.[79]
Information about the use of special methods of inquiry is considered as classified data. A person entitled to be informed of materials in a criminal case after the completion of pre-trial investigation, can bring a submission to the prosecutor or investigating judge asking to be informed of secretly obtained data that are not added to the file.[80]
Complaints about the use of special methods of inquiry can be lodged under the general provisions of the *Criminal Procedure Law*.[81]

In 2005, an amendment was made to the provision of the *Law on Electronic Communications* that obliged dealers in electronic communications to install interception points for obtaining operational data from electronic communication networks, if the Director of the Constitutional Protection Bureau issues a written request. Dealers are now obliged to install, maintain, improve and modify such interception points by their own means. Interception points might be used for purposes of operational activities and criminal procedure activities free of charge.**[82]** The amendments also oblige dealers in electronic communications to submit loading data, which should be kept for three years, to the State Police, State security authorities and to the Bureau for Prevention and Combating Corruption, at their request.**[83]**

Reasons for concern

Cause for concern exists that authorities with the power of operational investigation do not always use this in conformity with the law. In April 2005 a well-known advocate announced that conversations and phone calls in his law office had been tapped, as well as office employees tracked, expressing concern that this was done illegally by the Constitutional Protection Bureau in cooperation with the Bureau for Prevention and Combating Corruption, as he is acting as representative in a court case for reinstatement of an official dismissed from the Bureau for Prevention and Combating Corruption. The advocate lodged a claim with the Prosecutor's Office, supported by a claim lodged by the Council of Sworn Advocates, asking for a thorough examination of the case in order to prevent violation of the Latvian *Constitution* and the Latvian *Advocacy Law*. In June, the Prosecutor's Office rejected his

[75] *Operatīvās darbības likums* [*Investigatory Operations Law*], adopted on 16 December 1993, in force since 14 January 2004, with amendments announced to 26 October 2005, Section 24 (1).
[76] *Kriminālprocesa kodekss* [*Criminal Procedure Code*], adopted on 16 January 1961, in force from 1 April 1961, annulled since 1 October 2005, Section 176, 176[1].
[77] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted on 21 April 2005, in force since 1 October 2005, Section 215.
[78] Ibid., Sections 211, 212.
[79] Ibid. Section 229(2).
[80] Ibid. Section 231.
[81] Ibid., Section 336-345.
[82] Likums *Grozījumi Elektronisko sakaru likumā* [Law *Amendments to the Law on Electronic Communications*], adopted on 12 May, 2005, in force since 8 June 2005, Section 10.
[83] Ibid.

claim, stating that the security authorities were not involved in illegal activities, nor had any criminal offence been committed.[84]

Under the *Investigatory Operations Law*, special investigations methods should be carried out without regard to citizenship, gender, nationality, age, residence, education, or social, employment or financial status and office of persons, their political and religious views, or affiliation with parties or other public organisations[85]. However, in preparing for the visit of US President George W. Bush to Latvia on 6 and 7 May 2005, Juris Leitietis, head of the Anti-Terrorism Centre, stated that students from Arab countries were under surveillance by Security Police, as well as permanently resident Muslims, along with criminals, national radicals and mentally ill persons.[86]

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

The *Sexual and Reproductive Health Law*[87] regulates termination of pregnancy, allowing termination of pregnancy at a woman's request prior to the 12th week of pregnancy after a gynaecologist (childbirth specialist) or a general practitioner has informed the woman of the nature of pregnancy termination. Before 2005, the law also required that women be provided with written information approved by the Minister for Health on the moral aspects of pregnancy termination, possible medical complications, and the possibility to preserve the life of the unborn child. The informative leaflet prepared by the Ministry of Health was sharply criticized by the Latvian Association of Gynecologists and Childbirth Specialists, as well as by the NGO Latvian Association for Family Planning and Sexual Health *Papardes zieds* for its frightening and biased content.[88] In 2005, the requirement to provide women with this written information was excluded from the law.[89]
In cases of pregnancy resulting from rape, termination should also be performed before the 12th week of pregnancy on the basis of a certificate confirming rape issued by a law enforcement institution. Termination of pregnancy due to medical indications should be performed before the 22 nd week of pregnancy.
Termination of pregnancy due to medical indications or in the case of a pregnancy resulting from rape is allowed only upon written confirmation of the council of doctors and the written consent of the woman (in the case of a woman lacking the capacity to act – upon the written consent of a guardian). It is interesting that although voluntary termination of pregnancy is legal until the 12th week anyhow, a victim of rape should have her case reviewed and authorized by the council of doctors, thus encumbering rather than facilitating the pregnancy termination in these cases.

Positive aspects

Excluding the obligation to provide a woman with one-sided and potentially traumatising information about moral aspects of termination of pregnancy instead of information with an

[84] National News Agency LETA, 15 June 2005.
[85] *Operatīvās darbības likums* [*Investigatory Operations Law*], adopted 16 December 1993, in force since 14 January 2004, with amendments announced to 26 October 2005, Section 4(5).
[86] Daily newspaper *Neatkarīgā*. *Uzmanīs musulmaņu diasporu*. 30 April 2005.
[87] *Seksuālās un reproduktīvās veselības likums* [*Sexual and Reproductive Health Law*], adopted 31 January 2002, in force since I July 2002, with amendments announced to 12 October 2005.
[88] Information provided by Iveta Ķelle, Executive Director of NGO Latvia's Association for Family Planning and Sexual Health *Papardes zieds*, 3 December 2005.
[89] Likums *Grozījumi Seksuālās un reproduktīvās veselības likumā* [Law *Amendments to the Sexual and Reproductive Health Law*], adopted 22 September 2005, in force since 26 October 2005.

individual approach from the *Sexual and Reproductive Health Law* should be considered a positive development towards respect for women's right to private life.

Reasons for concern

If a pregnant woman is younger than 16 years, the duty of the doctor who establishes the fact of pregnancy is to inform the parents or guardian of the woman regarding the fact of pregnancy. An appointment for termination of pregnancy for a woman younger than 16 years at her request may be issued if at least one of her parents or a guardian has given written consent for termination, also in the case of rape or due to medical indications. It is necessary to obtain a decision of the Orphans' Court in order to terminate the pregnancy if there is any dispute between a patient younger than 16 years and her parents or her guardian regarding preservation of the pregnancy.[90]
The existence of such a provision could deter a pregnant woman under 16 from addressing a doctor in case of pregnancy for fear of problems in the family, and to seek illegal termination.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Amendments to the *Sentence Enforcement Code* came into force at the very end of 2004[91], containing some provisions liberalising contacts with the outside world for convicted persons, e.g., granting convicted persons an additional long-term visit up to 48 hours in the case of registration of marriage with permission of the prison administration; entitling convicted juveniles to up to 12 long-term visits by relatives for 36-48 hours yearly[92]; stipulating that correspondence of sentenced prisoners with UN bodies, the Parliamentary Human Rights Committee, prosecutors' offices, courts, sworn advocates, the National Human Rights Office, and, in the case of foreign prisoners, the relevant diplomatic or consular mission, is not to be subject to censorship, and with the exception of sworn advocates, postal expenses are to be borne by the prison authorities.

The provision of the *Sexual and Reproductive Health Law*, forseeing childbirth only in medical institutions, was changed following extensive discussions about legalising childbirth at home. Discussion arose after a court case against the Ministry of Justice, which supervises the work of the Civil Registry Office. In 2004, the Office refused to issue a Birth Certificate in two cases for a child born at home in the presence of a midwife. The refusal was based on the provision of the previous *Law on Acts of Civil Status*[93] that a Birth Certificate can be issued only on the basis of a medical certificate issued by a medical institution or doctor, but not by a midwife. Both children were registered only after the intervention of the Mayor of Riga.
Both families lodged claims to the Administrative Court, who found the action of the Civil Registry Office unlawful and awarded the families compensation for non-pecuniary damage of respectively 1000 and 500 Lats (approx. 1400 and 700 EUR) by decision of the first instance court on 23 December, 2004, as well by the appeal instance court on 13 June, 2005.[94]
However, the new *Law on Acts of Civil Status* so far also contains a provision requiring that a

[90] *Seksuālās un reproduktīvās veselības likums* [*Sexual and Reproductive Health Law*], adopted 31 January 2002, in force since I July 2002, with amendments announced to 12 October 2005, Section 27.
[91] Likums *Grozījumi Sodu izpildes kodeksā* [Law *Amendments to the Sentence Enforcement Code*], adopted on 11 November 2004, in force since 9 December 2004.
[92] Such entitlement was previously granted only to convicted adults.
[93] Likums *Par civilstāvokļa aktiem* [*Law on Acts of Civil Status*], adopted 21 October 1993, in force from 28 October 1993, annulled since 15 April 2005, Section 22(4).
[94] The Ministry of Justice has appealed the decision at cassation instance.

medical certificate issued by a medical institution or doctor be presented for registration of a child's birth. [95]

Positive aspects

Amendments were adopted to the *Sexual and Reproductive Health Law*, abolishing the provision that childbirth is allowed only in medical institutions.[96]

Reasons for concern

Although in 2004 the *Sentence Enforcement Code* was amended[97], entitling convicted juveniles yearly to up to 12 long-term visits by relatives for 36-48 hours, by the end of 2005 no facilities for long-term visits had yet been set up in the Cēsis Correctional Facility for boys, thus ruling out the possibility to implement this provision.

Family life

Protection of family life

Legislative initiatives, national case law and practices of national authorities

At the end of 2004, the *Action Plan for implementing the State Family Policy concept for 2004-2013* was finally approved by the Cabinet of Ministers. Before approval, it was rejected twice as utopian and unrealistic. The *Action Plan* was elaborated by the Ministry of Children and Family Affairs, and can be considered as governmental strategy for improving conditions of families and children in 14 different areas such as medicine, education, social sphere, and housing.[98]

On 15 September 2005, Latvijas Pirmā partija (the First Party of Latvia) proposed in the Parliament to amend the provision of the *Constitution* "The State shall protect and support marriage, the family, the rights of parents and rights of the child. [..]"[99], with an explanatory sentence which stipulate that marriage is a union between man and woman. On 26 October, 2005, the Parliament voted (65 votes out of 100 for, 5 against, 20 abstentions) for the first reading of an alternative proposal for amendments to the Constitution, "The State shall protect and support marriage – a union between man and woman, the family, the right of parents and child." (See also Article 9.)

Reasons for concern

The elevation of the same-sex marriage prohibition in civil law to the constitutional level followed public controversies on the rights of homosexuals and issues of non-discrimination on grounds of sexual orientation and can be seen as an attempt to block any potential future law amendments on the issue through a simple parliamentary majority. Discourse surrounding the amendments, especially by politicians, was frequently disrespectful and homophobic and

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[95] *Civilstāvokļa aktu likums* [*Law on Acts of Civil Status*], adopted 17 March 2005, in force since 15 April 2005, Section 22(3).
[96] Likums *Grozījumi Seksuālās un reproduktīvās veselības likumā* [Law *Amendments to the Sexual and Reproductive Health Law*], adopted 22 September 2005, in force since 26 October 2005, Section 3.
[97] Likums *Grozījumi Sodu izpildes kodeksā* [Law *Amendments to the Sentence Enforcement Code*], adopted 11 November 2004, in force since 9 December 2004, Paragraph 20.
[98] The *Action Plan for implementing the States' Family Policy concept* is available on the homepage of the Ministry of Children and Family Affairs, http://www.bm.gov.lv/lat/gimenes_politika/
[99] *Latvijas Republikas Satversme* [*Constitution of the Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, with amendments announced to 7 October 2004, Section 110.

puts into question the commitment to the equality principle. This is especially the case within the context of the failure until the end of the year to include sexual orientation among the prohibited grounds for discrimination in the relevant legislative amendments.

Removal of child from the family

Legislative initiatives, national case law and practices of national authorities

Amendments to the *Protection of the Rights of the Child Law* stipulate that eviction of the family shall not be a ground for removal of a child from the family.[100]

Positive aspects

The amendments protecting children from removal from the family in case of eviction should be evaluated positively, as a decision on removing a child from the family is taken by the Orphans' court[101] – an institution established and financed by the municipality.[102] Where the municipality is not able to provide housing for families with a low income and minor children, as is required by the *Law on Assistance in Solving Apartment Matters*[103], it might otherwise occur that removal of a child from the family and accommodation in a shelter could be used as a temporary solution for such a situation.

Reasons for concern

Reportedly, cases have occurred where children sought help because of abuse or violence in the family. However, the staff responsible for decision-making on removing a child from the family are rather pre-disposed to give greater weight to the testimony of adults, even leaving a child in a family where the risk of abuse has credibly been established also without sufficient supervision of the situation.[104]

Right to family reunification

Legislative initiatives, national case law and practices of national authorities

At the very end of 2004, a new *Regulation on the Order of Entry and Residence of Citizens of EU Member States and European Economic Area Countries, and Their Family Members* entered into force[105], implementing EU Directives concerning this issue. Entry and residence of aliens who are family members of Latvian citizens, non-citizens, as well as of aliens holding a permanent residence permit, are regulated by the *Immigration Law*[106] (see Article 9

[100] *Likums Grozījumi Bērnu tiesību aizsardzības likumā* [Law *Amendments to the Law on Protection of the Rights of the Child*], adopted 17 March 2005, in force since 15 April 2005, Section 11.
[101] *Likums Par bāriņtiesām un pagasttiesām* [*Law on Orphans Courts and Parish Courts*], adopted 6 November 1995, in force since 7 December 1995, with amendments announced to 11 January 2005.
[102] The chair and members of the Orphans' Court are elected by the municipal council for 5 years.
[103] *Likums Par palīdzību dzīvokļa jautājumu risināšanā* [*Law on Assistance in Solving Apartment Matters*], adopted 6 December 2001, in force since 1 January 2002, with amendments announced to 11 January 2005, Section 14.
[104] Information provided by Laila Balode, Head of the Counselling Department of the *Dardedze* Centre Against Abuse on 6 December 2005.
[105] MK *Noteikumi Nr. 914 Kārtība, kādā Latvijas Republikā ieceļo un uzturas Eiropas Savienības dalībvalstu un Eiropas Ekonomikas zonas valstu pilsoņi un viņu ģimenes locekļi* [*Regulation on the Order of Entry and Residence of Citizens of EU Member States and European Economic Area Countries, and Their Family Members*], adopted 9 November 2004, in force since 13 November 2004.
[106] *Imigrācijas likums* [*Immigration Law*], adopted 31 October 2002, in force since 1 May 2003, with amendments announced to 12 July 2005.

of the Report). Additionally, the entry of family members of third country nationals who hold a temporary residence permit remains regulated under the provisions of the *Immigration Law*. Amendments to the *Asylum Law* were adopted in 2005, providing a right to family reunification for refugees.[107] Under this provision, the Cabinet of Ministers adopted the *Regulation on the Order of Reunion of Refugee Families, and Reunion of Families of Persons Granted Alternative Status in the Republic of Latvia*[108], implementing *Directive 2003/86/EC* on the right to family reunification.

Private – and family life in the context of the expulsion of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

On 16 June, 2005, the European Court of Human Rights delivered a Chamber judgement in the case of *Sisojeva and Others vs. Latvia*[109]. The Court held by 5 votes to 2 that there had been a violation of Article 8 (right to respect for private and family life) of the *European Convention on Human Rights*, and by 6 votes to 1 that the Latvian Government had complied with their obligations under Article 34 of the *Convention*. The Court awarded each of the applicants 5000 euros for non-pecuniary damage.

Mr Sisojev, who was a soldier in the Soviet army, was stationed in Latvia in 1968 and served there until he was demobilised in 1989. His wife Svetlana Sisojeva came to Latvia in 1969 and their daughter was born there. In 1991 Latvia restored its independence, and in 1993 Mr Sisojev and his wife applied to the Citizenship and Immigration Department of the Latvian Ministry of the Interior[110] (the Department) to obtain permanent resident status and to be entered in the register of residents. After court proceedings, they were granted temporary residence permits and were entered in the register. In 1995 the Department discovered that Mr Sisojev and his wife had each been issued with two former Soviet passports in 1992 and had thus been able to have their place of residence registered in Russia as well as in Latvia. Their daughter had done likewise in 1995. The Department initiated court proceedings based on newly discovered circumstance for revising a decision about issuing a residence permit and entering the applicants in the register of residents. In August 1996 Mr Sisojev and his daughter applied for and obtained Russian citizenship. After the last decision of the Supreme Court, the Department notified the applicants that they were required to leave Latvia. In November 2003, the Head of the Department sent a letter to the applicants explaining how Svetlana Sisojeva could regularise her stay in Latvia and obtain an identity document as a stateless person, so that her husband and daughter could then be issued with residence permits. However, as they did not follow those recommendations, the applicants did not obtain residence permits.

The Court found that refusal to recognise the applicants' right to permanent residence in Latvia constituted interference with the applicants' right to respect for their private life. The interference, which had been in accordance with the provisions of the law, had been intended to ensure compliance with immigration laws and had therefore pursued the legitimate aim of "prevention of disorder". As to whether the interference had been "necessary in a democratic society", the Court noted that the applicants had spent virtually all their lives in Latvia and had developed personal, social, and economic ties there that were strong enough for them to be regarded as sufficiently integrated into Latvian society. In those circumstances, the Court

[107] Likums *Grozījumi Patvēruma likumā*, adopted 20 January 2005, in force since 3 February 2005, Section 11.

[108] MK *Noteikumi Nr. 652 Kārtība, kādā Latvijas Republikā notiek bēgļa ģimenes atkalapvienošana, kā arī tās personas ģimenes atkalapvienošana, kurai piešķirts alternatīvais statuss* [*Regulation on the Order of Reunion of Refugee Families, and Reunion of Families of Persons Granted Alternative Status in the Republic of Latvia*], adopted 30 August 2005, in force since 2 September 2005.

[109] *Svetlana Sisojeva and Others vs. Latvia* (Appl. No. 60654/00, Decision of 16 June 2005).

[110] Latvijas Republikas Iekšlietu ministrijas Pilsonības un imigrācijas departaments

considered that only particularly serious reasons could justify refusal to regularise the applicants' status, but it had been unable to discern any such reasons. Having regard to the circumstances of the case and, in particular, to the lengthy period during which the applicants had been in a state of uncertainty and a precarious legal position in Latvian territory, the Court considered that the authorities had failed to strike a fair balance between the legitimate aim of preventing disorder and the applicants' interest in protection of their rights under Article 8. It therefore held that the interference in question had not been "necessary in a democratic society" and had breached Article 8 of the *European Convention on Human Rights*.
The State party has requested that the case be referred to the Grand Chamber of the Court.

Legislative initiatives, national case law and practices of national authorities

There remain a number of persons who have resided in Latvia for several years or even decades but who, following the collapse of the former Soviet Union, for different reasons have not regularised their status and obtained documents valid in the Republic of Latvia, or their status in Latvia is withdrawn because of formal registration in another member state of the former Soviet Union. Many of them have long established links with Latvia, including a permanent place of residence and close personal ties. Even when it is difficult to establish any significant link with other countries for those persons, it is highly problematic for them to obtain legal status to reside in Latvia.

Positive aspects

Although jurisprudence concerning the concept of private life and right to respect for private life is at a very early stage in Latvia, there have been rare court decisions developing the issue. One of those where these concepts were evaluated extensively was the case of *Valentīna Kruka vs. the Office of Citizenship and Migration Affairs (OCMA)*.[111] The claimant was born in 1968 in Latvia, but from 1991 to 2001[112] her place of residence was formally registered in Belarus. However, she never has been a citizen of Belarus or any other country, and, in fact, was not permanently living in Belarus. At the same time she was registered in Riga, and two daughters of hers were born in Riga (in 1989 and 1995). In 1999, the claimant's status of non-citizen of Latvia was withdrawn, and in 2003 the OCMA issued an expulsion order to her and both her daughters. The District Administrative Court found that the OCMA had not evaluated the preconditions of the case and had violated the right for respect for the private life of the claimant and her children as of long-term residents who since their birth had developed personal, social, and economic relationships in the state. The court held the decision of the OCMA to issue the expulsion order null and void.

Reasons for concern

There are cases where established long-term private and family life ties are not taken into account in cases of expulsion. In October, 2005, an expulsion order together with a prohibition on entering Latvia for five years[113], issued to a person who entered Latvia in 1989

[111] Administratīvās apgabaltiesas 2004. gada 13. decembra spriedums lietā Nr. AA 372-04.
[112] Likums *Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības* [*Law on the Status of Former USSR Citizens Who are not Citizens of Latvia or any other State*], adopted 12 April 1995, in force since 9 May 1995, with amendments announced to 9 March 2005, provides that persons registered in a member state of the Commonwealth of Independent States (CIS) after 1 July 1992 does not have the right to the status of Latvian non-citizen (Section 1(3)5).
[113] *Imigrācijas likums* [*Immigration Law*] stipulates that prohibition of entry to the Republic of Latvia shall be set in an expulsion order issued to an alien who breaches procedures for entry and residence of aliens in Latvia (mandatory administrative act).

(before the restoration of independence), was put into effect by forcibly expelling him to Azerbaijan. The expelled person had been living permanently in Latvia for the last 16 years, although he had not regularised his status. Since 1995 he had been cohabitating with a citizen of Latvia, and in 1999 their son was born. The OCMA failed to evaluate these factors in its decision to issue an expulsion order and to prohibit entry to Latvia for 5 years. There is reason to believe that this is not a unique case.

Article 8. Article 8. Protection of personal data

Independent control authority

Legislative initiatives, national case law and practices of national authorities

According to the *Personal Data Protection Law*[114], the supervision of personal data processing, its lawfulness and fairness is carried out by the State Data Inspection. All state and local government institutions, and other natural persons and legal persons that carry out or wish to commence carrying out personal data processing, and establish systems for personal data processing, should register these systems in accordance with the *Personal Data Protection Law*. The State Data Inspection carries out registration of these systems.
The State Data Inspection is subject to supervision by the Ministry of Justice, and is managed by a director, who is appointed and released from post by the Cabinet of Ministers pursuant to the recommendation of the Minister of Justice.
Such legal regulation has suffered criticism from legal experts of the European Commission, who alleged that Latvia has failed to fulfil the requirement laid down in Article 28 of *Directive 95/46/EC* on the independence of the data protection supervisory authority.[115]
By order of 10 January 2005 of the Prime Minister, a working group was established to achieve compliance of Latvian legislation with the requirements of *Directive 95/46/EC* of 24 October 1995 in respect to the protection of persons in data processing, as well as on the independence and working principles of the data protection supervisory authority.[116]
On 28 June 2005, the Cabinet of Ministers adopted a Regulation *On order of processing, designing, retention and exchange of electronic documents in State and municipal institutions and on order of exchange of electronic documents between State and municipal institutions or between these institutions and natural and legal persons*.[117]

Protection of personal data

Reasons for concern

Although data subjects have the right to obtain all information concerning them that has been collected in any system for personal data processing, unless the disclosure of such information

[114] *Fizisko personu datu aizsardzības likums* [*Personal Data Protection Law*], adopted 23 March 2000, in force since 20 April 2000, with amendments announced to 13 November 2002.
[115] Article 28.(1) *Each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive. These authorities shall act with complete independence in exercising the functions entrusted to them.*
[116] Information provided by Egons Ālers, Public Relations Specialist of the Latvian State Data Inspection, 15 December 2005.
[117] MK 2005. gada 28. jūnija Noteikumi Nr. 473 *Elektronisko dokumentu izstrādāšanas, noformēšanas, glabāšanas un aprites kārtība valsts un pašvaldību iestādēs un kārtība, kādā notiek elektronisko dokumentu aprite starp valsts un pašvaldību iestādēm vai starp šīm iestādēm un fiziskajām un juridiskajām personām* [Regulation No.473], adopted 28 June 2005, in force since 2 July 2005.

is prohibited by law[118], up to now cases have occurred where persons are denied access to data about their state of health and treatment, as the *Medical Treatment Law* provides for the confidentiality of information regarding the medical treatment of a patient, the diagnosis and prognosis of a disease, as well as information obtained by medical practitioners during medical treatment regarding the private life of patients and their closest relatives.[119] Such misinterpretation of the provision of the law especially concerns imprisoned persons, who are denied access to medical documentation on themselves, while copies are not provided for them. However, similar situations also occur in other medical institutions.

Protection of the private life of workers

Reasons for concern

In 2005 the Latvian Centre for Human Rights and Ethnic Studies (LCHRES) received a complaint from a person who was hired as a loader by a supermarket, but shortly afterwards dismissed on the ground of his criminal record. According to the claimant, the information about his criminal record was obtained through the personal links of the supermarket security service. As the Criminal Records Register is a manual system of register cards[120], unauthorised access and misuse of information about data cannot be excluded.

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

Marriage and control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

The only form of registered partnership in Latvia is marriage. The institution of marriage is regulated by the *Civil Law* (*Part I, Family Law*)[121]. A person entering into marriage may not be younger than 18 years (or 16, in exceptional cases set by law), and cannot be deprived of legal capacity because of mental disability or mental deficiency. The following are forbidden: marriage to direct-line relatives, or between brother and sister, stepbrother and stepsister, adopter and adoptee, legal guardian and ward, trustee and ward, so long as this relationship exists, as well as marriage between persons who are already married, and marriage between same-sex persons.

The Latvian *Constitution* contains a declarative provision, "The State shall protect and support marriage, the family, the rights of parents and rights of the child. [..]".[122]

The *Immigration Law* provides that an alien who is the spouse of a Latvian citizen or non-citizen of Latvia, or an alien holding a permanent residence permit shall be entitled to receive a temporary residence permit for one year when submitting documents for the first time; a temporary residence permit for four years when submitting documents for the second time, and a permanent residence permit when submitting documents for the third time. The *Immigration Law* stipulates that a residence permit shall be issued on condition that the

[118] *Fizisko personu datu aizsardzības likums* [*Personal Data Protection Law*], adopted on 23 March 2000, in force since 20 April 2000, with amendments announced to 13 November 2002. Section 15.

[119] *Ārstniecības likums* [*Medical Treatment Law*], adopted on 12 June 1997, in force since 1 October 1997, with amendments announced to 6 July 2005. Section 50.

[120] Information provided by Jānis Rītiņš, Head of the Information Centre of the Ministry of Interior on 1 December 2005.

[121] *Civillikums. Pirmā daļa. Ģimenes tiesības* [*Civil Law. The First Part. The Family Law*], adopted 28 January 1937, in version of 25 May 1993, in force since 1 September 1993, with amendments announced to 24 March 2005.

[122] *Latvijas Republikas Satversme* [*the Constitution of Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, with amendments announced to 7 October 2004, Section 110.

marriage is monogamous, and that spouses live together and have a common household.[123] A temporary residence permit may be cancelled if there is reason to believe that an alien has entered into a marriage of convenience in order to receive a residence permit in the Republic of Latvia.[124]

Under the *Immigration Law*, the following are responsible for documenting and controlling the entry and residence of aliens in the country: the Office of Citizenship and Migration Affairs (OCMA), the State Border Guard, diplomatic and consular representatives of the Republic of Latvia, and the Consular Department of the Ministry of Foreign Affairs.[125] In order to take a decision regarding the issue of a residence permit, officials of the these authorities are entitled to conduct interviews with aliens and those inviting them and require explanations, as well as to examine information provided by aliens or those inviting them.[126]

In practice, the OCMA informs the State Border Guard about aliens who have received temporary residence permits, while officials of the State Border Guard conduct an inspection as to the place of residence of the family, interviewing the family and neighbours in order to confirm that the marriage is not simulated. When applying to the OCMA for a permanent residence permit, aliens and their spouse have to complete separate questionnaires about, e.g., their place of residence, everyday habits. The OCMA can refuse to issue a permanent residence permit on the basis of information received from the State Border Guard and discrepancies in answers of the spouses, if this evidence indicates that the marriage is simulated.[127] In the words of the Deputy Head of the OCMA, if a common child has been born in the marriage, no check is conducted on possible simulation of the marriage.

A decision to refuse to issue, or to cancel, an alien's residence permit may be appealed by the inviter to the Head of the OCMA within 30 days of receiving the decision. An alien who legally resides in the State, or the inviter, has a right in accordance with procedures set by law to appeal to the court against refusal by the Head of the OCMA to issue a residence permit[128].[129]

Fictitiousness is also a ground under *Civil Law* for recognising a marriage as null and void.[130] In 2005, four court cases were initiated on this ground. In one case the claim was rejected, while three claims have yet to be examined.[131]

Positive aspects

Until 2005, any alien who had breached the procedures for entry and residence of aliens in Latvia was subject to an expulsion order setting a term prohibiting entry to the Republic of Latvia (mandatory administrative act). However, under amendments to the *Immigration Law*,

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[123] *Imigrācijas likums* [*Immigration Law*], adopted 31 October 2002, in force since 1 May 2003, with amendments announced to 12 July 2005, Section 25, 26.

[124] Ibid., Section 34 (1) 13.

[125] Ibid., Section 3 (1).

[126] Ibid., Section 33 (4).

[127] Information provided by Mariks Petrušins, Head of the Immigration Department of the State Border Guard, 11 November 2005, and Maira Roze, Deputy Head of the OCMA, 25 November 2005.

[128] *Imigrācijas likums* [*Immigration Law*], adopted 31 October 2002, in force since 1 May 2003, with amendments announced to 12 July 2005, Section 40.

[129] Augstākās tiesas Senāta Administratīvo lietu departaments [the supreme instance of the Administrative Court] in its decisions in cases of appeal from a refusal by the Head of the OCMA to issue a residence permit has explained that the mere fact of registration of marriage cannot be considered a sufficient argument for recognition of marriage. The Court has noted that it is necessary to establish that real family ties exist. (2004. gada 26. oktobra spriedums SKA-177 lietā; 2004. gada 21. septembra spriedums SKA-129 lietā.).

[130] *Civillikums. Pirmā daļa. Ģimenes tiesības* [*Civil Law. Part I. Family Law*], adopted 28 January 1937, in version of 25 May 1993, in force since 1 September 1993, with amendments announced to 24 March 2005, Section 60.

[131] Information provided by the Department of Court Statistics of the Court Administration on 2 December 2005.

where an alien is spouse of a Latvian citizen or non-citizen, then the expulsion order may set a prohibited entry term (optional administrative act).
After the *Administrative Procedure Law* came into force and the Administrative Court started its work in 2004, an appeal procedure against decisions of the OCMA, including refusals or cancellations of residence permits, has become more practicable.

Reasons for concern

As there is no form of registration of partnership foreseen in Latvian law other than marriage, the State also does not recognise a civil partnership or same sex marriage registered abroad. This leads to non-applicability of *Immigration Law* provisions on family reunification in cases of registration of a partnership that is not an opposite-sex marriage.

Legal recognition of same-sex partnerships and recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

The Latvian *Constitution* contains a declarative provision "The State shall protect and support marriage, the family, the rights of parents and rights of the child. [..]".[132] The *Latvian Civil Law* provides an explicit prohibition of marriage between persons of the same sex.[133] There is no form of legal registration of partnership in Latvia other than marriage, which means that same-sex partnerships are not legally recognised. Same-sex couples consequently have no rights similar to family rights, e.g., to succession and filiation, nor to social protection as legally registered families. The *Civil Law* also stipulates that persons who are not married may not adopt a child together.[134]
Moreover, on 15 September, 2005, in a session of the Parliament, the Latvijas Pirmā partija (the First Party of Latvia) proposed amending the above provision of the *Constitution* with an explanatory sentence stipulating that marriage is a union between man and woman. The parliamentarian who presented the proposal pointed out that gays and lesbians have a particularly strong lobby in Europe, and many European countries do not understand the issue of the substance of marriage, but in Latvia such an attitude could cause a demographic crisis, even the threat of demographic catastrophe. The proposed amendment was submitted to Parliamentary commissions. On 26 October, 2005, the Parliament adopted (out of 100 votes - 65 for, 5 against, 20 abstentions) in the first reading a proposal for amendments to the Constitution, "The State shall protect and support marriage – a union between man and woman, the family, the right of the parents and child."
Although a qualified majority (2/3 of deputies shall be present, and 2/3 from them shall vote 'for') of votes is necessary for amending the *Constitution*, there is noticeable support for the proposal in the Parliament, so that presumably the amendments will be adopted without difficulty.
Transsexuals can exercise their right to marry according to the gender indicated in their passport. Although the criteria for recognition of change of gender are not set by law, if a person who has completely changed gender medically also has a medical certificate in confirmation, then the Civil Registry Office may change that person's gender in the Birth Register[135] and subsequently issue a new passport.[136]

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[132] *Latvijas Republikas Satversme* [*Constitution of the Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, with amendments announced to 7 October 2004, Section 110.
[133] *Civillikums. Pirmā daļa. Ģimenes tiesības* [*Civil Law. Part I. Family Law*], adopted 28 January 1937, in version of 25 May 1993, in force since 1 September 1993, with amendments announced to 24 March 2005, Section 35.
[134] Ibid., Section 166.
[135] *Civilstāvokļa aktu likums* [*Law on Acts of Civil Status*], adopted 17 March 2005, in force since 15 April 2005, Section 32 Other amendments to the Birth Register:

Reasons for concern

Several expressions from members of the Parliament during debates concerning proposals for amending the *Constitution* in some cases could be evaluated as homophobic hatred. Homosexual people were compared with monkeys and zoophiles. With elected politicians setting such examples de facto legitimizing disrespectful and even hateful speech towards sexual minorities, there is concern that intolerance towards LGBT is growing rather than declining in society at large.

Other relevant developments

Positive aspects

The new *Law on Acts of Civil Status*, adopted in 2005[137], no longer contains the requirement included in the previous law that those who are planning to register a marriage should declare a confirmation about their state of health, issued by a medical practitioner working in a State or municipal institution[138]. In practice, the former provision was supplemented by various regulations and instructions making the procedure cumbersome, especially in cases of marriage to an alien.

Reasons for concern

Registration of marriages may be performed by the Head of the Civil Register Office and also by the eight[139] confessions to whom the state has delegated this function.[140] Such regulation could constitute discrimination towards other religions, especially non-Christian, although *Reliģisko organizāciju likums* (the *Law on Religious Organisations*) forbids direct or indirect infringement of people's rights or creation of privileges, as well as interference with feelings or instigating hatred because of attitudes towards religion. Indeed, the *Constitution* declares, "Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State".[141]

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(1) The Birth Register should be amended if the child's surname is changed, if either of a child's parents changes their surname, name, record of nationality or citizenship, identity number, as well as if the gender of the child is changed, if the child is adopted, if the record about a child's mother or father is annulled by a court decision, if the court has terminated adoption, and if a foundling's parents become known

[136] Information provided by the Civil Registry Office on 23 November 2005. However, there is no information about such cases since 1998, when a person after a sex-change operation applied to the Riga Civil Registry Office for change of her birth record. This, however, was rejected on the ground that partial feminisation cannot be regarded as a change of sex and that a certificate signed by a medical practitioner cannot be viewed as a basis for amendments to birth records. Following involvement of the National Human Rights Offices' lawyers in the case, a change to the person's birth record was achieved.

[137] *Civilstāvokļa aktu likums* [*Law on Acts of Civil Status*], adopted 17 March 2005, in force since 15 April 2005.

[138] *Likums Par civilstāvokļa aktiem* [*Law on Acts of Civil Status*], adopted 21 October 1993, in force from 28 October 1993, annulled 15.04.2005, Section 14 (2) 4.

[139] Representatives of the Lutheran, Catholic, Orthodox, Old-Believer, Methodist, Baptist, Seventh-day Adventist, and Judaist confessions.

[140] *Civillikums. Pirmā daļa. Ģimenes tiesības* [*Civil Law. Part I. Family Law*], adopted 28 January 1937, in version of 25 May 1993, in force since 1 September 1993, with amendments announced to 24 March 2005, Section 53.

[141] *Latvijas Republikas Satversme* [*Constitution of the Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, with amendments announced to 7 October 2004, Section 99.

Article 10. Freedom of thought, conscience and religion

Incentives and reasonable accommodations provided in order to ensure the freedom of religion, including the right to conscientious objection

Legislative initiatives, national case law and practices of national authorities

Although Latvian legislation does not legally define traditional and non-traditional or new religions, religions are distinguished by several laws and government authorities. This has some impact on the right to ensure the freedom of religion of those whose religion is not perceived as the traditional.

In state and municipal schools, educators from five[142] confessions can teach the Christian religion, according to the education programme approved by the Ministry of Education and Science.[143] Public schools of national minorities also have the right to teach religion of the relevant minority according to the rules of the Ministry of Education and Science. However, the state funds only Christian religion - or ethics lessons, if the child does not opt for religion lessons. Another function – registry of marriages – is delegated by the state to eight[144] confessions.[145] In turn, the representatives of nine confessions[146] have the right to fulfil the chaplain service (religious service in the armed forces, places of detention, medical care institutions etc.). Jehovah's Witnesses[147] have also requested the right to visit prisons, but their request has been turned down.

Christmas, Good Friday, and Easter are official state holidays in Latvia. The government during recent years has several times discussed but not supported the call to accord the status of an official holiday also to the Orthodox Christmas.[148]

There are no legal norms that regulate use of religious symbols in schools. However, all schools have house rules that may include a dress code. No cases of schools banning the use of religious symbols in schools have been identified.

According to officials of the Ministry of Education and Science, no incidents pertaining to the use of religious symbols in schools were reported in 2005.[149]

The *Law on Religious Organisations*[150] stipulates that religious organisations may own movables and real estate. Real estate of religious organisations, which is not used for the purpose of commercial activity, is exempted from real estate tax[151]. According to data from 2004, the following religious organisations owned churches: Lutherans, Catholics, Orthodox,

[142] Educators from the Evangelical Lutheran, Catholic, Orthodox, Old-Believer and Baptist confessions.
[143] *Reliģisko organizāciju likums* [*The Law on Religious Organisations*], adopted 7 September 1995, in force since 10 October1995, with amendments announced to 26 September 2002. *Izglītības likums* [*The Education Law*], adopted 29 October 1998, in force since 1 June 1999, with amendments announced to 13 February 2004.
[144] Representatives of the Lutheran, Catholic, Orthodox, Old-Believer, Methodist, Baptist, Seventh-day Adventist and Judaist confessions.
[145] *Civillikums. Pirmā daļa. Ģimenes tiesības* [*The Civil Law. Part I. Family Law*]. Adopted 28 January 1937, in force since 1 September 1993. In edition of 25 May 1993, with amendments announced to 7 April 2005.
[146]Representatives of the Lutheran, Catholic, Orthodox, Old-Believer, Methodist, Baptist, Seventh-day Adventist, Judaist and Pentecostal confessions.
[147] In 2004, 12 parishes of Jehovah's Witnesses were officially registered in Latvia.
[148] Daily Newspaper *Latvijas Avīze*. *Pareizticīgo Ziemassvētkus oficiāli nesvinēsim* 27 December 2005.
[149] Information provided by an official of the Mnistry of Education and Science on 10 October 2005.
[150] *Reliģisko organizāciju likums* [*Law on Religious Organisations*], adopted 7 September 1995, in force since 10 October 1995, with amendments, announced to 26 September 2002. Section 16.
[151] *Likums Par nekustamā īpašuma nodokli* [*Law on Real Estate Tax*], adopted on 4 June 1997, in force since 1 January 1998, with amendments announced to 9 November 2005. Section 1(2)4.

Old Believers, Baptists, Seventh Day Adventists, Pentecostal, the New Age, Salvation Army, Methodists.

Positive aspects

In 2005 a new chapel for use of believers belonging to all confessions was opened in the Central Prison in Riga – one of the biggest prisons in the country. Up to then the Central Prison had only a chapel for Orthodox believers.[152]

Reasons for concern

For several years a discussion on building a Mormon meetinghouse has been taking place in Liepaja – one of the largest towns in Latvia. It is planned to build the meetinghouse in the centre of the town, not far from churches of other confessions and public schools. In the first public discussion in 2004, the meetinghouse project was denied; however, opinions mostly were expressed in regard to the presence of the Mormon Church in Liepaja, not to the architecture of the project. In 2005 repeated public discussion was announced, and this time most opinions were positive towards building the meetinghouse. Also the City Development Committee of Liepaja City Council accepted the implementation of the project. However, at the end of 2005, the Liepaja City Council denied the project again, basing the view on the planned location of the meetinghouse close to two public schools and an art school.[153]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

After conclusion and ratification in 2002 of the Concordat between Latvia and the Holy See regarding the status of the Latvian Roman Catholic Church, the question about possible discrimination towards other religious confessions was raised by putting the Catholic Church in a privileged position, and agreements with other Christian confessions – Evangelical Lutheran, Orthodox, Old-believers, Baptist, Methodist, Adventist, as well as with the Jewish religious congregation were concluded (agreements with other faiths, e.g., Islam, have not been discussed). These agreements were almost identical; however, they differed from the agreement between Latvia and the Holy See and contained disputable provisions, such as an obligation of the State to agree with the respective confession before adopting a law which can affect this confession; the right of the confession to base decisions on employment on the person's religious belief and readiness and ability to act loyally and in good faith towards the confession; as well as provisions regulating property issues differently from the general law. Identical draft laws legalising these agreements between the State and the churches - except the agreement with the Jewish religious congregation - were submitted to the Parliament on 8 June 2004, and delivered to the Legal Commission of the Parliament on 10th June 2004.
Serious criticism focused on non-compliance with the hierarchy of legal norms, as they stipulate that if the agreements contain other provisions than those in the legislative acts of Latvia, then the provisions of the agreements shall apply. The Parliamentary Law Committee then decided to elaborate six separate laws on the relationship between the respective church and the State instead of legalising all agreements by law. The text of the new *Draft Laws* was adjusted with all confessions by the end of the year, except the Old-believers, although they had still not been submitted to the Parliament.[154]

[152] National News Agency LETA, 30 December, 2005.
[153] National News Agency LETA, 2 November 2005, 17 November 2005.
[154] National News Agency LETA, 22 March 2005, 20 September 2005.

Article 11. Freedom of expression and of information

Freedom of expression and of information

Legislative initiatives, national case law and practices of national authorities

A frequently addressed issue, as in previous years, was the public debate over journalistic freedom versus protection of a person's honour and dignity. In 2005, debate focused around the application of *Criminal Law*[155] (Sections 156, 157, 158)[156], which criminalizes defamation and violation of a person's honour. In March 2005, for the first time a journalist was subject to criminal prosecution under one of these provisions of the *Criminal Law*. The case concerned a journalist from the regional newspaper *Brīvā Daugava*, who ironically characterized the activities of a local policeman as those intrinsic to Robin Hood and attributing to him the name of this English hero. The Jēkabpils District Court found that such a comparison violated the honour and dignity of the policeman and contravened Section 158 of the *Criminal Law* and sentenced the journalist with duty to apologize publicly.[157] The journalist lodged an appeal, and in June 2005 the Zemgale Regional Court reversed this decision.[158] Further, the Supreme Court (the cassation instance) in its decision did not find the activities of the journalist to be defamatory or violating the honour of the policeman.[159] This case raised extensive public debate about the need to decriminalize defamation and violation of a person's honour.

In September 2005, the Parliament amended the *Law on the Press and Other Mass Media*[160] by imposing an obligation on mass media editors to examine claims of physical or legal persons about violation of their honour and dignity in the respective media. If the mass media cannot prove that the statement published is true, then they should withdraw it, while in other cases of violation of a person's honour or dignity an excuse must be published.

Reasons for concern

Section 158 of the *Criminal Law* still provides that for intentional defamation or violation of a person's honour in the mass media, an individual may be imprisoned for up to one year. An individual may be found guilty under this article for the offence of defamation not only for having disseminated false facts, but also if an opinion expressed is found to violate the honour of the person concerned.
There is no professional media organization or media ombud to examine complaints about defamation cases in the media and other possible violations of media ethics. This results in the situation that in case of dispute all such complaints are examined by the courts.

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[155] *Krimināllikums* [*Criminal Law*], adopted 17 June 1998, in force since 1 April 1999, with amendments announced to 20 October 2005.
[156] Section 156. Goda aizskaršana [Violation of Honour] (prohibits intentional violation of honour or demeaning the dignity of a person orally, in writing, or by act); Section 157. Neslavas celšana [Defamation] (prohibits intentional distribution of fictional statements, knowing them to be untrue and defamatory of another person, in printed or otherwise reproduced material, as well as orally, if such has been committed publicly (defamation)); Section 158. Goda aizskaršana un neslavas celšana masu saziņas līdzeklī [Violation of Honour and Defamation in the Mass Media] (prohibits intentional violation of honour and defamation in the mass media).
[157] Jēkabpils rajona tiesas 2005.gada 29.marta spriedums krimināllietā Nr. K16-15/05.
[158] Zemgales apgabaltiesas 2005.gada 29.jūnija spriedums krimināllietā Nr. KA 06-122/05.
[159] Latvijas Republikas Augstākās tiesas Senāta Krimināllietu departamenta 2005. gada 16. augusta lēmums krimināllietā Nr. 13210022004 SKK-01-445/05.
[160] *Likums Grozījumi likumā Par presi un citiem masu informācijas līdzekļiem* [*Law Amendments to the Law on the Press and Other Mass Media*], adopted 26 October 2005, in force since 25 November 2005, Section 8.

Media pluralism and fair treatment of the information by the media

Legislative initiatives, national case law and practices of national authorities

Hate speech in Latvia has in the past tended to be based on prejudice based on race and ethnicity (especially different ethnic origin or skin colour) or religion (especially anti-Semitic statements), both in the Latvian- and Russian-speaking communities. However, in 2005 sexual minorities also became frequent targets.
Because of complaints lodged, the police have become more aware of the issue of hate speech compared with previous years, at least the incitement to racial and ethnic hatred. However, only a few investigations of potential incitement initiated in 2005 have led to cases being brought to Court and only one of the investigations resulted in a conviction of six month imprisonment on condition.
This is largely attributed both to the interpretation and the text of Section 78 of the *Criminal Law*, which requires proof of intention to incite racial or national hatred in order to obtain a conviction. In addition, section 78 of the *Criminal Law* does not provide protection against hate speech to all vulnerable groups, but only to national and racial minorities. The *Criminal Law* (Article 150)[161] also contains a separate provision protecting religious minorities (although there never has been a case investigated or prosecuted under this section). However, other groups subject to hate speech, such as sexual minorities, cannot invoke any of these provisions of the *Criminal Law* to obtain protection.

The *Civil Law* does not directly provide compensation for non-pecuniary damage for victims of hate speech. However, some years ago in two cases[162] the victims of racist speech successfully claimed non-pecuniary damages under the provisions of the *Civil Law* protecting honour and dignity (Section 2352a).[163]

Reasons for concern

In practice, 2005 has seen a rise in the occurrence of hate speech in the public sphere, but there has been little or no political initiative to counter this trend, or to analyze the potential need for legislative amendments. A more efficient means should be found for restricting hate speech and protecting all vulnerable groups within society against such speech. In some cases this requires amendments to the existing *Criminal Law*, while in others results might be achieved by a wider interpretation of existing incitement norms. Besides, the victims of hate-inciting speech should be more aware of, and able to use, civil law avenues to obtain compensation for harm suffered. The *Code of ethics* of parliamentarians should regulate hate speech by members of Parliament and such cases should immediately be condemned by the Parliament.

[161] Ibid., Section 150, Violation of Equality Rights of Persons on the Basis of their Attitudes Towards Religion (prohibits direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion, excepting activities in the institutions of a religious denomination, or committing violation of religious sensibilities of persons or incitement to hatred in connection with the attitudes of such persons towards religion or atheism)
[162] Latvijas Republikas Augstākās tiesas Civillietu tiesu palātas 2003. gada 9. aprīļa spriedums lietā PAC-244; Rīgas Latgales priekšpilsētas tiesas 2003. gada 8. septembra spriedums lietā Nr. C29240503
[163] *Civillikums. Ceturtā daļa. Saistību tiesības* [*Civil Law. Part Four. Liability Law*], adopted 28 January 1937, in force since 1 March 1993, with amendments adopted to 12 December 2002

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In 2005 intensive discussions among media representatives and parliamentarians focused around the proposed draft *Law on the Audio-visual Media* strengthening the independence of public radio and television as well as changing the existing system of control of the audio-visual media.

The new draft law, which would regulate the work of the audio-visual media, was proposed in order to substitute the outdated and widely criticised current *Law on Radio and Television*, adopted in 1995. One of the major changes introduced by the new draft relates to the system of funding of public radio and television. The new draft law provides for a license fee instead of subsidies from the State budget to public radio and television. This would make the public audio-visual media more independent from the influence of politicians and the need to broadcast programs funded by state agencies, in addition to allowing public radio and television to plan its work on a long-term basis instead of annual subsidies. However, the majority of parliamentarians have not been ready to introduce a license fee, on the basis that such a measure could deprive low-income social groups of access to the audio-visual media.

The new draft law would also change the system of control of the audio-visual media. Its existing monitoring body - the National Radio and Television Council (NRTC) - is now in a conflict of interest situation because it monitors the work of the audio-visual media, both state and private, and at the same time the NRTC is a shareholder in public radio and television. Besides, the selection procedure and composition of the members of the NRTC is entirely determined by political parties. Indeed, it is usually former members of parties constituting the governing coalition, or nominees of these parties, who have been appointed to the NRTC. The new law provides for wider representation of society in the NRTC. However, disagreements within the Parliament and the very large number of proposals for the new draft statute have brought adoption of the new law close to stalemate.

In November 2005, restrictive amendments were adopted to the *Law on Meetings, Processions and Pickets*[164], which were highly debated in society and opposed both by non-governmental human rights organizations, the NHRO and the political opposition in the Parliament. While these amendments mainly restrict freedom of assembly and association, the application of these norms might also encroach on freedom of expression. The previous text of the law defined picketing as an activity where no address can be made. However, the new amendments impose an absolute ban on expression of slogans and speech during pickets. The new amendments also require the organizers of meetings to agree with the municipal authorities about the use of microphones and other sound intensifying devices.

Positive aspects

An open debate has started, with general agreement among the media and parliamentarians that the existing system for monitoring the audio-visual media should be changed, in particular the significant influence of nominees of political parties. However, disagreements remain about the precise model and composition of a new control institution.

In November 2005 the NRTC should have appointed a new director for Latvian State Radio. One of the candidates with best prospects for nomination to this post had previously taken part in local municipal elections as a candidate for the second biggest party in the Parliament. His candidacy met with objections from 23 leading officials of Latvian State Radio, including

[164] *Likums Grozījumi likumā Par sapulcēm, gājieniem un piketiem* [*Law Amendments to the Law on Meetings, Processions and Pickets*], adopted 3 November 2005, in force since 23 November 2005.

the directors of several channels. Despite the fact that the system for selecting members of NRTC is dominated by political parties, the majority of its members refused to appoint this person as director of Latvian State Radio, taking into account protests from employees.

Reasons for concern

The financial independence of the public audio-visual media should be strengthened and the system for control improved by diminishing the role of politicians in the control system.

New amendments to the *Law on Assemblies, Processions and Pickets* may lead to illegitimate restriction of the freedom of expression.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

Legislative initiatives, national case law and practices of national authorities

The *Constitution* stipulates "The State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets."[165]
However, the provisions of the *Law on Meetings, Processions and Pickets*[166] set limits on this freedom, stating that an application should be submitted to the municipality of the territory where the event will take place, and that the municipality may deny permission to hold an event on legitimate grounds.[167]
If such grounds are lacking, then the municipality should issue "a note confirming that the municipality holds no objections against the event"[168]. The event may not be organized if the organizers have not received the note. The difference between this necessary note and permission is hard to see.
The *Law on Meetings, Processions and Pickets* was amended in 2005[169]. To a great extent this was a reaction to particular events, such as when activists from the political organization *Dzimtene – Krievu nacionālā savienība*[170] organized protest action during the commemoration march for Latvian WWII Legionnaires on 16 March, organized by the national-radical youth organization *Klubs 415*, or when the Headquarters for the Defense of the Russian Language Schools tried to interfere with the celebration of Independence Day on 4 May, as well as previous meetings against the educational reform implementing bilingual education in schools following minority education programmes.
The amendments impose basic restrictions on freedom of assembly. They provide a more cumbersome procedure for obtaining permission for the event: the application should be submitted five working days prior to the event, enclosing agreements with persons who will be responsible for order during the event, as well as written consent of the owner of private land, if the event is to take place on such. The municipality must issue a refusal or permission not later than 48 hours before the event. However, if a refusal is appealed to the court, then

[165] *Latvijas Republikas Satversme* [*Constitution of the Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, with amendments announced to 7 October 2004, Section 103.
[166] Likums *Par sapulcēm, gājieniem un piketiem* [*Law on Meetings, Processions and Pickets*], adopted 16 January 1997, in force since 13 February 1997, with amendments announced to 22 November 2005.
[167] Legitimate grounds for prohibiting an assembly provided by law are mainly related to public security, e.g., prohibitions on making calls against the independence of Latvia, issuing calls for the violent overthrow of state power, to propagate violence, national and racial hatred, open Nazi, Fascist and Communist ideology, war propaganda, glorifying violations of the law or calls to violate the law.
[168] Ibid., Section 15.
[169] *Likums Grozījumi likumā Par sapulcēm, gājieniem un piketiem* [*Law Amendments to the Law on Meetings, Processions and Pickets*], adopted 3 November 2005, in force since 23 November 2005.
[170] *Fatherland – Russian National Union*.

this should be heard within three days, leaving a gap that could potentially, depending on court practice, make effective appeal more difficult if the refusal is issued lat and the court schedules the hearing after the planned time of the event. At the same time, a positive aspect of the amendments makes the court decision effective immediately upon adoption. Permission is now also necessary for pickets, if these disturb traffic or pedestrians. During pickets, not only speeches, but also slogans and rallying-calls are banned; the use of microphones and megaphones is allowed only with consent of the municipality. Not only the organizer, as before, but also the facilitator of the event, the assistant facilitator, and assistants providing order during the event, should not be a person previously subject to an administrative penalty for violating procedures for organizing and processing meetings, processions and pickets or for violating regulations on the formation or closure of non-governmental organizations, or for lesser hooliganism, or for malicious resistance to legitimate demands of a police officer. In addition, the municipality can issue regulations on the order of organization of events in particular places. Counter-processions, meetings and pickets can be forbidden at the discretion of the municipality in cases stipulated by the law. Meetings, pickets and processions may not take place closer than 50 meters from various state institutions, including municipal buildings, police stations, and prisons.

The Parliament adopted the amendments under its urgent procedure (in two readings, by qualified quorum).

As before, in 2005 a number of fines were imposed for breaching regulations on holding meetings and pickets. Several such administrative penalties were challenged in the Administrative court. The court has received a number of appeals regarding administrative fines imposed on activists from the Headquarters for the Defense of Russian Language Schools. The results of these appeals vary. The Administrative District Court decreased the administrative fine imposed on Mr. Gilmans, an activist from the Headquarters, for causing disorder during the Commemoration march on 16 March from LVL 80 (approx. 110 EUR) to LVL 30 (approx. 40 EUR).[171] However, when the Administrative District Court reviewed the appeal submitted by Mr Kotovs and Mr Buzajevs, also opponents of minority education reform, the Court did not change the decision on fines issued by the Riga City Central District Court.[172] In December 2004, the Administrative District Court reviewed an appeal submitted by Mr Petropavlovskis, member of the Headquarters for the Defense of Russian-language Schools, and annulled an administrative fine levied for holding a protest event in an area within a radius of 50 meters from the Cabinet of Ministers.[173]

Positive aspects

In practice, against a history of few protest events, their growing number has generally met with acceptance by the authorities, as witnessed by requests for organising pickets and meetings submitted by a broad range of organizations and for various reasons and the permissions issued. The number of participants ranged from a few individuals to several thousand.[174] The Riga municipality issued required notes for protest events in 226 cases in 2005 (out of a total of 254 requests). The news services also increasingly reported on pickets and meetings held in towns other than the capital – in Liepāja, Daugavpils, Rēzekne, and Jelgava.

Since the legitimacy of the grounds for denying a protest action is not always well understood, especially on politically sensitive issues, it can be seen as a positive development that denials have for the first time in 2005 been challenged in administrative courts. This should lead to a development of case law that would interpret more clearly the limits to the restrictions on freedom of assembly.

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[171] The National News Agency LETA, www.leta.lv, 8 Dec 2005.

[172] Administratīvās Rajona tiesas 2004. gada 13. decembra spriedums lietā Nr. 1-27076104/5 un 2004. gada 2. decembra spriedums lietā Nr. 1-27091104/08.

[173] The National News Agency LETA, www.leta.lv, 13 December 2004.

[174] The National News Agency LETA, www.leta.lv, archive.

Reasons for concern

On 7 May several political and non-governmental organisations held protest events against the external policy of the USA during a visit by US President George W. Bush. However, the Riga City Council allowed protest events to be organized only in the suburbs of the city, although initially they were planned in the centre of the capital.

At the beginning of July 2005, the Latvian Gay and Lesbian Youth Support Group obtained permission from the Riga City Executive Director to organise a LGBT Pride March through Old Riga. Two days before the event, the Riga City Executive Director annulled his permission for the LGBT Pride March, explaining that his decision was not discriminatory and was purely motivated by security reasons[175]. This followed strong political pressure, mainly from the Latvijas Pirmā Partija (the Latvian First Party), and after a threat to organise public disorder from the radical nationalist organisations *Club 415* and Union of National Force, as well as expressions by the Latvian Prime Minister that he could not accept a parade of sexual minorities in the middle of the capital next to the main Cathedral, as Latvia is a state based on Christian values. On the same day, the Gay and Lesbian Youth Support Group submitted a complaint to the Administrative Court against the Riga City Executive Director's annulment of the previous permission for the Pride March, and a day before the planned event the Administrative Court overturned the decision of the Riga City Executive Director to annul the permission, finding it unjustified and discriminatory.[176]
However, the Riga Pride took place in a highly homophobic atmosphere, with real threats of violence reported and order maintained only by the strong presence of the police.

It should be noted, however, that also in 2005 in Riga the required notes were not issued in 28 cases out of 226.[177]
Moreover, often when permission notes to hold an event are not issued the adequacy of the grounds of denial, which puts limits on this fundamental freedom, need to be questioned. So far, however, international court practices and precedents, which interpret legitimate grounds for restrictions on the freedom of assembly very narrowly, have not been sufficiently taken into account.
The amendments to the *Law on Meetings, Processions and Pickets* adopted as a resort in the particular political situation, have an essential impact on the freedom of assembly. In practice, they eliminate the chance to react promptly to a particular situation, as the time limit for submitting the application is not less than five days, even in the case of pickets.

Another reason for concern is the restriction with the new law amendments of the possibility for counter-demonstrations. During the adoption of such restrictions, there were very few voices challenging the notion that two demonstrations with opposing messages should not be allowed simultaneously.

Another issue is the prohibition of Soviet socialist symbols during public events. Since the adoption of this prohibition, the problem has existed in practice, when at commemorative gatherings of WWII veterans from the Soviet army – now elderly people – some persons wear their old uniforms. Although this is a problem recognized by law enforcement, who in practice have not enforced this aspect of the law, but the attempt in the recent amendments to

[175] However, in explanation on cancellation the LGBT Pride March submitted by the Riga City Council to Court the arguments were explicitly the overwhelmingly negative reaction by callers and letter writers, by the Prime Minister as well as the main Church denominations, and security issue added on, based on security police evaluation of possible provocations by some groupings.
[176] Administratīvās rajona tiesas 2005. gada 22. jūlija spriedums lietā Nr. A42349805 A3498-05/19, available at website http://www.pride.lv/raksts-42
[177] Letter from Ē. Škapars, Riga City Executive Director, No. 4-21/RD-05-6004nd of 15 December 2005.

deal with this issues by eliminating the prohibition to wear uniform-like dress during such public events. However, since the uniforms include Soviet insignia, the issue is still not resolved.

Also, a main concern is the tendency for parliamentarians (and to some extent law enforcement institutions) to respond to the growing number of protest actions – espcially when on politically sensitive issues (national questions, rights of sexual minorities) by proposing restrictions in the laws.

Freedom of association

Legislative initiatives, national case law and practices of national authorities

Freedom of association, including rights to establish and be a member of trade unions, are guaranteed by Section 102 of the *Constitution*.[178]
2005 was the last year when the *Law on Public Organisations and Associations*[179] regulated the work of NGOs. By 1 January 2006, all existing public organizations should be reregistered in the Associations and Foundations Register, and continue their work under the *Law on Associations and Foundations*[180]. The goal of the new law is "to foster activities and long-term development of associations and foundations, as well as to promote the strengthening of democracy and civil society".
An association can be established by physical or legal persons, and the minimum number of founders (and members) is two. The right to initiate a court case for closing an association is held by fewer institutions than in the previous law: this can be done by a prosecutor, or the State Revenue Service if an association has received a warning and within a specified period of time has not eliminated violations, or within a year after the warning repeatedly violates the law, especially with regard to its public activities. In this case, the court can terminate the association's activities, if these are not in compliance with the *Constitution* or the law, or if commercial activities have become the main activities of the association; or if its board has not applied for closure of the association in accordance with the law, or in other cases foreseen by the law. Unlike an association, a foundation's activities can also be terminated by the court if its founding goal has been achieved, or if achievement of this goal has become impossible (in this case the foundation's board applies to the court to terminate activities), as well as if the foundation's activities do not correspond to the goals specified in statute (observing the warning procedure mentioned above).
The second part of the *Law on Public Organizations and Associations* continues to regulate the work of political organizations, registered in the Register of Political Parties. However, in 2005 a new law on political parties was proposed for adoption by the Parliament and passed its second reading on 1 December. The draft law provides that founders of a party may only be citizens of Latvia who are at least 18 years old. The minimum number of founders should be 200.[181] Citizens from other EU member states residing in Latvia and Latvian non-citizens may be members of a party; however, Latvian citizens should compose not less than 200 members, but where the number of members is higher than 400 then not less than one half of all members.[182]

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[178] *Latvijas Republikas Satversme* [*Constitution of the Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, with amendments announced to 7 October 2004. Section 102. "Everyone has the right to form and join associations, political parties and other public organisations."
[179] *Likums par Sabiedriskajām organizācijām* [*Law on Public Organisations and Associations*], adopted 15 December 1992, in force since 29 December 1992, with amendments announced to 8 April 2004.
[180] *Biedrību un nodibinājumu likums* [*Law on Associations and Foundations*], adopted 30 October 1993, in force since 1 April 2004, with amendments announced to 7 October 2004.
[181] *Likumprojekts Politisko partiju likums* [*Draft Law on Political Parties*], Reg. No 1027, submitted to the Parliament on 25 November 2004, passed the 2nd reading on 1 December 2005. Section 12.
[182] Ibid., Section 26.

In November 2005, 64 political organisations (parties) and associations were registered[183]. Of these, 8 were represented in the Parliament.
Activities of trade unions are regulated by the *Law on Trade Unions*. The law stipulates that residents of Latvia have the right to register a trade union, which is subject to registration if it unites not less than 50 members or not less than one quarter of those working in an institution, profession, or field. In November 2005, 145 trade unions were registered in Latvia.[184]

Positive aspects

In practice, the activities of non-governmental organisations are rarely terminated, while registration is rarely rejected. In March 2005, the organization NBP was registered. In fact, this is the successor to the National Bolshevik organisation *Pobeda* (*Victory*), closed by a decision of the Riga Vidzeme district court in 2003. As the Security Police did not prove that real security or other potential risks to democracy could emerge from registration of the organization, the Register of Enterprises did not reject the registration, because of lack of legitimate grounds to do so, despite sharp objections by politicians.[185]
The reaction of Latvian state institutions and society in the case of the Headquarters for the Defence of Russian Language Schools could be evaluated positively That is, despite the institutions' often openly declared dislike towards the Headquarters, there were no attempts to dismantle this unregistered association, thus in practice respecting freedom of association not only for officially registered organizations. However, this tolerance may be short-lived, as attempts at elaborating legal amendments to restrict the freedom of action of non-registered entities have been discussed by various parliamentarians.
The other positive aspect is abolition of some restrictions on forming trade unions. Until the end of 2004, the *Law on the Police* forbade police officers from forming trade unions. The Parliament abolished the restriction in early 2005. This followed calls over a number of years by the Latvian Free Trade Unions' Association, as well as the initiative taken by police officers in coordination with the International Union of Police associations, and a case submitted to the Constitutional Court by the National Human Rights Office. The law now allows formation of police officer trade unions from 1 January 2006.[186] However, border guards are still not allowed to form trade unions.[187]

Reasons for concern

Participation in non-governmental organizations is rather low. According to a study on the attitude of society towards NGOs, less than 20% of the population is involved in their work.[188] This tendency has also proved true during re-registration of public organizations as associations and foundations. Up to 1 December, 2005, 2378 associations and 250 foundations were registered compared with about 8000 public organizations registered before.[189]
If the provisions of the new draft law on political parties that only citizens may be founders of a party come into force, then compliance with Article 16 of the *European Convention on*

[183] The Register of Enterprises homepage http://www.ur.gov.lv/index.php?t=3&a=24&v=lv#2
[184] The Register of Enterprises homepage http://www.ur.gov.lv/index.php?t=1&z=271&v=lv
[185] The National News Agency LETA, 9 March 2005; 10 March 2005.
[186] *Likums Grozījumi likumā Par policiju* [*Law Amendments to the Law on the Police*], adopted 14 April 2005, in force since 10 May 2005, Section 5, Transitional clause.
[187] *Robežsardzes likums* [*Law on the State Border Guard*], adopted 27 November 1997, in force since 1 January 1998, with amendments adopted to 25 November 2005.
[188] Pētījums *Nevalstiskās organizācijas Latvijā: sabiedrības zināšanas, attieksme un iesaistīšanās* [*Study on Non-governmental organizations in Latvia: Knowledge, Attitude and Involvement of Society*] by Kristīne Gaugere, Ivars Austers, 2005. The full text of the study is available on website http://www.politika.lv/index.php?id=110833&lang=lv
[189] *NVO un valsts. Vai sabiedrotie?* [*NGOs and the State. Allies?*] by Guntars Laganovskis, newspaper *Latvijas Vēstnesis* [*Herald of Latvia*], 1 December 2005

Human Rights may become open to question, especially in light of the participation in local elections by citizens of other EU member states who reside in Latvia but who would continue to be prevented from participating in the founding of a party.
Although Latvian trade unions continue to develop on a practical level, they are not yet an effective mechanism for protecting members' interests.

Article 13. Freedom of the arts and sciences

Freedom of the arts

Legislative initiatives, national case law and practices of national authorities

In 2005 the state increased funding both for artistic and cultural projects as well as raising the salaries of performers and other professionals in this field. Insufficient funding of these professions has been a long-term problem, which made it impossible for many professionals in this area to devote themselves fully to their chosen profession.

The State Culture Capital Foundation (SCCF) administers the greater part of state funding for artistic and cultural projects. It is a non-commercial public foundation composed of experts in different branches of art and culture. Cultural projects are evaluated on the basis of free competition

Positive aspects

In comparison with previous years, in 2005 the state devoted substantial budgetary contributions to the arts and culture as well as engaging in dialogue with professionals in this field about ways and means to overcome insufficient funding.

Reasons for concern

Increased state funding for the arts and culture should be further strengthened on a long-term basis but independently of the changing priorities of political groups coming to power.

Freedom of research and academic freedom

Legislative initiatives, national case law and practices of national authorities

In April 2005, the Parliament adopted a new *Law on Scientific Activities*,[190] which provided for an annual increase of budgetary contributions for science, determined the basic principles of scientific research and academic freedom, the system of recognition of qualifications, and established the competence of the Latvian Council of Sciences.
In August 2005, amendments were made to the *Law on Higher Educational Institutions*.[191] In order to avoid fragmentation of funds devoted to science among different types of institutions of higher education as well as to integrate education and research, these amendments increased the requirements for institutions of higher education to qualify as universities. At the same time, the state granted additional funding for scientific research in institutions that meet these requirements. In order to improve the quality of higher education, the law also restricts the possibilities of individuals to hold simultaneously elected academic positions in different institutions of higher education, which was a widespread practice due to insufficient

[190] *Zinātniskās darbības likums* [*Law on Scientific Activities*], adopted 14 April 2005, in force since 19 May 2005.
[191] MK *635. noteikumi Grozījumi Augstskolu likumā* [*Regulation No. 635 Amendments to the Law on Higher Educational Institutions*], adopted 23 August 2005, in force since 31 August 2005.

funding of academic staff. Increased requirements to obtain university status and restrictions on holding an elected academic staff position in different institutions simultaneously might negatively impact some private institutions of higher education, which might lose university status due to lack of sufficient qualified academics on their permanent academic staff.

Positive aspects

An annual increase of budgetary contributions for science established in the new *Law on Scientific Activities* could be evaluated as an achievement in this sphere.

Article 14. Right to education

Access to education

Legislative initiatives, national case law and practices of national authorities

Tensions remained, but were decresed, over the goals and methods of implementing minority education reform, whose aim is the switch to the Latvian language as the main language of instruction in secondary schools from the 10th grade. (See Article 22.)

Two cases were examined by the Constitutional Court related to access to education. The first of these was on non-compliance with Article 91 of the *Constitution* of Article 9.3 of the *Transitional Provisions of the Law on Education*[192]. These prescribe that, "as of 1 September 2004 studies starting from the tenth form of state and municipal secondary education institutions which implement educational programmes for minorities, and starting from the first academic year of the state or municipal professional education institutions, shall be commenced in the state language in accordance with the State standard on public secondary, vocational and professional education. This provides that at least 3/5 of the total number of classes shall be taught in the State language (Latvian)". The next case was on the provision of the *Law on Education* that lays down: "the state and municipalities take part in financing private educational institutions in accordance with respective regulations of the Cabinet of Ministers, if they provide state-accredited educational programmes in the State language [Latvian]". (See Article 21.)

Amendments to the *Asylum Law*[193] foresee that children of asylum seekers and unaccompanied minor asylum seekers will be provided with educational facilities in accordance with general State laws. The order for providing education should be set by regulations issued by the Cabinet of Ministers.

In 2005, amendments to the *Regulation on the Order of granting, refunding and canceling the study loan and loan for students from the means of credit institution with State guaranty* were adopted[194], implementing Directive 93/96/EEC of 29 October 1993 and Directive 2004/38/EC of 29 April 2004. Since then, citizens of other EU countries can also apply for a study loan and loan for students, if they are granted a temporary or permanent residence permit.

[192] *Izglītības likums* [*Law on Education*], adopted 29 October 1998, in force since 1 June 1999, with amendments announced to 13 February 2004.
[193] *Likums Grozījumi Patvēruma likumā* [*Law Amendments to the Asylum Law*], adopted 20 January 2005, in force since 3 February 2005, Paragraph 4.
[194] Grozījumi Ministru kabineta 2001. gada 29. maija *Noteikumos Nr.220 Kārtība, kādā tiek piešķirts, atmaksāts un dzēsts studiju kredīts un studējošā kredīts no kredītiestādes līdzekļiem ar valsts vārdā sniegtu galvojumu* [*Amendments to Regulation No. 220*], adopted 27 September 2005, in force since 5 October 2005.

Positive aspects

In 2005, *Apeirons*, an organisation of people with disabilities and their friends, in co-operation with *Vaivari* elementary school, Liepaja City Council and the Regional Council of Madona launched a project, co-financed by the European Social Fund, *Creating a supportive environment for juveniles with special needs for integration in the education system.* The goal of the project is to promote a social, psychological, informative and physical environment for integration of juveniles with special needs into the educational system, reducing the risk of their being socially excluded.

Reasons for concern

The situation concerning statistical data in education remains problematic, as data are lacking on, e.g., the number of illiterates, the precise number of children who do not attend school. Existing general official data are usually also not disaggregated according to ethnicity, for instance, statistics on educational performance and attainment of students by ethnicity.
The only available data in education is the ethnic breakdown of students at public schools, the division of students according to the language of instruction and their ethnicity, the number of minority schools and the number of students there.[195] The data draw attention to the situation of Roma in education (see Article 21).
Recent data on access to education for children with disabilities are also not available. According to data from 2003, only 0,38% of them are attending general education establishments, while some others are using home-teaching services, but most are attending special educational establishments.

Vocational training

Positive aspects

The National Employment Agency implements projects of re-qualification and continuing education for the unemployed, as well as providing training to groups at risk of social exclusion, under the *National Programme for Support to implement activities of employment*, supported by EU Structural Funds. Groups at risk of social exclusion under the project are disabled people with different functional disturbances, young people (age 18-25) with a low educational level, people of pre-retirement age, persons after child-care leave, persons after serving terms of imprisonment, and the long-term unemployed.[196] Under projects co-financed by the European Social Fund, subsidised working places will be provided for approximately 1100 unemployed persons of groups at risk of social exclusion.[197]

[195] The Ministry of Education and Science, Statistics, http://www.izm.gov.lv/default.aspx?tabID=7&lang=1&id=1268
[196] Information provided by Solveiga Rozīte, Director of the Employment Coordination Department of the State Employment Agency, on 11 October 2005.
[197] Information available on the website of the Ministry of Welfare http://www.lm.gov.lv/index.php?sadala=489&id=1378

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

The right to engage in work and the right for nationals from other member States to seek an employement, to establish themselves or to provide services

Legislative initiatives, national case law and practices of national authorities

Latvia has not set a transitional period for opening the labour market, so EU nationals can apply for work in Latvia under the general order, without receiving a particular work permit. The requirements and order of recognition of professional qualifications obtained abroad are laid down in the Law on Regulated Professions and Recognition of Professional Qualifications.[198] A number of specific regulations deriving from this law, concerning different professions, were adopted during 2005. However, legislation in relation to the freedom to choose an occupation and the right to engage in work remains untested, because immigration from EU Member states is low.

The prohibition of any form of discrimination in access to employment

Legislative initiatives, national case law and practices of national authorities

Most of the main requirements of Directive 2000/78/EC are incorporated into the Labour Law by amendments of 2004[199]. Since then, the Labour Law contains definitions and prohibition of direct and indirect discrimination, harassment, instruction to discriminate, and victimisation, as well as a provision on shifting the burden of proof in discrimination cases, and an obligation for employers to provide reasonable accommodation and facilitate establishing of working relations for disabled persons in order to foster the principle of equal opportunity. A non-exhaustive list of prohibited grounds of discrimination includes gender, race, skin colour, age, disability, religious, political or other beliefs, national or social origin, property or family status, and other conditions; however, sexual orientation is still not explicitly mentioned. In addition, full transposition of Directive 2000/78/EC still requires amendment to the Civil Service Law, at least. (See more under Articles 21, 23, 25, 26.)

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

In 2005, the *Regulation on work permits for aliens* was amended in order to implement *Directive 2003/9/EC* of 27 January 2003. The amendments stipulate that where an asylum seeker has not received a decision from the Refugee Affairs Department of the Office of Citizenship and Migration Affairs (OCMA) within a year of applying for refugee or alternative (subsidiary) status, and such delay is not caused by the fault of the asylum seeker, then the OCMA issues a work permit to the asylum seeker (without approval of an invitation from an employer by the State Employment Agency), based on personal documents on the identity of the asylum seeker.[200]

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[198] *Likums Par reglamentētajām profesijām un profesionālās kvalifikācijas atzīšanu* [*Law on Regulated Professions and Recognition of Professional Qualifications*], adopted 20 June 2001, in force since 20 July 2001, with amendments announced to 7 December 2005.

[199] *Likums Grozījumi Darba likumā* [Law *Amendments to the Labour Law*], adopted 22 April 2004, in force since 8 May, 2004.

[200] MK 2005. gada 13. septembra *Noteikumi Nr. 700 Grozījumi Ministru kabineta 2004.gada 20.janvāra noteikumos Nr.44 Noteikumi par darba atļaujām ārzemniekiem* [*Regulation No.700 amending Regulation No.44 of 20 January 2004 on work permits for aliens*], adopted 13 September 2005.

Positive aspects

In February 2005, the OCMA in co-operation with Liepāja Region Council, the Latvian Red Cross, the International Organisation for Migration, and the NGO *Caritas Latvija* launched the *Step by step* project, financed by the Equal initiative, aiming at professional and social integration of asylum seekers. The term of implementation of the project is December 2007.[201] However, the number of asylum seekers, as well as of refugees and persons with alternative status remains very low in Latvia, which may result in only theoretical results for the project.

Access to employment in public administrations

Legislative initiatives, national case law and practices of national authorities

Under the Law on the Civil Service, a civil servant is a person who forms the policy or development strategy of a sector, co-ordinates the activity of a sector, distributes or controls financial resources, formulates regulatory enactments or controls observance thereof, prepares or issues administrative documents and prepares or takes other decisions related to the rights of individuals in the State Chancellery, a ministry, the Secretariat of the Deputy Prime Minister, the Secretariat of the Minister for Special Assignments, as well as at a State administrative institution (hereinafter – institution) subject to the control of or supervised by a ministry, the Minister for Special Assignments, or the Deputy Prime Minister. A civil servant in a specialised State civil service is a person who performs the functions referred to in Paragraph one of this Section in the diplomatic and consular service, the State Revenue Service, the police, the Border Guard, the State Fire-Fighting and Rescue Service, or the Prison Administration. Civil Servants include the Prime Minister, ministers, Ministers for Special Assignments, Deputy Prime Ministers (hereinafter – ministers), State ministers, office employees of these officials (assistants, advisers, press secretaries) and parliamentary secretaries are not civil servants.
A person may apply for a civil service position if he/she is a citizen of the Republic of Latvia; is fluent in the Latvian language; has a higher education; has not reached the age of retirement determined by law; has not been convicted of deliberate criminal offences, or has been rehabilitated, or for whom the conviction has been set aside or extinguished; has not been dismissed from a civil service position by a court judgment in a criminal matter; has not been found as lacking capacity to act in accordance with the procedures prescribed by law; is not or has not been in a permanent staff position in the State security service, intelligence or counter-intelligence service of the U.S.S.R., the Latvian SSR or some foreign state; is not or has not been a participant in organisations prohibited by law or by the adjudication of a court; and is not a relative (a person who is married to, or in kinship or affinity of the first degree with, or a brother or sister of, a civil servant) of the head of an institution or a direct supervisor.

Reasons for concern

Although the requirements imposed on those who apply for civil service posts generally could be considered as proportionate, concern is raised by the very broad definition of civil servant status, which leads to imposing it on many of positions in governmental institutions.

[201] Information available at website of the OCMA http://www.pmlp.gov.lv/?_p=666&menu__id=157

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Criminal Procedure Law[202], adopted in 2005, involves a new restrictive measure – prohibition of particular occupations. This restrictive measure means temporary prohibition for suspects or accused to perform particular occupations (activities) or fulfil particular duties of particular posts (jobs), imposed by the decision of the investigator.

Reasons for concern

There still is an inconsistency and lack of reasoned system on restrictions on freedom to choose an occupation imposed by different laws on persons who have received a criminal penalty, even where a criminal record has become null and void.

Article 16. Freedom to conduct a business

Freedom to conduct a business

Legislative initiatives, national case law and practices of national authorities

At the end of 2004, the Cabinet of Ministers adopted *Regulation No.862*[203] *on prohibited agreements between market participants and prohibition of abuse of a dominant position*. The *Regulation* also provides for a *leniency programme*, i.e. discharge from fines or fine reductions for participants in a horizontal cartel agreement, based on different levels of co-operation with the Competition Council.[204]
A 100% exemption from fines will apply where a market participant is the first to furnish evidence to the Competition Council. However, this only applies where the market participant was not the initiator of the specific prohibited agreement or did not play a decisive role in the prohibited activity and did not force others to participate in the prohibited activity.
Fines can be reduced by 49 % where the initiator of a violation, who played a leading role in prohibited activities, furnishes key, conclusive evidence of violation.

Article 17. Right to property

The right to property and the restrictions to this right

Legislative initiatives, national case law and practices of national authorities

On 20 December 2004, the Parliament adopted amendments to the *Residential Tenancy Law*[205] providing prolongation (till 2008) of rent restrictions in denationalised houses. This had been the cause of considerable public discussion and dispute between owners and tenants.

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[202] *Krimināl*procesa likums [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005.
[203] MK *Noteikumi Nr.862 Kārtība, kādā nosakāms naudas sods par Konkurences likuma 11. panta pirmajā daļā un 13. pantā minētajiem pārkāpumiem* [*Regulations on Procedures for Calculation of Fines for Violations Referred to in Section 11, Paragraph one and Section 13 of the Competition Law*], adopted 19 October 2004, in force since 23 October 2004.
[204] Information from the official website of the Competition Council of Latvia, http://www.competition.lv/?object_id=640&module=news.
[205] *Grozījumi likumā Par dzīvojamo telpu īri* [*Amendments to the Residential Tenancy Law*], adopted 20 December 2004, in force since 1 January 2005.

Indeed, constitutional litigation was initiated on the constitutionality of this norm under Sections 1[206], 91[207] and 105[208] of the *Constitution*.[209]
Amendments to the *Law on Coercive Expropriation of Real Estate for State or Public Needs*[210] provide for procedural changes shortening the terms for judicial review where the parties have not reached an agreement on compensation. Now it is clearly stated[211] that the State obtains property rights to the real estate from the moment of entry into force of a specific law on expropriation. These amendments also provide that agreement between the State and the real estate owner on compensation may be reached after entry into force of this specific law.[212] This norm was challenged in the Constitutional Court (Satversmes tiesa) under Sections 1 and 105 of the Constitution[213].

Article 18. Right to asylum

Asylum proceedings

Legislative initiatives, national case law and practices of national authorities

Asylum proceedings and rights of asylum seekers are regulated by the *Asylum Law*[214], which foresees procedures for submission and examination of applications, and also regulates accommodation of asylum seekers, granting and withdrawing refugee status, as well as alternative status and temporary protection for groups of persons.
In 2005, the *Asylum Law* was amended.[215] Since then, an asylum application should be examined not only if submitted in writing but also orally. However, in practice the State Border Guard officials still hold the opinion that an asylum application should be examined only if it is in writing, with a possible exception where the application is submitted in the presence of a notary or witnesses, if the applicant is illiterate[216].
The other amendment to the *Asylum Law* provides that information about asylum seekers may be disclosed not only to law enforcement institutions as before, but also to foreign institutions if this is in accordance with Latvia's international obligations, but should not be disclosed to

[206] *Satversme* [*Constitution of the Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, restored after the Soviet period with a declaration from 4 May 1990, and a law from 21 August 1991, with amendments announced to 07.10.2004. Section 1: *Latvia is an independent democratic republic.*
[207] Ibid., Section 91: *All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.*
[208] Ibid., Section 105: *Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.*
[209] The case will go for trial on 7 February 2006. Information available on the official website of the Satversmes tiesa [the Constitutional Court of Latvia], http://www.satv.tiesa.gov.lv/LV/info/ires_griesti.htm
[210] Grozījumi likumā *Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām* [Amendments to the *Law on Coercive Expropriation of Real Estate for State or Public Needs*], adopted 9 June 2005, in force since 29 June 2005.
[211] Previously this was stated in judgments, but was not codified in the law.
[212] Information available on the website of the Satversmes tiesa [the Constitutional Court of Latvia], http://www.satv.tiesa.gov.lv/LV/info/atsav.htm
[213] See above footnote 206 and 208.
[214] *Patvēruma likums* [*Asylum Law*], adopted on 7 March 2002, in force since 1 September 2002, with amendments announced to 20 January 2005.
[215] *Likums Grozījumi Patvēruma likumā* [*Law Amendments to the Asylum Law*], adopted 20 January 2005, in force since 3 February 2005.
[216] Interview with Viesturs Brēdiķis, Head of the Immigration Department of the Riga Board of the State Border Guard, newspaper *Latvijas Vēstnesis* [*Herald of Latvia*] 2 September 2005.

the country whose nationality the asylum seeker possesses or to the last country of residence if the asylum seeker is stateless. Other persons/institutions can receive information about an asylum seeker if the person concerned has given written consent. However, in practice this provision is also occasionally used in cases where, e.g., non-governmental institutions are trying to meet a person who has applied for asylum. The State Border Guard requests the written consent of the asylum seeker to a meeting. Where the asylum seeker orally agrees to the meeting but refuses to sign under the application of the person who asks for a meeting because of uncertainty regarding the content of the document, then this is not allowed, on the basis of confidentiality of information about asylum seekers.[217]
The State Border Guard has a right to detain an asylum seeker for 10 days. The court can prolong the detention at the request of the State Border Guard, but for no longer than the period of examination of the asylum application (normally 3 months, but up to 12 months if such extension is well-founded). Asylum seekers can be detained in order to ascertain their identity; if there is reason to consider that they will endeavor to misuse the asylum procedure or there is reason to consider that they have no legal basis to reside in the Republic of Latvia in accordance with the provisions of the *Asylum Law*, or if it is necessary in the interests of State security or public order. In such cases the asylum seeker would not be accommodated at the *Mucenieki* centre for asylum seekers, which is a unit of the OCMA, but in the *Olaine* camp for illegal immigrants, under the auspices of the State Border Guard. However, asylum seekers there are significantly disadvantaged in obtaining information about their rights and in receiving legal aid because the camp for illegal immigrants is a closed institution with conditions similar to those in prison and with strictly limited contacts with the outside world.

Positive aspects

Since the amendments to the *Asylum Law*[218], an asylum seeker has a right to receive primary medical assistance from State resources, not only emergency medical assistance as before.
As the number of asylum seekers remains very low, no medical staff (nurse or paramedic) is constantly employed in the accommodation centre for asylum seekers. However, the Office of Citizenship and Migration Affairs (OCMA) has prepared and is planning to sign agreements with two hospitals (*Saurieši* Centre for Lung diseases and Tuberculosis and *Gaiļezers* Children's Hospital), as well as with two family medical practices (for adults and paediatrics) in the village next to the *Mucenieki* accommodation centre.[219]
The other amendment to the *Asylum Law*[220] foresees that children of asylum seekers and minor asylum seekers will be provided with educational facilities in accordance with general State laws. The order for providing education should be set by regulations issued by the Cabinet of Ministers.

Reasons for concern

Although in 2003 the HRC expressed its concern at the short time limits for appeal procedures and recommended that "the State party should ensure that the time limits under the accelerated asylum procedure be extended, in particular for the submission of an appeal"[221], until now these time limits remain very short. If an asylum application is submitted at a border control point (the so-called Border procedure), then the State Border Guard should

[217] Letter from G. Dāboliņš, Head of the State Border Guard, addressed to the National Human Rights Office, 16 September 2005, No. 23/1-6/4128.
[218] *Likums Grozījumi Patvēruma likumā* [*Law Amendments to the Asylum Law*], adopted 20 January 2005, in force since 3 February 2005, Paragraph 3.
[219] Information provided by Aija Šibajeva, Deputy Head of the *Mucenieki* Accommodation Centre for Asylum Seekers, 21 November 2005.
[220] *Likums Grozījumi Patvēruma likumā* [*Law Amendments to the Asylum Law*], adopted 20 January 2005, in force since 3 February 2005, Paragraph 4.
[221] CCPR/CO/79/LVA (2003), Section 9.

interview the asylum seeker and in cases mentioned in the law[222] should submit the information obtained together with the application to the Refugee Affairs Department not later than within three days of the day of submission, and the Department should examine the received interview materials within two working days of receipt. Interestingly, the law does not specify how to proceed under the Border procedure in all other cases. Asylum seekers or their authorised representative may appeal a decision of the Department to the Appeals Board for Refugee Matters within one working day. (However, it is not said explicitly that this period should be counted from the day of receipt of the decision and explanation of it, not from the day it was issued. It is also not clear whether the appeal should be in writing or whether orally submitted appeals may also be considered.) The Board should examine the appeal within two working days of the day of receipt.[223] Under the regular procedure (if a person has submitted an asylum application from within the State) the time limit for examining an application is 3 months (in exceptional cases up to 12 months), with seven days for an appeal.[224] In cases of reasonable doubt about the grounds for the asylum claim, the asylum application is examined in an accelerated procedure within five working days, and then the time limit for appeal is 2 days.[225]

Although a decision as to grant or refusal of refugee or alternative status should include an explicit justification, this is available in writing only in the state language. The asylum seeker should be acquainted with the substance of the decision and the procedures for appeal in a language that the asylum seeker understands.[226] The law does not require a written translation of the decision. Such provisions raise concerns that a situation could arise where asylum seekers are not provided with complete information about their rights and the procedure for appeal. As the time limit for appeal by the Border procedure is only one day (two days by the accelerated procedure, and seven days by the regular procedure), in practice it is very difficult for asylum seekers to receive legal aid for submission of appeal.

The other reason for concern is the expressed position of the State Border Guard that until submission of asylum application, a person should be treated as an illegal immigrant under the *Immigration Law*, which does not explicitly oblige the authorities to explain to detainees the procedure for submitting an asylum application.[227]

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

The number of asylum seekers in the Latvia under the period of scrutiny was 17. No person was granted refugee or alternative status. 1 application was examined by the accelerated procedure, 2 by the border procedure, and 1 by the regular procedure, while 7 asylum seekers withdrew their applications and returned to the country they had previously left. Among them was an Iraqi family with 4 children, the youngest of whom was some weeks old and had serious health problems. 5 applications are still in the process of examination.[228]

[222] *Inter alia*, if the application is obviously unfounded or unbelievable and contradictory, or the asylum seeker submits the application without a justified explanation in order to prevent expected deportation although he or she has had an opportunity to submit an application earlier.

[223] *Patvēruma likums* [*Asylum Law*], adopted 7 March 2002, in force since 1 September 2002, with amendments announced to 20 January 2005, Section 13.

[224] Ibid., Section 16, 18.

[225] Ibid., Section 19.

[226] Ibid., Section 18 (3).

[227] Interview with Viesturs Brēdiķis, Head of the Immigration Department of the Riga Board of the State Border Guard, newspaper *Latvijas Vēstnesis* [*Herald of Latvia*] 2 September 2005.

[228] Information provided by Baiba Biezā, Head of the Refugee Affairs Department of the OCMA, on 21 November 2005.

Since 1998, when Latvia began reviewing asylum applications, only 8 persons have received refugee status and the last person was granted such status in 2001. One of these lost refugee status in 2004, as he became a Latvian citizen through naturalisation.[229]
The provisions of the *Asylum Law* on the grant of refugee status should not be applied if there is reason to believe that an asylum seeker has committed a crime against peace, a war crime, or a crime against humanity, also a crime of genocide within the meaning defined in international documents adopted to carry out measures against such crimes; or before arrival in Latvia has committed an especially serious non-political crime; or is guilty of committing acts contrary to the principles and purposes of the United Nations.

Unaccompanied minors seeking asylum

Legislative initiatives, national case law and practices of national authorities

The *Asylum Law* provides[230] that the rights and lawful interests of unaccompanied minors during the asylum procedure should be represented by an independent authorised representative appointed by the Appeals Board for Refugee Matters. The duty of the representative is to act objectively in the interests of the minor. Interviews with unaccompanied minors should be conducted by border guards specially trained for the task. The protection of child rights of unaccompanied minors should be provided in accordance with the law. In addition, they are entitled to legal assistance free of charge during the asylum procedure, as well as educational facilities in accordance with the law.
3 unaccompanied minors (14, 16 and 17 years old) entered Latvia seeking asylum on 5 August 2005 together with 2 adults who are not their parents[231]. Their asylum applications are still under examination. However, these persons are placed in the detention centre for illegal immigrants, not in the accommodation centre for asylum seekers, in order to ascertain their identities. A representative from a non-governmental institution was involved, since Orphans courts - the state institutions that presumably is responsible for assigning a representative for unaccompanied minors - refused to do so. All the minors have the same representative - a social worker, involved in work of different non-governmental institutions, such as *Caritas in Latvia* and Association for Street Children.

Reasons for concern

Although unaccompanied minors should be provided with free legal aid during the asylum procedure, no independent lawyer is involved. Moreover, recent practice indicates that responsible state institutions have no interest in providing required legal assistance. The main source of information about their rights is officials of the State Border Guard and the OCMA.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In October, 2005, a working group for elaboration of amendments to legislation in order to harmonise it with EU legislation was created within the scope of the Community *EQUAL* initiative project *Step by step* for support to asylum seekers launched by the OCMA in collaboration with the Council of Liepaja Region, the International Organization for Migration (IOM), the NGO *Caritas Latvija*, and the Red Cross in Latvia. The working group involves representatives from the Ministry of Justice, the Ministry of Welfare, the Red Cross

[229] Information from the homepage of the OCMA, http://www.pmlp.gov.lv/?_p=309&menu__id=15
[230] *Patvēruma likums* [*Asylum Law*], adopted 7 March 2002, in force since 1 September 2002, with amendments announced to 20 January 2005, Section 11.
[231] Information provided by Baiba Biezā, Head of the Refugee Affairs Department of the OCMA on 21 November 2005.

in Latvia, the International Organisation of Migration, the Latvian Centre for Human rights and Ethnic Studies, and some other organisations.
Within the same project, another working group has been established to elaborate a training strategy for social workers, teachers, medical professionals, and State Border Guard personnel on issues related to asylum seekers; and the IOM has subcontracted a sociological survey on problems faced by asylum seekers in Latvian society.

Reasons for concern

The study programme of the State Border Guard School (one-year professional education programme for qualification of State Border Guard inspector) includes different issues relating to asylum seekers. However, only 4 academic hours in the course of the year are devoted to it. The State Border Guard College (a two-year first-level higher professional education programme for qualification of State Border Guard junior officer) foresees 20 academic hours for matters related to asylum seekers. However, most of these are devoted to technical issues (e.g., use of the EURODAC system).[232] This raises concerns that the education and training of staff dealing with asylum applications is not sufficient.

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

Collective expulsions

Legislative initiatives, national case law and practices of national authorities

In 2004, the Parliament adopted amendments to the *Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any Other State*[233], providing that the status of Latvian non-citizen can be withdrawn if a person has permanent residence in another State after 1 June 2004. The amendments were challenged in the Constitutional Court, which delivered its judgment on 7 March 2005.[234] The Court regarded the amendments as unconstitutional. (See Article 45).
Latvia does not practice collective expulsions. About 10 decisions on forcible expulsion were made every month in 2005. The yearly number of decisions on forcible expulsion has decreased significantly during the last 10 years (from 1317 in 1995 to 176 in 2004).[235] Presumably, the reason is that most of these were issued to citizens of the former USSR who for different reasons had not legalised their status in Latvia (see also Article 7), and the number of such persons in the country has gradually decreased.

Subsidiary protection and prohibition of removals of foreigners to countries were they face a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments

Legislative initiatives, national case law and practices of national authorities

Subsidiary status or, under the Latvian *Asylum Law*, alternative status should be granted to those to whom refugee status may not be granted but who are under threat of the death

[232] Information provided by I. Zālītis, Head of the State Border Guard College , Letter Nr. 23/11-3/1400 from 4 November 2005.
[233] *Likums par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības* [*Law on Status of Former USSR Citizens who are not Latvian Citizens or Citizens of Any Other State*], adopted 12 April 1995, in force since 25 April 1995, with amendments announced to 9 March 2005.
[234] Latvijas Republikas Satversmes tiesas 2005. gada 7. marta spriedums lietā Nr. 2004-15-0106 [Decision No 2004-15-0106 of the Constitutional Court, issued 7 March 2005].
[235] Information available on website of the OCMA http://www.pmlp.gov.lv/?_p=314&menu__id=117

penalty, corporal punishment, torture, inhuman or degrading treatment, or degrading punishment in their country of citizenship or, in the case of stateless persons, in their country of former residence, or due to external or internal armed conflict they need protection and cannot return to their country of citizenship or, in the case of stateless persons, to their country of former residence. Alternative status may not be granted to asylum seekers if before arrival in the Republic of Latvia they resided in a country where they could have requested and received protection; have committed a crime against peace, a war crime or a crime against humanity, also a genocide crime within the meaning defined in international documents adopted to carry out measures against such crimes; are guilty of committing acts contrary to the principles and purposes of the United Nations; or pose a threat to the security of the State and the people of Latvia.[236]

In the period from 2002 to 20 June 2005, nine persons were granted alternative status in Latvia (none in 2005).[237] In 2004, five of them lost their alternative status and returned to their country of domicile[238].[239]

The *Asylum Law* also provides the grant of temporary group protection in Latvia for a specified period if the group needs protection and is or has been forced to leave their country of citizenship or, in the case of stateless persons, their country of former residence due to ethnic conflict or civil war. In such cases the Cabinet of Ministers may issue a temporary protection order to the group, determining their total number, the period of residence, accommodation procedures, and other conditions.[240] So far, no such cases have occurred in Latvia.

Positive aspects

In 2005, the *Asylum Law* was amended. Since then, those granted alternative status receive a temporary residence permit for up to 4 years, instead of one year as was the case before the amendments. If a person applies for extension of alternative status a month before the expiry of the term and if the conditions on the basis of which the alternative status was granted still exist, then a new temporary residence permit for the same period can be issued.[241] Those granted alternative status who have resided in Latvia for at least two years may apply for the reunion of their family, whereas before the amendments this right arose after at least three years of residence.[242]

Reasons for concern

The *Asylum Law* provides that if a person who has been granted alternative status does not have a valid personal identity or travel document and it is impossible to obtain such a document, then a personal identity document should be issued to them.[243] However, under the interpretation of the OCMA, an identity document issued in Latvia is valid only within the country and can not be used as a travel document.[244] This means that persons with alternative

[236] *Patvēruma likums* [*Asylum Law*], adopted 7 March 2002, in force since 1 September 2002, with amendments adopted to 20 January 2005. Sections 35 and 36.
[237] 3 from Belorussia (2 adults and 1 child) and 6 from Russia (3 adults and 3 children).
[238] A Chechen family from Russia.
[239] Information available on the webpage of the OCMA http://www.pmlp.gov.lv/?_p=309&menu__id=118
[240] *Patvēruma likums* [*Asylum Law*], adopted 7 March 2002, in force since 1 September 2002, with amendments adopted to 20 January 2005. Section 44.
[241] Likums *Grozījumi Patvēruma likumā* [Law *Amendments to the Asylum Law*], adopted 20 January 2005, in force since 3 February 2005.
[242] Ibid.
[243] *Patvēruma likums* [*Asylum Law*], adopted 7 March 2002, in force since 1 September 2002, with amendments to 20 Jan 2005. Section 38.
[244] Information provided by Baiba Biezā, Head of the Department of Refugee Matters of the OCMA, on 1 November 2005.

status are not allowed to leave Latvia. However, such a restriction is not explicitly included in the *Asylum Law* and should be evaluated as disproportionate (it is not imposed on those granted refugee status).

Legal remedies and procedural guarantees regarding the removal of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

See Article 7 (judgment of the European Court of Human Rights in the case of *Sisojeva and Others vs. Latvia*[245]).

Legislative initiatives, national case law and practices of national authorities

Procedures for removal and expulsion of foreigners are laid down in the *Immigration Law*[246].

Reasons for concern

Although the *Immigration Law* of 2003 sets the procedure for detention and forcible expulsion of foreigners, there are still several shortcomings in the law, as well in practice, limiting their rights considerably. For instance, the *Immigration Law* provides that if an official of the State Border Guard has detained an alien in the territory of Latvia, the Head of the OCMA or an official authorised by him shall take a decision regarding the forcible expulsion of the alien.[247] The OCMA interprets this to means that the decision of forcible expulsion should be issued as mandatory in a case of detention of an alien, and other considerations should not be taken into account.[248] The decision of forcible expulsion is issued in the State language, and no written translation (in some cases – no translation at all) is provided for a detained alien, thus seriously limiting the possibility to appeal it. Moreover, in some cases the written decision on forcible expulsion is delivered to a detainee after the end of the term of appeal (7 days). The *Law* does not contain explicit provisions on the procedure of making a detained alien aware of a decision on forcible expulsion.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 14 October 2005 the OCMA submitted to the Government amendments to the *Immigration Law* and a new draft law aiming at transposing *Directive 2003/109/EC* concerning the status of third-country nationals who are long-term residents.[249] The new draft law applies equally to foreigners and Latvian non-citizens. Where Latvian non-citizens do not go through the procedures of application for long term resident status within Latvia, they will continue to be treated according to national legislation. Their status in the EU in that case remains undetermined.

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[245] *Svetlana Sisojeva and Others vs. Latvia* (Appl. No. 60654/00, Decision of 16 June 2005).

[246] *Imigrācijas likums* [*Immigration Law*] adopted 31 October 2002, in force since 1 May 2003, with amendments announced to 12 July 2005.

[247] *Imigrācijas likums* [*Immigration Law*] adopted 31 October 2002, in force since 1 May 2003, with amendments announced to 12 July 2005. Section 47.

[248] PMLP Daugavpils pilsētas un rajona nodaļas vadītājas 2005. gada 22. augusta lēmums Nr.8/87 par ārzemnieka piespiedu izraidīšanu. [Decision No. 8/87on forcible expulsion of alien, issued by the Head of Daugavpils City and Regional Department of the OCMA 22 August 2005]

[249] National news agency LETA, 14 Oct 2005. The draft law is available at http://www.pmlp.gov.lv/images/documents/eiropas_kopienas.doc

A foreigner is not allowed to enter Latvia or may be removed from the country if their name appears on the so-called *Blacklist* – a list of foreigners for whom entry and stay in Latvia is prohibited.[250] The decision to include a person on the list is taken by the Minister of the Interior on grounds listed in Article 61 of the *Immigration Law*. These include, e.g., a suggestion by competent state institutions that a foreigner may constitute a threat to state security, public order and policy, or that a foreigner has committed a serious crime. The Minister for Foreign Affairs takes such a decision if a person is *persona non grata* in the Republic of Latvia. The Director of the Consular Department, a diplomatic official authorised to perform consular functions, or the Chief of the State Border Guard decide to include a person on the *Blacklist* within the sphere of their respective competence. According to part 6 of Article 61, decisions made by Ministers of the Interior and Foreign Affairs were not subject to appeal.

On 6 December 2004, the Constitutional Court ruled on the compatibility of Article 61 of the *Immigration Law* with Article 92 of the *Constitution*[251], which provides that: "[e]veryone has the right to defend their rights and lawful interests in a fair court".

The applicant was a citizen of Moldova who was included on the *Blacklist* in accordance with a decision of the Minister of the Interior. After unsuccessful attempts to challenge the decision in courts, she turned to the Constitutional Court.

The Court followed the methodology of the European Court of Human Rights (ECHR) and referred to ECHR case law. It concluded that the procedure has been prescribed by law and had a legitimate aim. After that, the Court discussed whether the procedure set by Article 61 is proportionate. The Court acknowledged that there are many possibilities open for an individual to challenge decisions affecting them. For instance, Article 6 of the *Law on State Security Institutions*[252] provides for the right to approach the Public Prosecutor, who gives an opinion or submits the case to the court. However, paragraph 6 of Article 61 exempts decisions made by the Ministers of the Interior and Foreign Affairs from appeal procedures. According to the Court, this contradicts Article 92 of the *Constitution*. The Court decided that the norm in Article 61 will become null and void as from 1 May 2005.

The Law was amended by the Parliament on 16 June 2005[253]. The amendments allow for appeal to the Senate of the Supreme Court against decisions of the Minister of the Interior. In relation to decisions by the Minister for Foreign Affairs, no amendments were introduced.

On 16 August 2005, the Cabinet of Ministers accepted the procedure for maintaining and reviewing the list of persons to whom entry to Latvia is prohibited[254]. According to the procedure, the OCMA will become a focal point for collection of information about foreigners who are not allowed to enter Latvia. The OCMA will maintain an electronic *Register on Prohibition of Entry* (*Ieceļošanas aizlieguma reģistrs*) for these purposes.[255] Therefore, where officials authorised by the *Immigration law* prohibit entry, they will be obliged to inform the OCMA, which in turn will update the electronic list. Data on the *Register* will be classified as information of limited access. However, foreigners will have the right to verify the information on the *Register* in relation to themselves and their children under 16, as well as in relation to other dependants.

Cases of expulsion and inclusion of individuals on the *Blacklist* attracted public discussion on two occasions during the reporting period.

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[250] The procedure for inclusion in this list is provided in Article 61 of the *Immigration Law*.

[251] Satversmes tiesas 2004. gada 6. decembra spriedums lietā Nr. 2004-14-01 [Decision No 2004-14-01 of the Constitutional Court, issued 6 December 2004].

[252] *Valsts drošības institūciju likums* [*Law on State Security Institutions*], adopted 5 May 1994, in force since 19 May, 1994, with amendments announced to 2 November 2005.

[253] *Likums Grozījumi Imigrācijas likumā* [*Law Amendments to the Immigration Law*], adopted 30 June 2005, in force since 1 July 2005.

[254] *Noteikumi Nr. 605 Kārtība, kādā uztur un aktualizē ārzemnieku sarakstu, kuriem ieceļošana Latvijas Republikā aizliegta* [*Regulation No.605 On procedure for maintaining and updating list of foreigners prohibited entry to the Republic of Latvia*], adopted 16 August 2005.

[255] National News Agency LETA, 16 August 2005.

The first case concerned Mr. Aleksandr Kazakov. He organised and took part in a number of events against educational reform in Latvia. The protests were organised by a non-registered organization and allegedly called for violence in protest actions involving children. Mr.Kazakov had acquired a residence permit until 1 October 2004 on account of the fact that he was married to a Latvian citizen. After the death of his wife at the beginning of September 2004, the OCMA noted that he could not provide any other basis for residence in Latvia and annulled his residence permit. On the basis of the opinions of State security institutions, Mr.Kazakov was expelled from Latvia. Moreover, even in May 2004 the Minister of the Interior included Mr.Kazakov in the *Blacklist*. Mr.Kazakov appealed the decisions of expulsion, annulment of residence permit, and inclusion on the *Blacklist* to the court. The Administrative court in the first instance requested the Minister of the Interior to issue a written order on inclusion of Mr.Kazakov in the *Blacklist*, confirmed legality of annulment of residence permit and requested the State Border Guard to review Kazakov's case and to issue a reasoned decision.[256] The case is under appeal by Mr.Kazakov in relation to annulment of residence permit.[257] He claims it to be contrary to the right to private and family life.
The second case concerned Mr. Boris Berezovskiy, the Russia's businessman, who after his second visit to Latvia (26 October 2005) was included in the *Blacklist* on the basis of the decision of the Prime Minister acting in the capacity of Minister of the Interior. He based his decision on the opinions of the State security institutions.[258] The case generated considerable media attention mainly based on the fact that the decision followed high level political discussions and different opinions by high level politicians, which casts some doubts as to the neutrality of decisions concerning inclusion on the *Blacklist*.

Positive aspects

The process of including a person in the *Blacklist* has potentially become more transparent due to recent amendments to the Immigration Law and the new procedure for coordinated preparation of the *Blacklist*. As a result of the amendments, political discretion in cases of inclusion in the *Blacklist* has been limited.

Reasons for concern

Discussion continues on the draft law aiming at transposing *Directive 2003/109/EC*. During the accession period to the EU the political decision was made to apply the *Directive* to all non-citizens of Latvia in order to ensure that they are entitled to the required minimum rights within EU territory. Despite the fact that the *Directive* was adopted, elaboration of the law has now created concerns that the *Directive* will not automatically apply to all non-citizens of Latvia, thus potentially de facto creating different sub-groups of non-citizens

Although the *Immigration Law* has been amended regarding inclusion of persons in the *Blacklist*, the amendments only partially take into account the decision of the Constitutional Court. Decisions of the Minister for Foreign Affairs are exempted from judicial review.
Generally, the expulsion procedure remains problematic in cases of EU citizens, which raises concerns. Additional safeguards for their expulsion are not taken into account as provided in the case-law of the European Court of Justice. There is no sliding scale which could provide guidance to officials taking decisions on expulsion of EU citizens.

[256] Administratīvās rajona tiesas 3. oktobra spriedumi lietās [Rulings of the Administrative District Court] A42274405(A2744-05/2), A42190205 (A1902-05/2), A42176705(A1767-05/2).
[257] National News Agency LETA, 3 October 2005.
[258] National News Agency LETA, 26 October 2005 and 15 November 2005.

CHAPTER III. EQUALITY

Article 20. Equality before the law

Equality before the law

Legislative initiatives, national case law and practices of national authorities

The *Constitution*[259] recognizes the principle of equality before the law, in stipulating that "[a]ll human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind".
In practice, this clause has been used to challenge the provisions of statutory law in the Constitutional Court under the *Law on the Constitutional Court*[260], which provides that its competence includes examining compliance of statutory law with the *Constitution*.
The principle of equality before the law is also laid down in a number of statutory laws, and expressed by different wording. An illustration is the *Administrative Procedure Law*[261]. This aims to place certain Executive acts[262] under the scrutiny of an independent, impartial, and competent judicial body. It contains a section on the principle of equality, providing: "in matters where there are identical factual and legal circumstances, institutions and courts shall adopt identical decisions (in matters where there are different factual or legal circumstances – different decisions) irrespective of the gender, age, race, skin colour, language, religious beliefs, political or other views, social origin, nationality, education, social and financial status, type of occupation or other circumstances of participants in the administrative proceedings".
The *Labour Law*[263] provides that "differential treatment based on the gender of an employee is prohibited when establishing employment legal relationships, as well as during the period of existence of employment legal relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training, as well as when giving notice of termination of an employment contract. [..] The provisions of this Section [..], insofar as they are not in conflict with the essence of the relevant right, shall also apply to the prohibition of differential treatment based on race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status or other circumstances of an employee."
The *Administrative Procedure Law* directly provides for remedies in case of violation of this principle[264], as indeed does the *Labour Law* in addition to clauses laying down the principle of equality before the law.
The *Religious Organizations Law*[265] also contains a provision on equality before the law and refers to other laws (e.g., the *Criminal Law*) in case of violation of this principle.

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[259] *Satversme* [*Constitution of the Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, restored after the Soviet period with a declaration of 4 May 1990, and a law from 21 August 1991, with amendments announced to 07.10.2004, Section 91.
[260] *Satversmes tiesas likums* [*Law on the Constitutional Court*], adopted 5 June 1996, in force since 28 June 1996, with amendments announced to 23 January 2004.
[261] *Administratīvā procesa likums* [*Administrative Procedure Law*], adopted 25 October 2001, in force since 1 February 2004, with amendments announced to 23.01.2004, Section 6.
[262] Relating to specific public legal relations between the State and private persons.
[263] *Darba likums* [*Labour Law*], adopted 20 June 2001, in force since 1 June 2002, with amendments to 2 November 2005, Section 29.
[264] *Administratīvā procesa likums* [*Administrative Procedure Law*], adopted 25 October 2001, in force since 1 February 2004, with amendments announced to 23.01.2004, Section 92.
[265] *Reliģisko organizāciju likums* [*The Religious Organizations Law*], adopted 7 July 1995, in force since 10 October 1995, with amendments to 26 September 2002.

The newly adopted *Criminal Procedure Law* also contains a clause on the principle of equality before the law. This lays down a unified procedural order for everyone involved in criminal proceedings irrespective of their origin, social and property status, occupation, citizenship, race, national identity, attitude to religion, gender, education, language, place of residence, and other circumstances.
Declarative provisions on the principle of equality before the law are included in many other laws[266].
Access to the courts is another essential issue related to equality of persons before the law, and is especially dependent on property status and place of residence. This issue is examined under Article 47 of this Report (Right to an effective remedy and to a fair trial).

Article 21. Non-discrimination

Protection against discrimination

Legislative initiatives, national case law and practices of national authorities

In 2005, Latvia is still continuing to transpose and implement *Directives 2000/43/EC of 29 June 2000*, and *2000/78/EC of 27 November 2000*. Most main requirements of *Directive 2000/78/EC* are incorporated into the *Labour Law* by amendments of 2004[267]. Since then, the *Labour Law* contains definitions and prohibition of direct and indirect discrimination, harassment, instruction to discriminate, and victimisation, as well as a provision on shifting the burden of proof in discrimination cases, and an obligation for employers to provide reasonable accommodation and facilitate establishing of working relations for disabled persons in order to foster the principle of equal opportunities. A non-exhaustive list of prohibited grounds of discrimination includes gender, race, skin colour, age, disability, religious, political or other beliefs, national or social origin, property or family status, and other conditions; however, sexual orientation is still not explicitly mentioned. New amendments to the *Labour Law*, which were elaborated in order specifically to include this ground on the list, passed the first reading on 15 September 2005 after sharp debates in the Parliament, but by the end of the year it remained unclear when (or indeed if) these would be adopted.
In addition, full transposition of *Directive 2000/78/EC* still requires amendment to the *Civil Service Law*, at least.
Transposition of *Directive 2000/43/EC* is at an early stage. A working group under the auspices of the Secretariat of Special Assignments Minister for Social Integration proposed various ways to complete transposition by 1 May 2004 most effectively and acceptably. A comprehensive *draft Law on Prevention of Discrimination*[268] was elaborated, taking into account all international standards relating to the issue of non-discrimination, which Latvia has undertaken. The *Law* passed its first reading in the Parliament on 7 April 2004. However, after criticism by the Parliament's Human Rights and Public Affairs Committee and Law Bureau and attempts to reduce the protection level set by this law to the minimum requirements of *Directives*, draft amendments to eight separate laws were submitted to the Parliament instead. Amendments included those to the *Civil Law*, the *Law on Social Security*, the *Law on the State Civil Service*, the *Law on Consumer Rights*, the *Law on Associations and Foundations*, the *Law on the Latvian National Human Rights Office*, the *Criminal Law*, and

[266] *Laws on Judicial Power, Social Security, Education, Advocacy, Police, Latvian Penal Code, Children's Rights Protection, Fire Safety, Border Guard, Scientific Activity, Advertising, Private Pension Funds*.
[267] *Likums Grozījumi Darba likumā* [*Law Amendments to the Labour Law*], adopted 22 April 2004, in force since 8 May, 2004.
[268] *Likumprojekts Diskriminācijas novēršanas likums* [*Draft Law on Prevention of Discrimination*], Reg.No. 741, passed the first reading 7 April 2004.

the *Administrative Violations Code*. However, these do not fully cover the requirements of *Directive 2000/43/EC*, e.g., concerning access to education.
The amendments were submitted to different committees of the Parliament, and are thus going through the procedure of adoption separately, not as a package.
The draft amendments to the *Criminal Law* and the *Administrative Violation Code* passed their first reading in the Parliament in 2004[269], and amendments to the *Law on Social Security Law* were adopted in 2005[270]. However, amendments to the *Civil Law*, to the *Law on Consumer Rights*, to the *Law on Associations and Foundations* and to the *Law on the State Civil Service* still have not passed even their first reading. The amendments to the *Law on the Latvian National Human Rights Office (NHRO)* were adopted at the second reading before the end of the period under scrutiny.[271] These provide the NHRO with the competence of designated institution for implementing the principle of non-discrimination not only on the grounds of race and ethnicity, but for the principle of equal treatment overall. They also foresee a right (however, not a duty) of the NHRO to represent victims of discrimination under civil and administrative proceedings.[272]
In 2005, the Department for the European Policy of Non-discrimination was established under the Secretariat of Special Assignments Minister for Social Integration[273]. Although the Secretariat is the institution responsible for transposing and implementing *Directive 2000/43/EC*, the Department envisages wider functions. These would include preparing elaboration of policy documents on the issue of non-discrimination, implementing and coordinating the *National Action Plan on Promotion of Tolerance 2005-2009*, as well as raising awareness in society on non-discrimination and tolerance policy. However, the Department has not yet launched any practical initiatives.[274]
The NHRO in its turn has created a Unit for Eliminating Discrimination[275], which would, e.g., investigate cases of discrimination, analyse legislation, and raise public awareness.
From January to October 2005, The National Human Rights Office – the only State institution which in practice deals with complaints of discrimination - received 16 written and 56 oral complaints on the issue (approximately 1% and 2% respectively of the total number of complaints during the period). The majority of these are on the ground of gender (6 written and 25 oral complaints), with 2 written and 4 oral complaints on the ground of race or ethnicity.[276]
In 2005 the courts for the first time examined cases under non-discrimination clauses in the *Labour Law*.[277] There were two such cases. In one of these, the court found discrimination on

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[269] *Likumprojekts Grozījumi Krimināllikumā* [*Draft Law Amendments to the Criminal Law*], Reg.No. 739, passed the first reading in the Parliament on 7 April 2004. *Likumprojekts Grozījumi Administratīvo pārkāpumu kodeksā* [*Draft Law Amendments to the Administrative Violations Code*], Reg.No. 740, passed the first reading in the Parliament on 7 April 2004.
[270] *Likums Grozījumi likumā Par sociālo drošību* [*Law Amendments to the Law on Social Security*], adopted 1 December 2005.
[271] *Likumprojekts Grozījumi Likumā par Valsts Cilvēktiesību biroju* [*Draft Law Amendments to the Law on the National Human Rights Office*], Reg.No. 1321, passed the second reading in the Parliament on 7 April 2004.
[272] *Likumprojekts Grozījumi Likumā par Valsts Cilvēktiesību biroju* [*Draft Law Amendments to the Law on the National Human Rights Office*], Reg.No. 1321, passed the second reading in the Parliament on 7 April 2004.
[273] Operating since 1 August 2005. Information available on the website of the Secretariat of Special Assignments Minister for Social Integration http://www.integracija.gov.lv/index.php?id=784&sadala=192
[274] Information provided by an official of the Department of European Policy on Non-discrimination of the Secretariat of Special Assignments Minister for Social Integration on 6 October 2005.
[275] Operating since 16 November 2005. Information available on the website of the National Human Rights Office http://www.vcb.lv/default.php?open=jaunumi&this=161105.202
[276] Information provided by Aigars Smiltnieks, the Head of the Information Department of the NHRO on 15 November 2005.
[277] Before the *Labour Law* entered into force in 2002, there were two court cases on discrimination in labour relations under the *Labour Code*. Both of them were on the ground of gender.

the ground of sexual orientation. Although this ground is not explicitly listed in the *Labour Law*, the court considered that it is determined under 'other grounds', as the list of prohibited grounds of discrimination laid down by the *Labour Law* is not exhaustive. In another case, the court found multiple discrimination on the grounds of gender and property status. Interestingly, the plaintiff initially argued for recognition of the fact of discrimination only on the ground of gender.

In two other cases, the issue of discrimination was involved. One of these was on access to a public place for disabled persons. The other was on the equal opportunity to exercise freedom of assembly. As the decisions in all cases were in favour of the plaintiff, the attitude of the courts towards the issue of non-discrimination might be assessed as progressive, although practice in this field remains scarce.

Article 91 of the *Constitution* contains a general provision prohibiting discrimination: "[a]ll human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind". Thus, if statutory law contradicts the *Constitution* or international legal norms binding on Latvia, a case on discrimination can be brought to the Constitutional Court. During the period under scrutiny, the Constitutional Court has examined 3 applications where Article 91 was involved. However, in one of these the Constitutional Court found non-compliance with other norms of the *Constitution*, so that compliance with Article 91 was examined in 2 cases.

The first of these was on non-compliance with Article 91 of the *Constitution* of Article 9.3 of the *Transitional Provisions of the Law on Education*[278]. These prescribe that, "as of 1 September 2004 studies starting from the tenth form of state and municipal secondary education institutions which implement educational programmes for minorities, and starting from the first academic year of the state or municipal professional education institutions, shall be commenced in the state language in accordance with the State standard on public secondary, vocational and professional education. This provides that at least 3/5 of the total number of classes shall be taught in the State language (Latvian)". The opinion of the applicants (20 opposition MPs from the People's Harmony Party, the Union for Human Rights in United Latvia, and the Latvian Socialist Party) was that such norm can lead to lowering the quality of education in minority schools because the following were not taken into account: regional specifics, specialization of schools, teaching staff, and parents' wishes. Subsequently, if students from minority schools lack equal opportunities to obtain education of the same quality as others, then this could be evaluated as discrimination. The applicants also referred to Articles 1[279] and 114[280] of the *Constitution*; Article 2 of the *1st Protocol to the European Convention on Human Rights* in conjunction with Article 14 of the *Convention*; Articles 26 and 27 of the *ICCPR*, Article 5 of the *CERD*, Articles 2 and 30 of the *CRC*, as well to Article 18 of the *Vienna Convention on the Law of Treaties*. The Constitutional Court found that at this stage it is not possible to prove that implementing the challenged provision may lead to reduction in the quality of education and the educational process, at the same time indicating that the mechanism for quality control in education is not sufficient and should be improved, and that the challenged norm has to be interpreted and implemented with lenience and flexibility towards the students whose educational level is at risk. The Constitutional Court found that if these suggestions were taken into account, then the challenged provision was in compliance with Article 91.[281]

The next case was on the provision of the *Law on Education* that lays down: "the state and municipalities take part in financing private educational institutions in accordance with respective regulations of the Cabinet of Ministers, if they provide state-accredited educational programmes in the State language [Latvian]". The applicants (20 left-wing MPs from the

[278] *Izglītības likums* [*Law on Education*], adopted 29 October 1998, in force since 1 June 1999, with amendments announced to 13 February 2004

[279] Article 1 of the *Satversme*: „Latvia is an independent democratic republic."

[280] Article 114 of the *Satversme*: „Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity."

[281] Latvijas Republikas Satversmes tiesas 2005. gada 13. maija spriedums lietā Nr. 2004-18-0106.

People's Harmony Party, the Union for Human Rights in United Latvia, and the Latvian Socialist Party) challenged this as non-compatible with Article 91 of the *Constitution* and with Article 2 of the *1st Protocol to the European Convention on Human Rights* in conjunction with Article 14 of the *Convention*. The Constitutional Court pointed out that the state is not obliged to participate in financing private educational institutions. However, if it has taken a political decision to do so, then it has to be implemented on an equal basis. The Constitutional Court found the challenged provision to be disproportionate, by comparison with its legitimate aim – the strengthening of the state language - and found it null and void from the publishing of the decision.[282]

Positive aspects

Although sexual orientation is not specified in the *Labour Law* as a prohibited ground of discrimination, the first known court case on discrimination in employment under the *Labour Law*[283] was initiated exactly on this ground. A teacher with a degree in theology submitted a claim to the Riga City Ziemeļi District Court against the Riga School of Cultures (a public secondary school) alleging discrimination on the grounds of sexual orientation after the school decided not to hire him for a position of teacher of history of religion, which had been advertised in the press. The plaintiff contended that the applicant who was hired did not possess better professional qualifications and that his homosexuality was the main reason why his application was turned down.
The court interpreted the *Labour Law* in the light of *Directive 2000/78/EC* and took into account that the shift of burden of proof has to be applied in discrimination cases. The court found that the employer had directly discriminated against the plaintiff by not inviting him to interview on knowing his sexual orientation.
The court awarded the plaintiff moral compensation of 2000 Lats (approx. 2800 Euro) as a "just, proportionate, and effective remedy for non-pecuniary damage in cases of discrimination, in order to foster and create a just working environment". The plaintiff's claim for lost income of 960 Lats (approx. 1330 Euro) was not satisfied.[284] The Riga School of Cultures has appealed the decision of the first instance court.

Reasons for concern

The process of transposing *Directive 2000/43/EC* is still unreasonably slow. This particularly concerns amending legislation applicable to the private sphere, e.g., the *Civil Law*. Different reasons exist for this: besides the lack of political will, some experts in private law, who provided an opinion on draft amendments, were against any limitation of the principle of private autonomy.
The number of court cases involving the provisions of non-discrimination remains very small. The reason for lack of use even of existing legislation is low awareness in society of the issue of non-discrimination and lack of belief in remedies, as well as fear of being victimised.

[282] Latvijas Republikas Satversmes tiesas 2005. gada 14. septembra spriedums lietā Nr. 2005-02-0106.
[283] The *Labour Law* entered into force on 1 June 2002 and includes prohibition of different treatment. However, there were no known court cases on discrimination in employment based on this law (as well as under other areas) until 2005. Before the *Labour Law* entered into force, there were two court cases on discrimination in labour relations under the *Labour Cod*e. Both of these were on the ground of gender.
[284] Rīgas pilsētas Ziemeļu rajona tiesas 29. aprīļa spriedums lietā Nr.C32242904047505 C-475/3.

Fight against incitement to racial, ethnic, national or religious discrimination

Legislative initiatives, national case law and practices of national authorities

The *Criminal Law*[285] contains provisions concerning incitement to national, racial, and religious discrimination, providing criminal responsibility for such conduct.[286]
However, these provisions are rather new (they were not included in the *Criminal Code*, which was in force before adoption of the *Criminal Law* in 1998) and very rarely used in practice allegedly because of the high standard of proof, although the question of narrow interpretation has been raised by some legal experts and law enforcement representatives. Section 78 includes intent connected with action, and investigators and prosecutors mainly have not succeeded in proving intent. In practice, the interpretation that it is sufficient to prove that a reasonable person should know that their action could lead to the consequences foreseen in the section is not accepted and the prevalent position taken by law enforcement and prosecution is that it should be clearly recognized (in most cases subjectively - by admission) that a person has performed a deliberate act with intent to cause conflict or hatred.
Changes are being prepared in the *Administrative Violations Code* and in the *Criminal Law* in line with the *Race Directive (2000/43/EC)*. The draft amendments foresee that the *Administrative Violations Code* should be amended with penalty for violating the prohibition of discrimination on the grounds of gender, age, race, skin colour, nationality, or ethnic identity, political or other opinions, social origin, education, social and property status, kind of occupation, health status, or sexual orientation.
The proposed amendments foresee that Section 78 of the *Criminal Law* will be divided. That is, it will continue to include sanctions for breach of the prohibition of commission of acts knowingly directed towards instigating national or racial hatred or enmity, with a more severe sanction for the same act if it has caused severe damage, or is associated with violence, fraud or threats, or is committed by a group of persons, a State official, or a responsible employee of an undertaking (company) or organisation, or is committed using an automatic system of data processing. Discrimination will be transferred to Section 150, which is foreseen to apply so as to include sanctions for breach of prohibition of discrimination based on gender, age, race, skin colour, nationality or ethnic affinity, religious, political or other conviction, social origin, education, social or property status, kind of employment, state of health or sexual orientation, if committed repeatedly in a year. More severe sanctions are foreseen if severe damage is caused, or if it is associated with violence, fraud or threats, or where committed by a group of persons, a State official, or a responsible employee of an undertaking (company) or

[285] *Krimināllikums* [*Criminal Law*], adopted 17 June 1998, in force since 1 April 1999, with amendments announced to 20 October 2005

[286] Section 78. Violation of National or Racial Equality and Restriction of Human Rights.
(1) For a person who commits acts knowingly directed towards instigating national or racial hatred or enmity, or knowingly commits the restricting, directly or indirectly, of economic, political, or social rights of individuals or the creating, directly or indirectly, of privileges for individuals based on their racial or national origin, the applicable sentence is deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage.
(2) For a person who commits the same acts, if they are associated with violence, fraud or threats, or where they are committed by a group of persons, a State official, or a responsible employee of an undertaking (company) or organisation, the applicable sentence is deprivation of liberty for a term not exceeding ten years.
Section 150. Violation of Equality Rights of Persons on the Basis of their Attitudes Towards Religion.
For a person who commits direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons on the basis of the attitudes of such persons towards religion, excepting activities in institutions of a religious denomination, or commits violation of religious sensibilities of persons or incitement to hatred in connection with the attitudes of such persons towards religion or atheism, the applicable sentence is deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage.

organisation, or committed using an automatic system of data processing. However, these amendments have still only passed the first reading.[287]
In the first nine months of 2005, the Security Police initiated or investigated seven criminal cases for incitement to ethnic and racial hatred. Only one investigation has so far resulted in a conviction of six month imprisonment on condition.[288]
In 2005, the number of incidents of violence with alleged racial motivation was on the increase. If during earlier years recorded evidence of such cases did not exist, then in 2005 five cases of verbal or physical assaults on individuals were reported to the police. However, none of these incidents was finally classified as incitement to racial hatred, since the standard of proof of racial motivation is excessively high, and since there is no legal provision for racist or hate motivation (as aggravating factor or otherwise), they were simply classified as hooliganism or minor hooliganism.

Positive aspects

During 2005 the police authorities (at least in Riga) started to become more aware of the issue of incitement to hatred, hate speech and hate crime. In addition, the media reported considerably on the issues. Non-governmental organizations (*Providus*; the Latvian Centre for Human Rights and Ethnic Studies) organized conferences on the issue of racism and xenophobia with the participation of the Minister of the Interior, the Mayor of Riga, as well as leaders of Riga Public Order Police, Riga Municipal Police, and the State Security Police.

Good practices

Approximately 200 citizens and residents of Latvia signed and published an open letter to Latvian society, expressing concern about recent cases of intolerance and disregard of the traditions of democracy.

Reasons for concern

The number of cases of incitement to ethnic and racial hatred, as well as racially motivated violent incidents, is growing. Since spring 2005 public concern about the issue is increasing as well. The Police, reacting to complaints, have initiated some cases. However, most of these have not yet been heard in court. One reason why so few cases are brought to court is presumably the high standard of proof required of intent behind action inciting racial, national or religious hatred for the cases of incitement, and the lack of racist or hate motivation in the legislation for the incidents. The *Criminal Law* contains a list of 13 aggravating factors that may be taken into account in imposing a penalty[289]; however, racial motivation (or any other hate) is not one of these.

Remedies available to the victims of discimination

Legislative initiatives, national case law and practices of national authorities

Those who consider themselves victims of discriminatory practices of public institutions may challenge the discriminatory administrative act under the *Administrative Procedure Law* in a

[287] *Likumprojekts Grozījumi Krimināllikumā* [*Draft Law Amendments to the Criminal Law*], Reg.No. 739, passed the first reading in the Parliament on 7 April 2004. *Likumprojekts Grozījumi Administratīvo pārkāpumu kodeksā* [*Draft Law Amendments to the Administrative Violations Code*], Reg.No. 740, passed the first reading in the Parliament on 7 April 2004.
[288] Information provided by the press-secretary of the Security Police on 6 October 2005 and by the Information Centre of the Ministry of the Interior on 11 October 2005.
[289] *Krimināllikums* [*Criminal Law*], adopted 17 June 1998, in force since 1 April 1999, with amendments announced to 20 October 2005, Section 48.

higher public institution or the Administrative Court. The *Administrative Procedure Law* explicitly lays down the principle of equality in the administrative process: "In matters where there are identical factual and legal circumstances, institutions and courts shall adopt identical decisions (in matters where there are different factual or legal circumstances – different decisions) irrespective of the gender, age, race, skin colour, language, religious beliefs, political or other views, social origin, nationality, education, social and financial status, type of occupation or other circumstances of participants in the administrative proceedings"[290]. The same law provides for compensation in cases of violation of rights within the administrative process: ". Everyone is entitled to claim due compensation for financial loss or personal harm, including moral harm, which has been caused him or her by an administrative act or an actual action of an institution."[291]

For discrimination occurring in labour relations, remedies are available under the *Labour Law*, which stipulates: "Everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair work remuneration. The[se] rights shall be ensured without any direct or indirect discrimination – irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status or other circumstances."[292] Differential treatment is prohibited both when establishing and throughout employment legal relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training, as well as when giving notice of termination.[293]

The *Labour Law* also provides for shift of the burden of proof.

Violation of prohibitions against differential treatment and victimisation entitle an employee affected to claim compensation for loss and moral harm. In case of dispute, the court may determine the amount of compensation for moral harm.

In 2005, the courts examined the first two cases since adoption of the *Labour Law*: one on the ground of sexual orientation (see Article 21) and one on the ground of gender (see Article 23). In both cases the plaintiffs were awarded moral compensation in the amount claimed (2000 and 1000 Lats [approx. 2800 and 1400 Euro] respectively), while in the second case the plaintiff was also awarded lost income.

As is clear from the above, the law explicitly provides for compensation for non-pecuniary damage in case of discrimination in an administrative relationship between an individual and a public institution, as well as in cases of discrimination in labour relationships. However, to date the law does not explicitly provide compensation for non-pecuniary damage for victims of discrimination in other areas, e.g., in access to and supply of goods and services available to the public. Interestingly, there is a precedent where in such cases the court has qualified the discrimination as violation of honour and dignity, and awarded moral compensation under the relevant provision of the *Civil Law* (Section 2352a)[294]. (See Article 26).

The only out-of-court state institution dealing with complaints of discrimination is the National Human Rights Office (NHRO). In the period from January to October 2005, the NHRO received 16 written and 56 oral complaints alleging discrimination (respectively, approximately 1% and 2% of the total number of complaints in the period). The legal staff of the NHRO provided legal consultations and conciliation. Up to now, the *Law on the National Human Rights Office*[295] did not envisage the function of the NHRO to represent the victims of discrimination in court. However, the functions of the NHRO will now become wider, as the

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[290] *Administratīvā procesa likums* [*Administrative Procedure Law*], adopted 25 October 2001, in force since 1 February 2004, with amendments announced to 23 January 2004, Section 6.

[291] Ibid., Section 92.

[292] Darba likums [*Labor Law*], adopted 20 June 2001, in force since 1 June 2002, with amendments to 2 November 2005, Section 6.

[293] Ibid., Section 29.

[294] *Civillikums. Ceturtā daļa. Saistību tiesības* [*Civil Law. Part Four. Liability Law*], adopted 28 January 1937, in force since 1 March 1993, with amendments to 12 December 2002.

[295] *Likums par Valsts Cilvēktiesību biroju* [*Law on the National Human Rights Office*], adopted 5 December 1996, in force since 31 December1996, with amendments announced to 19 July 2005.

Parliament is planning to adopt amendments to the Law *on NHRO*, appointing it the designated institution with competence to implement the principle of equal treatment. Recently the Unit for Elimination of Discrimination was established under the NHRO.

Positive aspects

Amendments are still awaited to the *Law on Associations and Foundations*, enabling NGOs established with the aim of protecting human rights or rights of the individual to submit an application to the institution or court on behalf of victims of discrimination with his/her consent in case of violation of prohibition of different treatment. However, under administrative and recently also under civil procedures[296], individuals can authorize any physical person to represent them. In practice, this means that victims of discrimination can authorize a representative of a NGO to defend their rights in a court case.
Since March, 2005, it is also not necessary to obtain a warrant, authorized by a notary, to represent a person under the civil procedure. Indeed, it is possible to authorize the representative orally during a court hearing.[297] The same order for authorising a representative is laid down in the administrative procedure, since the *Administrative Procedure Law* came into force on 1 February, 2004.
The existence of such procedures is of considerable importance, for two reasons. Firstly, the plaintiff now is not obliged to turn to a sworn advocate but can choose a representative from, e.g., a NGO competent to litigate in discrimination cases. Secondly, a plaintiff should not have to pay for the services of a notary, as the notarial tariff can be considered rather high, a deterrent from litigation for those on a low income, who are more frequently victims of discrimination.

Reasons for concern

Incomplete transposition of *Directives 2000/43/EC* and *2000/78/EC* into national law, so that they fail to cover particular fields, e.g., access to and supply of goods and services available to the public, embarrass and decrease the chance to obtain remedies in case of discrimination.
As court practice on discrimination is very low, the use of the provision on shift of the burden of proof is still unstable. As this concept is completely new, not all judges understand how to apply it in practice.
Although the Unit for Elimination of Discrimination is now established under the NHRO, this has only the right but not a duty to represent victims of discrimination in court cases. If the capacity of the unit remains insufficient for regular litigation, then court practice in litigation cases will remain low because only a few NGOs are capable of dealing with cases of discrimination. Moreover, awareness of the issue of non-discrimination also remains rather low among sworn advocates.

Positive actions aiming at the professional integration of certain groups

Legislative initiatives, national case law and practices of national authorities

There have been no legislative initiatives during 2005 aiming at the professional integration of certain groups. In practice, the *Plan of Action for the Promotion of Employment 2004-2006* under the European Social Fund priority "*Development of human resources and promotion of employment* is continuing to be implemented. During the planned period of three years, Latvia can receive 174 million EUR for this purpose.

[296] *Likums Grozījumi Civilprocesa likumā* [*Law Amendments to the Civil Procedure Law*], adopted 12 February 2004, in force since 10 March 2004.
[297] *Likums Grozījumi Civilprocesa likumā* [*Law Amendments to the Civil Procedure Law*], adopted 17 February 2005, in force since10 March 2005.

During 2005, the State Employment Agency provided vocational training for the following groups at risk of social exclusion: the long-term unemployed (1240 persons); young unemployed people (age 15-25) with a low education (primary education or lower) (356 persons); unemployed persons who are returning to the labour market after child-care leave (1091 persons); persons unemployed after serving a prison sentence (32 persons); and unemployed disabled persons with different functional impairments (vision, hearing, etc.) (562 persons). Three levels of vocational training are offered: training (for persons with no professional education); professional re-qualification; and professional development. Most of those attending training were 20-24 years old. Around 32.6% of graduates of vocational training courses found a job soon afterwards. [298]

Protection of Gypsies / Roms

Legislative initiatives, national case law and practices of national authorities

On 1 March 2005, the Parliamentary Subcommittee on Social Integration voiced support for development of the *National Programme for the Integration of Roma*, where education was cited a top priority. On 16 September, 2005, the Parliament supported the grant of additional funding for a number of activities of the Secretariat of the Special Assignments Minister for Social Integration, including about EUR 27,660 to develop and launch the *National Roma Programme*. The Secretariat has completed drafting the programme before end of 2005.[299]
In 2005 the NGO Centre for Educational Initiatives finalised the study *Romani Identity at a Multicultural School*. The study was conducted on the basis of two activity projects implemented by the Centre since 2003. The projects and the study were implemented with the financial support of the EU Phare programme and the Latvian government administered by the Social Integration Foundation, co-funded by the Open Society Institute and nine local municipalities. The project looks into issues faced by Romani children in education in nine districts of Latvia in the period 2003-2005. The study states that the educational model for inclusion of Romani children in mainstream schools implemented by the Centre in the framework of two projects was effective and led to successful integration of all Romani children into mainstream schools. Analysis was conducted of expectations of Roma towards education and work of teachers. The study revealed that a teacher's personality plays an important role in the integration of Romani children into mainstream schools.[300]
Traditionally a significant proportion of Romani children tend to attend special schools or special classes – frequently correction classes – i.e. experience de facto segregation.

Positive aspects

The elaboration for the first time of a government programme for the Roma is a positive development, as the issue has received attention within the last couple of years. On the other hand, the implementation and effect of the programme will have to be closely monitored, as the situation of Roma remains critical.

Good practices

The NGO Centre for Educational Initiatives implemented the project *The Romani child in a welcoming school* during October 2004 - July 2005. The project was the follow-up of the project *Qualitative education for Romani children* in 2003/2004. The main objectives of the

[298] Information provided by Dzidra Aleksandrova, project manager of the State Employment Agency, on 1 December 2005.
[299] Secretariat of Minister for Special Assignments for Social Integration, http://www.integracija.gov.lv/?id=616&sadala=30&setl=1.
[300] The Centre for Educational Initiatives (2005), *Romani Identity at a Multicultural School*, http://www.iic.lv/petijums1.pdf

project were to include Romani children in mainstream schools through establishing local structures, such as Romani Parent Support Centres, and training mainstream school teachers to work with Romani children. In total, 501 persons participated in the project. Seminars, a conference *Romani Identity in a Multicultural School*, workshops for parents, meetings, consultations for parents of Romani children, teachers and other participants were held. As a result, fifty-four Romani children were integrated into pre-school and mainstream schools.

Reasons for concern

The data draw attention to the situation of Roma in education. For the last two years, the number of Romani children registered at mainstream schools has continued to decrease: in the school year 2004/2005 there were 1,464, in 2003/2004 – 1,508.[301] Taking into account that the Roma in Latvia is the only ethnic group with a positive demography (more births than deaths) and that according to official sources very few Roma have left Latvia,[302] this may indicate that existing school practices fail to integrate Roma into the mainstream educational system (although the possibility that Roma have migrated to other countries cannot be fully excluded).
Difficulties faced by Roma in the Latvian educational system are revealed by the study *Romani Identity in a Multicultural School* conducted by the NGO Centre for Educational Initiatives and presented in 2005. The report does not provide for specific numbers but indicates the main problems faced by Roma: low enrolment, early drop-outs, and others.[303]

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

In Latvia the Church is officially separate from the State[304], and there is no official state religion. The Board of Religious Affairs[305] has registered over 100 religious organisations, some of which are united into over thirty confessions and religious associations (churches). The biggest churches are Evangelic Lutherans (539,327 members), Roman Catholics (395,067 members), Orthodox (350,000), Old Believers (7,635), Baptist (7,123), Seventh-day Adventists (3,950), Methodists (1,010), Jews (667), and Muslims (355).[306]
In 2005, the Board of Religious Affairs denied registration to five organisations: two Muslim organisations (one of these was denied registration repeatedly), two Christian congregations, and a pagan brotherhood. The denials were issued on the basis of Article 11 of the *Law on Religious Organisations*, which provides the right to deny registration if a religious organisation has not submitted all required documents and if documents submitted fail to correspond to the statutes of a religious organisation as provided by law.[307]

[301] Data provided by the Ministry of Education and Science: statistics on number of students at mainstream schools according to their ethnicity in 2004/2005, http://www.izm.gov.lv/default.aspx?tabID=7&lang=1&id=1268.
[302] Central Statistical Bureau of Latvia, Demographic Year Book of Latvia, 2004, page 44.
[303] The Centre for Educational Initiatives (2005), *Romani Identity at a Multicultural School*, http://www.iic.lv/petijums1/pdf
[304] *Latvijas Republikas Satversme* [*the Constitution of Republic of Latvia*], adopted 15 February 1922, in force since 7 November 1922, with amendments announced to 7 October 2004, Section 99.
[305] The Board of Religious Affairs is a state institution under the supervision of the Ministry of Justice, which ensures implementation and co-ordination of state policy in the field of religion.
[306] Information provided by a representative of the Board of Religious Affairs on 10 October 2005.
[307] Information provided by a representative of the Board of Religious Affairs on 10 October 2005.

Reasons for concern

Latvian legislation does not provide a legal definition of traditional and non-traditional or new religions. However, in practice religions are distinguished by several laws and government authorities. (See Article 10.)
Differentiation of religions is also applied regarding the establishment of a church. That is, ten or more congregations of one confession, already registered in Latvia, may establish a religious association (church). However, this excludes congregations of those confessions and religions that do not belong to already registered religious associations and that are beginning their activities in Latvia for the first time.[308] Moreover, these are required to re-register each year for the first ten years, for the Board of Religious Affairs "to examine their loyalty towards Latvia and the compliance of their activities with relevant laws."[309] In addition, congregations of one confession may only register one religious association.[310] These regulations hamper the official establishment of religions that are not considered traditional in Latvia.

Protection of linguistic minorities

Legislative initiatives, national case law and practices of national authorities

Tensions remained, but decreased, over the goals and methods of implementing minority education reform, whose aim is the switch to the Latvian language as the main language of instruction in secondary schools from the 10th grade. The number and scale of protest actions against the education reform has significantly decreased in 2005 in comparison with 2004, when wide-scale protest meetings against the implementation of minority education reform were organised four times, each time gathering at least a thousand to several thousand participants (according to various sources),[311]. In 2005, few protest actions were held against implementation of minority education reform, each time gathering only about 100-400 people, while two conferences against the reform were held. On 30 January, 2005, the Headquarters for the Defence of Russian Language Schools organised a national meeting of secondary school students, where about 330 students took part. The participants of the conference adopted a petition to European human rights institutions, the Ministry of Education and Science, and the Constitutional Court demanding that the reform be cancelled.[312] On 17 April 2005, about 400 people participated in the second Congress of the Defenders of Russian-language Schools, organised by the Headquarters for the Defence of Russian-language Schools. The Congress decided to keep campaigning against implementation of the reform, as well as setting new goals: to achieve official status for the Russian language, and to achieve the automatic granting of Latvian citizenship to all Russian-speakers living in Latvia through registration.[313]
In 2005 the Constitutional Court examined two cases related to the issue.[314] (See Article 21.)

Reasons for concern

The main concern expressed by protesters regarding the minority education reform is the impact of the reform on the quality of education. In February, the Headquarters for the

[308] *Reliģisko organizāciju likums* [*Law on Religious Organisations*], adopted 7 September 1995, in force since 10 October 1995, with amendments announced to 26 September 2002. Section 7.
[309] Ibid., Section 8(4).
[310] Ibid., Section 7.
[311] Latvian Centre for Human Rights and Ethnic Studies, *Annual Report 2004 by the RAXEN Latvian National Focal Point*, p.10.
[312] National News Agency LETA, 30 January 2005.
[313] National News Agency LETA, 18 April 2005.
[314] Latvijas Republikas Satversmes tiesas 2005. gada 13. maija spriedums lietā Nr. 2004-18-0106, Latvijas Republikas Satversmes tiesas 2005. gada 14. septembra spriedums lietā Nr. 2005-02-0106.

Defence of Russian-language Schools in Latvia conducted an opinion poll among parents of students who study at mainstream secondary schools subject to the reform in 2004. About 250 parents from seventy schools took part in the poll. According to the poll, the quality of education has deteriorated since the start of minority education reform: 67 per cent of parents claimed that the level of academic attainment of their children has worsened.[315]
The State Education Inspectorate counter-argued the data and stated that in September – October 2004, of 223 schools implementing the reform, only one reported significant difficulties with implementation. However, the State Education Inspectorate admitted that problems exist concerning text books, methodologies, and teaching aids.[316]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In 2005 the Parliament, after long political discussion, ratified the *Council of Europe Framework Convention for the Protection of National Minorities*, signed by Latvia as long ago as 1995.[317] Ratifying the *Convention*, Latvia adopted a *Law on the Framework Convention for the Protection of National Minorities*, which declared that "the notion "national minorities" which has not been defined in the *Convention*, should, within the meaning of the *Convention*, apply to citizens of Latvia who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the *Convention* as defined in this declaration, but who identify themselves with a national minority and meet the definition contained in this declaration, will enjoy the rights prescribed in the *Convention*, unless specific exceptions are prescribed by law." Actually, the declaration means that the notion of national minority within the meaning of the *Convention* is not applicable to Latvian non-citizens and is questionable for those citizens who have naturalized recently.
Besides the definition of national minorities, the Law also contains a declaration that Latvia considers articles 10.2[318] and 11.3[319] of the *Convention* as binding, so far as they do not contradict the *Constitution* and other legal norms in force in the Republic of Latvia which govern the use of the State language. Evaluating the meaning of this declaration, in the context of Latvian legislation on the use of state language, excluding in some cases the use of other languages, it can be considered as hidden reservations to the *Convention*.

[315] Guščins, V. *Izglītības reforma: zināšanas ir otršķirīgas*, 1 March 2005, http://www.politika.lv/index.php?id=110856&lang=lv
[316] The State Education Inspectorate, *Annual report 2004*, http://www.ivi.gov.lv/?sadala=92 .
[317] Likums *Par Vispārējo konvenciju par nacionālo minoritāšu aizsardzību* [*Law on the Framework Convention for the Protection of National Minorities*], adopted 26 May 2005, in force since 1 June 2005.
[318] Article 10.2: *In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.*
[319] Article 11.3: *In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.*

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

A prohibition to discriminate on the ground of gender in employment relations is explicitly laid down in the *Labour Law*[320], which defines and prohibits direct and indirect discrimination, harassment and instruction to discriminate, as well as victimisation. The *Labour Law* provides that in cases of violation of the prohibition of differential treatment and in cases of victimisation, an employee or potential employee can bring a case to a court, asking to redress damages, as well as compensation for non-pecuniary damages.
Until 2005, there had been no known court cases based on the *Labour Law*[321]. In 2005, the courts examined two, one of which was submitted on the ground of gender.
A retired woman had been employed by the municipality for 7 years as a stoker during heating seasons. The municipality had paid for her instruction. At the beginning of heating season 2004, she and another five candidates re-applied for the vacancy; however, the municipality did not evaluate the candidates' qualifications, but hired a man who did not even apply for the job but already worked as a driver in the municipality. The plaintiff was orally informed that further in future no women would be employed for this job. During the court hearing the defendant pointed out that the plaintiff was receiving a retirement pension and already had means of subsistence, and that the municipality has the right to decide who needs more material support in the form of a salary.
The court found discrimination not only on the ground of gender on which the claim was based, but also on the ground of property status, as the other reason why the plaintiff did not get a job was the fact that she already had an income. The court awarded the plaintiff compensation for non-pecuniary damage of 1000 Lats (approx. 1400 Euro), as well as compensation for lost income of 585 Lats (approx. 810 Euro).[322]

According to information from the State Employment Agency[323], the rate of women among all unemployed is approx. 60%, although the official figures are incomplete, especially because of underreported rates of unemployment among the rural population and the number of labour relations without contracts in order to avoid paying taxes.

Reasons for concern

The provisions on non-discrimination are still not included in other laws regulating labour relations, e.g., in the *Law on the Civil Service*.

According to information provided by local NGOs, cases of gender discrimination in work and employment occur frequently, especially in small towns. However, in many cases women have no information about possible avenues for defending their rights or do not report because of fear of being victimised.

[320] *Darba likums* [*Labour Law*], adopted 20 June 2001, in force since 1 June 2002, with amendments announced to 2 November 2005.
[321] Before 2002, when the *Labour Law* entered into force, there were two court cases on discrimination on the ground of gender under the provisions of the *Labour Code*,
[322] Cēsu rajona tiesas 2005. gada 5. jūlija spriedums [Decision of Cēsis District Court] lietā Nr. C11019405.
[323] Information available on the website of the State Employment Agency http://www.nva.lv/index.php?cid=6&mid=89&txt=84&t=stat

Positive actions seeking to promote the professional integration of women

Good practices

The *Marta* Resource Centre for Women has begun implementing a project entitled *Opening the Labour Market for Women*, supported by the *EQUAL* European Commission initiative. The partners of *Marta* in the Project are the Baltic Social Science Institute, the Latvian National Human Rights Office, the International Organization for Migration, the Ministry of the Interior, the Social Economics Foundation, the Association of Businesswomen, the Technology Development Foundation, and the Association of Latvian Cities. The aim of the project is to develop an open market for women by reducing gender segregation in the labour market, facilitating reconciliation of family and working life, developing efficient support capacity, and reducing national tension.
In the course of the project's implementation, it is planned to introduce new support services – different new methods of adult training, activities to reconcile family and working life, individual consultations for women, consultations and free legal aid by the National Human Rights Office in order to promote the development of a labour market free of discriminatory practices based on gender, and reduce gender segregation in the labour market, including the prevailing stereotypes about women's role at work and in the family. The newly developed state, municipal, and NGO cooperation model for rehabilitating and reintegrating the victims of human trafficking into the labour market in Latvia will promote an inter-institutional and inter-professional approach to the issue. Its aim is to lessen the discriminatory attitude of society, state, and municipal institutions causing ostracism and hindering the victims of human trafficking from re-entering the labour market.
Project activities will take place in the larger cities of Latvia: Rezekne, Riga, Daugavpils, Liepaja, Ventspils, and Jelgava.

Gender discrimination in the access to goods and services

Legislative initiatives, national case law and practices of national authorities

No information is available on direct discrimination in access to goods and services. However, the salary of women for the same job is approximately 15% lower than for men, and so-called women's professions (e.g., teachers, younger medical staff, shop assistants) are paid less than men's professions.[324] There is also a high number of single mothers, and in many cases fathers of children are avoiding paying alimony. This contributes to the situation where access to goods and services for women is limited in comparison to men, because of their lower means.

Remedies available to the victim of gender discrimination

Legislative initiatives, national case law and practices of national authorities

The remedies available to victims of gender discrimination are the same as for discrimination on other grounds. (See Article 21, Remedies available to the victims of discrimination.)
There has been only one court case on the ground of gender (see above) since the provision on shift of burden of proof has been in force, and in this particular case the provision was mentioned during the court hearing, although it was not used in practice. The court hearing proceeded under the general provisions of the *Civil Procedure Law*, and both parties had to prove their position on an equal basis. Hopefully, in line with developing court practice on the

[324] Shadow Report to the Combined Initial, Second and Third Periodic Report of Latvia on the Implementation of the Convention of 18 December 1979 on Elimination of All Forms of Discrimination Against Women in the Republic of Latvia, submitted by Women's NGOs Network of Latvia. Riga, Latvia, 2004

issue of discrimination, the courts will comprehend how to use this provision, as well as its importance.
In the same case, the plaintiff asked for compensation for non-pecuniary damage of 1000 Lats (approx. 1400 Euro), as well as compensation for lost income of 585 Lats (approx. 810 Euro), and the court agreed with her request, pointing out that such amount could be considered just satisfaction for the plaintiff and a dissuasive measure in respect to the defendant.[325]
Victims of gender discrimination can turn for free legal aid to the National Human Rights Office (NHRO). The legal staff of the NHRO provide legal consultations and mediation. Within the project *Opening the Labour Market for Women*, supported by the *EQUAL* European Commission initiative, the NHRO has opened a hotline for victims of gender discrimination and is planning to represent the victims of gender discrimination in the courts. However, up to the end of 2005 there were no cases where this was done.
Consultations for victims of gender discrimination are also available at the NGO *Marta* Resource Centre for Women. Another NGO – the Latvian Centre for Human Rights and Ethnic Studies (LCHRES) - provides legal consultations on discrimination and represents the victims of discrimination in the courts free of charge, under the anti-discrimination project implemented by the LCHRES. In the above case, the LCHRES represented the plaintiff during all court proceedings.

Reasons for concern

Apart from a couple of NGOs operating out of the capital, there are no regional or local NGOs actively working in the field of non-discrimination, and information available about possibilities to obtain legal aid on this issue is still very limited.

Participation of women in political life

Legislative initiatives, national case law and practices of national authorities

In 2005, women constituted approximately 1/5 of the number of MPs.[326] The President of Latvia, as well as the Speaker of the Parliament and four out of 18 Ministers are women. However, generally the representation of women at the political level is far from proportional.
There was no political party for whom equality of women featured as a priority in the pre-election programme for the 2005 municipal elections.
The rate of participation of women in the 2005 municipal elections was approx. 74.5 %, while men 64.7 %.[327]

Article 24. The rights of the child

Possibility for the child to be heard, to act and to be represented in judicial proceedings

Legislative initiatives, national case law and practices of national authorities

Under the *Children's Rights Protection Law*, a child has the right to freely express his or her opinions, and for this purpose, to receive and impart any kind of information, as well as the

[325] Cēsu rajona tiesas 2005. gada 5. jūlija spriedums [Decision of Cesis District Court] lietā C11019405.
[326] Information available on the webpage of the Parliament www.saeima.lv
[327] The survey *Factors which have an impact on the participation of voters in the municipal elections 2005*, provided by the *SKDS* market and public opinion research centre on 13-21 March, 2005. http://www.cvk.lv/cvkserv/PV_2005//apt_vellidzdal05.pdf

right to be heard.[328] The law also provides that a child should be given the opportunity to be heard in any adjudicative or administrative proceedings related to the child, either directly or through a lawful representative of the child or through a relevant institution.[329]
Under the *Civil Procedure Law*, children below the age of 18 should be represented by their legal representative (parents or legal guardian) in litigation, although children between 15 and 18 years should also be asked to take part in proceedings themselves.[330] Children cannot be asked to give evidence against their parents, grand-parents, brothers or sisters. Generally, children can be asked to give evidence in civil proceedings from the age of 7.[331] The *Administrative Procedure Law* provides similar provisions to the *Civil Procedure Law* on rights of children to be heard, to act, and to be represented in judicial proceedings.[332]
In 2005, the *Criminal Procedure Law* came into force. This provides that if minors (children up to 18 years) have a right to defence under criminal procedures, then participation of defence counsel is obligatory.[333] For better protection of the rights and interests of a minor who has a right to defence, his/her representative can take part in criminal proceedings. The representative of the minor may be 1) the mother, father, legal guardian, custodian; 2) one of the grandparents, an adult brother or sister, if the minor has been living with them and the respective relative has take care of the minor; 3) a representative of a children's rights protection institution; 4) a representative of an NGO that protects the rights of children. The same list of persons as above may represent minor victims of an offence. In case of representation of a minor victim, the representative fully possesses all the rights of the victim, and a minor is not allowed to implement them himself, with the exception of the right to give evidence and express an opinion.[334]
Interrogation of a minor under 14 has to proceed in the presence of a teacher or psychologist.[335] The *Criminal Procedure Law* contains no age limit for minor witnesses in criminal procedure.
The *Asylum Law* provides[336] that the rights and lawful interests of a minor (a person under 18) should be represented by the parents. An application should be heard and the decision to grant or refuse refugee or alternative status also applies to minor children of an asylum seeker if they are located or arrive in Latvia concurrently with the parents. In hearing an application, the opinion of the minor must be taken into consideration. The rights and lawful interests of unaccompanied minors during the asylum procedure should be represented by an independent authorised representative appointed by the Appeals Board for Refugee Matters. The duty of the representative is to act objectively in the interests of the minor. In addition, unaccompanied minors are entitled to free legal assistance during the asylum procedure.

Reasons for concern

However, the *Asylum Law* does not explicitly state the obligation of the representative of accompanied minors to participate in interviews and court hearings related to the asylum procedure or detention. In practice, legal assistance is also not provided.

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[328] *Bērnu tiesību aizsardzības likums* [*Children's Rights Protection Law*], adopted 19 June 1998, in force since 22 July 1998, with amendments announced to 1 April 2005.Section 13.
[329] Ibid., Section 20(3).
[330] *Civilprocesa likums* [*Civil Procedure Law*], adopted 14 October 1998, in force since 1 March 1999, with amendments announced to 22 June 2005, Section 72.
[331] Ibid., Section 106.
[332] *Administratīvā procesa likums* [*Administrative Procedure Law*], adopted 25 October 2001, in force since 1 February 2004, with amendments announced to 23 January 2004, Section 21, Section 163.
[333] *Krimināl*procesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005, Section 83.
[334] Ibid., Section 89, Section 104.
[335] Ibid., Section 152.
[336] *Patvēruma likums* [*Asylum Law*], adopted 7 March 2002, in force since 1 September 2002, with amendments announced to 20 January 2005, Section 11.

Thus, on 5 August 2005, three unaccompanied minors entered Latvia seeking asylum together with 2 adults who are not their parents[337]. During the asylum procedure all of them were placed in the detention centre for illegal immigrants. The appointed representative did not participate in the court hearing[338] on extending the detention term. However, this was not considered a procedural obstacle to holding the hearing.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

At the end of 2004, the *Action Plan for implementing the State Family Policy concept for 2004-2013* was finally approved by the Cabinet of Ministers. The Action Plan was elaborated by the Ministry of Children and Family Affairs, and can be considered as governmental strategy for improving conditions of families and children in 14 different areas such as medicine, education, the social sphere, and housing.[339]

On 17 November 2005, a draft *Orphans' Court Law* passed the first reading in the Parliament[340]. The draft law includes a requirement for persons elected to the post of head of the Orphans' Court to have second level higher education in the field of medicine, law, social work, pedagogy or psychology, and for members of the Orphans' Courts to have at least first level higher education in these fields. The draft law also provides that in case of removal of a child from the family, the Orphans' Court has a duty to provide for out-of-family care with a foster family or by a legal guardian, and only if this is not possible to place a child in a care home.

Positive aspects

In 2005 the *Children's Rights Protection Law* was amended[341], stipulating that not only families but also individuals can become a foster family. In the period from 1 December, 2004 to 1 July, 2005, 107 families and individuals obtained foster family status.[342] This can be considered a great step forward towards reducing the number of children placed in care homes, as in 2004 there were only 47 families with such status, compared with 15 in 2003. At the end of August, 2005, the Cabinet of Ministers increased the allowance for exercising the functions of foster family from 70 to 80 Lats (approx. 115 Euro) monthly[343].

Reasons for concern

The *Citizenship Law* provides that children born after 21 August 1991 of Latvian non-citizen parents have a right to be registered as citizens without having to naturalise. However, the law does not foresee automatic grant of citizenship to them. Initially they have to be registered as Latvian non-citizens, and afterwards the parents or adopters have a right to submit an application, expressing their wish to register a child as a citizen and confirming that they will

[337] Information provided by Baiba Biezā, Head of the Refugee Affairs Department of the OCMA on 21 November 2005.
[338] Rīgas pilsētas Ziemeļu rajona tiesa [Riga City Ziemeļu District Court], 30 November, 2005.
[339] The *Action Plan for implementing the State's Family Policy concept* is available on the homepage of the Ministry of Children and Family Affairs, http://www.bm.gov.lv/lat/gimenes_politika/
[340] *Likumprojekts Bāriņtiesu likums* [*Draft Orphans' Court Law*], Reg.No 1409, passed the first reading on 17 November 2005.
[341] *Likums Grozījumi Bērnu tiesību aizsardzības likumā* [*Law Amendments to the Children's Rights Protection Law*], adopted 17 March 2005, in force since 15 April 2005.
[342] In accordance with the approach adopted in Latvia, a foster family cares for a child until he/she may return to his/her own family or is adopted or put under guardianship.
[343] Information available on the website of the Ministry for Children and Family Affairs www.bm.gov.lv

help the child master the Latvian language as the official language, and acquire an education and will instill in the child a respect for and loyalty to the Republic of Latvia.[344] If persons who have the right to submit an application regarding acknowledgement of a child as a citizen of Latvia have not done so, then a minor on reaching 15 has the right to acquire Latvian citizenship on application with a document verifying that he/she has acquired specialised education with Latvian as the language of instruction or a document certifying that he/she is fluent in the Latvian language. Although the number of applications is growing, particularly after information campaigns, the number of eligible non-citizen children still remains high at more than 15,000, while children with non-citizen status continue to be born.[345]

Article 25. The rights of the elderly

Participation of the elderly to the public, social and cultural life

Good practices

The National Employment Agency, together with local government, implements several projects co-financed by the European Social Fund, and creates subsidised working places for inclusion in the labour market of persons from groups at risk, including those of pre-retirement age. This development is in line with the *National Lisbon Programme 2005-2008*, which by decision of the Cabinet of Ministers of 5 July 2005 is coordinated by the Ministry of Economics. It was submitted to the European Commission on 15 October 2005[346], where the integration in the labour market of persons of pre-retirement age is emphasized as a priority task. This is important to improve their social security, as the amount of state retirement pension depends on social insurance contribution and age of retirement. The later a person stops working and starts receiving their retirement pension, the larger it is.[347]

Reasons for concern

Participation of the elderly in public, social, and cultural life is limited to a great extent because of the critical state of the social security system. Although retirement pensions and social security benefits have been indexed and gradually increase every year, they are still not sufficient to adequately cover the needs of the elderly.
On 1 January 2005 there were 593 494 persons receiving retirement pension in Latvia. Of these, 93,85% were receiving a pension lower than 105 Lats (approx. 150 Euro)[348], whereas the minimum living wage in Latvia was about 110 Lats (157 Euro)[349].

[344] In 2005, the government started discussions on *Citizenship Law* amendments, providing, *inter alia*, the possibility to register the children of non-citizen parents as Latvian citizens, right after birth, if the parents clearly express such a wish.
[345] Latvian Centre for Human Rights and Ethnic Studies. *Human Rights in Latvia in 2004*, p. 21.
[346] Information available on website of the Ministry of Foreign Affairs http://www.mfa.gov.lv/lv/eu/ekonomika/lisabona/
[347] Full text of the *Latvian National Lisbon Programme 2005-2008* is available on website http://www.em.gov.lv/em/images/modules/items/item_file_11631_2.pdf
[348] Information provided by the State Social Insurance Agency to the Constitutional Court [Satversmes tiesa]. Satversmes tiesas 2005. gada 11. novembra spriedums lietā 2005-08-01 [the decision of the Constitutional Court].
[349] Information provided by the Central Statistics Bureau on 3 December 2005.

The possibility for the elderly to stay in their usual life environment

Legislative initiatives, national case law and practices of national authorities

The *Law on Social Services and Social Assistance*, in force since 2003, foresees social services being provided at the client's place of residence or as close thereto as possible on the basis of an evaluation of individual needs and resources carried out by a social work specialist. If the scope of services is not sufficient, social care and social rehabilitation at a long-term care and social rehabilitation institution should be provided. A client or their breadwinner has a duty to pay for social care services received. If they are unable to pay for social care or social rehabilitation services, the costs should be covered from the local government budget. The local government in the territory of which a person has a registered place of residence has a duty to make available social services and social assistance corresponding to needs.[350]

In practice, there is no uniformity in the approach of local governments to providing home care services. Some municipalities have created their own care agency or mobile service teams, others are concluding agreements with private companies or NGOs, while others agree with the neighbours of elderly or disabled people about their care. There is also no unified State tariff for home care services.[351]

Local authorities provide home care services free of charge only to persons[352] defined as poor according to the order set by the government, and who have no breadwinner or whose breadwinner is also defined as poor.

Good practices

The Latvian Red Cross (LRC) has launched a campaign for donations for home care services for elderly people. The LRC has 65 nurses and 145 carers. According to the LRC estimate, approximately 30 Lats (43 EUR) monthly are neeeded to provide a home care service for one person. The LRC has also entered into agreement with some municipalities on providing home care services.

Reasons for concern

In 2004 local municipalities provided home care for 5087 retired persons. The number of local authorities providing day care centre services for retired persons is also growing. In 2004 this service was provided for 4945 persons.[353] The number is growing every year; however, it is still too small to consider as a developed and effective home care system for the elderly.

[350] *Sociālo pakalpojumu un sociālās palīdzības likums* [*Law on Social Services and Social Assistance*], adopted 31 October 2002, in force since 1 January 2003, with amendments announced to 15 December 2004. Sections 4, 8, 9.

[351] Briede Z., *Samaksa par mājas aprūpi ir dažāda.* Daily newspaper *Latvijas Avīze*, 4 April 2005.

[352] MK 2003. gada 27. maija Noteikumi Nr. 275 *Sociālās aprūpes un sociālās rehabilitācijas pakalpojumu samaksas kārtība un kārtība, kādā pakalpojuma izmaksas tiek segtas no pašvaldības budžeta* [Regulation No. 275 of 27 May 2003 O*rder of payment for social care and social rehabilitation services*].

[353] Information provided by Aldis Dūdiņš, an official of the Ministry of Welfare. The data on 2005 are still not available.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Since 1 January 2005, the *Law on Social Services and Social Assistance* provides a chance for persons with functional disturbances to receive social rehabilitation services in social rehabilitation institutions paid for by the State budget. One of the groups eligible for this service is elderly people whose ability to take care of themselves is limited, e.g., due to illness or trauma.[354]

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiatives, national case law and practices of national authorities

The prohibition of discrimination on the ground of disability or health is laid down in laws prohibiting discrimination in general. Although not all of them mention these grounds explicitly, as the list of grounds is mainly open, it should be considered that they are foreseen under 'other circumstances' (See Article 20, 21). Discussion has been raised on the content of the notion of disability and health. Generally, disability is understood as health status that limits a person's physical or mental ability and is recognized as such by the competent State institution: the Medical Commission for Expertise on Working Ability.[355] There were about 111 000 disabled persons in Latvia in 2005, of whom 70 000 are of working age.[356]

In 2005, for the first time a case involving discrimination on the ground of disability was heard by a court. On 11 July 2005, the Riga Regional Court (Rīgas apgabaltiesa) heardd the claim of disabled young man against a popular nightclub. The young man, who is confined to a wheelchair, was twice denied entry to a nightclub by the security staff, while his friends were allowed to enter the club without any objections. Several reasons were provided for refusing him entry to the nightclub, including a claim that it was holding a private party. After a spot about this incident appeared on a TV programme, the nightclub manager expressed the view in a TV interview that the plaintiff had to notify the nightclub a couple of days before the visit, as the architecture of the building is too complex for entering with a wheelchair without help.
The plaintiff found this requirement discriminatory, as it was not expressed to other visitors of the nightclub, and he considered that his honour and dignity were violated both by the security staff and by the manager of the nightclub. He also claimed that the nightclub had interfered with his liberty, unlawfully limiting his right to choose his location. The claim was based on Sections 89[357], 91, 92, 94 and 95 of the *Constitution*, Articles 1, 2, 3, 7, 27(1) of the

[354] Grozījumi *Sociālo pakalpojumu un sociālās palīdzības likumā* [Amendments to the *Law on Social Services and Social Assistance*], adopted 25 November 2004, in force since 29 December 2004.
[355]Darbspējas ekspertīzes ārstu komisija.
[356] *Basic Principles on Policy for Elimination of Disability and its Consequences 2005-2015*, adopted by the Cabinet of Ministers on 13 June 2005.
[357] *Latvijas Republikas Satversme* [*Constitution of the Republic of Latvia*], adopted 15 Feb 1922, in force since 7 Nov, 1922, with amendments announced to 7 Oct, 2004. Section 89. *The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.* Section 91. *All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.* Section 92. *Everyone has the right to defend their rights and lawful interests in a fair court. Everyone shall be presumed innocent until their guilt has been established in accordance with law. Everyone, where their rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.* Section 94. *Everyone has the right to liberty and security of the*

Universal Declaration of Human Rights, Articles 2, 9 and 26 of the *ICCPR*, Articles 2 and 15(1) of the *ICESCR*, Articles 14 and 5(1) of the *European Convention on Human Rights*, Articles 2, 3 and 4 of the *UN Declaration on the Rights of Disabled Persons*, as well as on Sections 1635 and 2352a(3) of the Latvian *Civil Law*[358].
The court denied the claim in part for deprivation of liberty, as the facts of the case were not relevant to the substance of the provisions relating to the deprivation of liberty and freedom of movement. However, the court found that the staff of the nightclub had discriminated against the plaintiff and that the discriminatory attitude had violated his honour and dignity, thus creating a basis for awarding him compensation under the *Civil Law*. The amount of compensation claimed by the plaintiff was 30 001 Lats (42 737 EUR)[359]; however, the court awarded him compensation of 3000 Lats (4274 EUR).[360] The decision was not appealed, either by the plaintiff, or by the defendant.

Positive aspects

This decision in fact widens the scope of prohibition of discrimination against disabled persons currently laid down by national law, as well as by *Directive* 2000/78/EC. The court successfully used the provision of the *Civil Law* related to compensation for violation of honour and dignity, comparing discrimination to such violation.

Reasons for concern

As social security benefits for the disabled are low and social services to families with disabled children are far from satisfactory, disabled persons are indirectly denied sufficient education, which further leads to difficulties in adequate competition in the labour market and thus places many disabled people in the category of poor.

Professional integration of persons with disabilities: positive actions and employment quotas

Good practices

Since February 2005, the length of employment in working places subsidised by the government[361] was extended from 10 to 24 months. 700 000 Lats (approx. 1 000 000 EUR) were allocated to support new activities of subsidised employment for the disabled

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person. No one may be deprived of or have their liberty restricted, otherwise than in accordance with the law. Section 95. *The State shall protect human honour and dignity. Torture or other cruel or degrading treatment of human beings is prohibited. No one shall be subjected to inhuman or degrading punishment.*

[358] *Civillikums. Ceturtā daļa. Saistību tiesības* [*Civil Law. Part Four. Liability Law*], adopted 28 January 1937, in version of 25 May 1993, in force since 1 September 1993, with amendments announced to 24 March 2005. Section 1635. *Every violation of rights, i.e., any disallowable action, gives to the person to whom it causes damage, a right to ask satisfaction from the violator, as far as the violation has occurred due to his fault.* Section 2352a(3). *If somebody has unlawfully violated the honour and dignity of another person orally, in writing or by action, he shall give compensation for it (material compensation). The amount of compensation is at the discretion of the court.*

[359] If a court case involves a dispute over a sum above 30 000 Lats, the first instance court where the case should be examined is the Regional court, instead of the District/City court. Clearly, the plaintiff's intention in claiming such amount of compensation was to start the case in the Regional court.

[3] Rīgas apgabaltiesas Civillietu kolēģijas 2005. gada 11. jūlija spriedums lietā Nr.C 04386004 C2020/3. [Decision of the Riga Regional Court].

[361] An employer who establishes a subsidized working place is eligible to receive a single subsidy of 200 lats (285 EUR) for providing and fitting out a working place with permanent assets and 500 lats (712 EUR) for adjusting the working place according to the recommendations of an ergotherapist. The salary subsidy is in the amount of the minimum working wage for the first 12 months and 75% of the minimum wage in the last 12 months.

unemployed and to finish those that were started previously. According to data of the State Employment Agency, from 2003 to 2005, 920 working places for disabled persons were created throughout the country. In 2003, 395 disabled unemployed took part in these activities, and 489 in 2004. During the next few years, subsidised working places co-financed by the European Social Fund will also be created under projects for inclusion of groups at social risk.
There are three levels of subsidised employment for the disabled: working practice (for 18-25 year-olds with higher or professional education or after professional training and with work experience of less than 1 year), development of professional skills (for those over 25 with work experience of not less than 2 years) and learning of professional skills (for unemployed disabled persons of working age irrespective of previous work experience). About 70% of disabled persons find a job after participating in activities of subsidised employment.[362]

Reasons for concern

The proportion of disabled persons among the registered unemployed is 3%. Approximately 28% of these find a job in a year. However, officially only about 10% of all disabled persons are employed.[363] This number can vary due to at least two factors: existence of unofficial employment, especially in rural areas, as well as because disabled persons frequently do not disclose their disability when seeking and finding a job.
However, the unemployment rate remains high among the disabled. This is related to lack of interest and information for employers about possibilities to create subsidised working places for the disabled, and also about possibilities for disabled persons to participate in activities of subsidised work. People, mainly in rural areas, also fear losing their disability benefits, which are dependent on income.

Reasonable accommodations

Good practices

In 2005 *Apeirons*, the association of disabled persons and their friends, in co-operation with the Construction Department of the Ministry of Economics, launched the second competition for the award of most 'human' or accessible public building, *The Golden Crutch*. 41 public buildings from different regions of the country were nominated.[364]

Reasons for concern

Lack of reasonable accommodation remains a serious problem. This has a major impact on education and working possibilities of the disabled, as well as their participation in social life.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Ministry of Welfare has elaborated *Basic Principles on Policy for Elimination of Disability and its Consequences 2005-2015*, adopted by the Cabinet of Ministers on 13 June 2005, in order to improve the system of social security for the disabled, to promote their employment, to improve the system for establishing disability and developing a complex of activities for prevention of disability. The *Principles* are a long-term planning document

[362] Information provided by the Ministry of Welfare on 4 December 2005.
[363] Valpētere I. *Kad tavas īpašās vajadzības rada iespējas citiem.* Publikācija *Nacionālās iecietības veicināšanas programmas* ietvaros [Publication within the scope of *National Programme for Promotion of Tolerance*], available at website www.dialogi.lv
[364] Information available on the website of *Apeirons* http://www.apeirons.lv/index.php?p=1&jid=182 .

(covering a 10-year period), which includes principles, objectives and priorities in prevention of disability, and state policy on the social security system for the disabled, reducing the risk of their exclusion. Elaboration and implementation of two new laws – *Law on Social Security for the Disabled* and *Law on Employment of the Disabled* – are foreseen in the document.[365]

[365] Full text of the document is available on the website of the Ministry of Welfare http://www.lm.gov.lv/doc_upl/Pamatnostadnes_2906.doc

CHAPTER IV. SOLIDARITY

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

Workers' information on the economic and financial situation of the undertaking

Legislative initiatives, national case law and practices of national authorities

As regards legislation adopted and legislative initiatives proposed during the period under scrutiny, three main developments should be pointed out:
1) amendments to the *Labour Law*, concerning rights and obligations of employees' representatives[366];
2) adoption of the *Law On European Commercial Companies*[367];
3) establishment of a governmental working group to implement *Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)* and *Council Directive 2003/72/EC of 22 July 2003* supplementing the *Statute for a European Cooperative Society* with regard to the involvement of employees.
It should be said that all the above legal developments in Latvia in the field of workers' right to information and consultation have been brought about by European Union law, in particular by the necessity to transpose the respective directives into the national legal system.
Amendments to the *Labour Law* for the first time introduce into the national legal system a definition of information corresponding to the definition laid down by *Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002* establishing a general framework for informing and consulting employees in the European Community, Article 2(f). In the *Labour Law*, information is defined as a process whereby an employer transmits to employees' representatives relevant information enabling them to acquaint themselves with and examine the subject matter. Such information should be transmitted in due time and in appropriate fashion and content. This obligation of appropriate transmission of relevant information and exchange of views and establishment of dialogue in a due and appropriate manner is introduced in the *Labour Law* also in respect of the consultation procedure. Under the *Labour Law*, consultation means exchange of views and establishment of dialogue between employees' representatives and the employer in order to reach an agreement. Consultation should be carried out at an appropriate level, content, as well as in due time and manner in order to provide employees' representatives with well-founded answers.
In addition to the above, the recent amendments to the *Labour Law* also concern the scope of information to be provided to employees' representatives. In particular, they oblige the employer to transmit information not only on the current social and economic situation of the undertaking, but also on relevant future perspectives and developments envisaged. This enables employees' representatives to anticipate possible future changes generated by restructuring of the undertaking or change of other working conditions at a much earlier stage, thereby allowing effective adoption of necessary measures such as employee training and skill development and preventing excessive redundancies.
The amendments to the *Labour Law* also deal with the issue of confidentiality. Accordingly, the *Labour Law* stipulates that both employees' representatives and experts who assist them (usually, employed persons working in the office of a trade union), remain bound by the obligation of confidentiality not only while discharging their respective duties but also after expiry of their terms of office. Thus, the scope of the confidentiality obligation has been broadened. However, information is regarded as confidential only where this is explicitly

[366] *Grozījumi Darba likumā* [*Amendments to the Labour Law*], adopted 13 October 2005, in force since 16 November 2005.
[367] *Eiropas Komercsabiedrību likums* [*Law on European Commercial Companies*], adopted 10 March 2005, in force since 7 April 2005.

indicated by the employer. Consequently, irrespective of the nature of information, employees' representatives and experts assisting them are not bound by the confidentiality obligation unless the employer has specifically indicated it.
The *Law On European Commercial Companies*, *inter alia*, incorporates the provisions of *Council Directive 2001/86/EC of 8 October 2001* supplementing the *Statute for a European company* with regard to the involvement of employees. The given *Law* provides for several stages of involvement of workers (workers representatives) in the process of both establishment and operation of a European commercial company. In line with information and consultation, the *Law On European Commercial Companies* sets out participation rights, which are defined as the influence of the employees' representation committee or employees' representatives in the affairs of the commercial company by way of the right to elect or appoint members of the administrative institution of the commercial company or the right to recommend or oppose the appointment of members of the administrative institution.
This *Law* provides for creation of a special negotiating body consisting of the employees of participating companies and any subsidiaries involved. The special negotiating body should be entitled to negotiate with the competent body of participating companies about establishing arrangements for the involvement of employees of a European Commercial Company. In particular, the main function of the special negotiating body is, in cooperation with the competent organs of the participating companies, to reach an agreement on composition, functions, procedures, and financial resources of the representative body. The *Law On European Commercial Companies* also lays down basic conditions for information and consultation procedure in the framework of a European Commercial Company founded within the jurisdiction of Latvia as well as information confidentiality provisions.

Positive aspects

As noted above, by virtue of the latest legislative developments in the area of employees' right to information and consultation, minimum standards adopted at European Union level and enshrined in the respective directives have been transposed into the national legal system. As a result, Latvian labour legislation is moving closer to the standards of transparent democracy and the co-decision taking procedure.
Provision of adequate and timely information and consultation is essential for employees and their representatives, in particular when concluding a collective agreement. According to the statistics of the Confederation of Free Trade Unions of Latvia[368], by January 2005 there were 2029 collective agreements[369] and 21 general collective agreements[370] effective in Latvia.

Reasons for concern

From interviews with workers' and employers' organizations, several reasons for concern have emerged regarding employees' right to information and consultation.
The most evident of these is the lack of effective legal remedies applicable with regard to the employee in the event of failure to honour information and consultation requirements. On the one hand, the *Code of Administrative Offences* provides for an administrative fine for violation of employees' right to information or consultation within a European commercial company (e.g., disclosure of confidential information, failure to provide employees'

[368] Information provided by Ms Natalija Sinica, a lawyer of the Free Trade Union Confederation of Latvia, 30 November 2005.
[369] *Darba likums* [*Labour Law*], adopted 20 June 2001, in force since 1 June 2002, with amendments announced to 2 November 2005. Section 17(1). *Agreement regulating the content of employment legal relationships, in particular the organisation of work remuneration and labour protection, establishment and termination of employment legal relationships, improvement of qualifications, work procedures, social security of employees and other issues related to employment legal relationships, and shall determine mutual rights and duties*.
[370] A collective agreement in a sector or territory. Ibid., Section 18(2).

representatives with the information required, failure to cover costs related to establishment of special negotiating body or representative body). The amount is up to LVL 5,000[371], which is one of the highest pecuniary sanctions laid down by the *Code of Administrative Offences*. On the other hand, other violations of information and consultation requirements on the part of employers are penalized by a fine in an amount only up to LVL 250 for employers who are private individuals, and LVL 500 for employers who are legal persons. These are the maximum administrative fines that the State Labour Inspectorate can impose. Where it considers an administrative offence to be of lesser importance, the State Labour Inspectorate may content itself with a warning. However, even the sanction in the amount of LVL 250 in most cases cannot be regarded as an effective and dissuasive legal remedy for overt disrespect of social dialogue within an undertaking.

The information conveyed by trade unions and the State Labour Inspectorate suggests that no cases have been brought before a court concerning alleged violation of information and consultation obligations during the period under scrutiny. Due to lack of respective case law, several controversial legal issues still remain unresolved. These include, e.g., whether failure to consult with employees' representatives can be a legal ground for invalidation of an adopted measure. The State Labour Inspectorate, as the institution in charge of control and supervision of employment legal relationships in Latvia, has investigated no complaints concerning alleged violations of information and consultation obligations in Latvia. This indicates that although Latvian legislation contains most of the general standards, their effective implementation and application is still lagging behind.

Another uncertain legal issue concerns the scope of the employer's right to refuse communication of information or undertaking of consultation when the nature of information or consultation is such that it would seriously harm the functioning of the undertaking. This right is provided for by Directive 2002/14/EC but has not been explicitly laid down by the *Labour law*. On the other hand, a general principle enshrined in the *Labour Law* stipulates that the exercise of employers' representatives' rights should not prejudice the effectiveness of the undertaking[372]. Potentially, this may be a legal provision in exceptional circumstances endowing the employer with the right to keep some information secret. However, its application still remains to be tested before a court.

Last but not least, employers' lack of social dialogue culture is also indicated as one of the reasons for concern. Usually it is employers' sceptical and negative attitude towards trade unions that constitutes an obstacle for genuine consultation and conclusion of collective agreements. Probably this is because the trade union system is so far relatively undeveloped and lacks significant impact on relationships between employers and employees.

A particularly sore issue is the area of dismissals and collective redundancy. This is a common example where the company's board of directors adopts a decision to cut expenses, leaving the practicalities of minimizing expenses to executive discretion. Usually, the executive unilaterally (without participation of employees' representatives) decides to dismiss a number of employees irrespective of the consultation obligation with the employees' representatives under Article 106 of the *Labour Law*.[373] Moreover, even where consultations are carried out, they focus on such issues as social guarantees and terms for dismissal, excluding consultation on the main point - alternatives for collective redundancy. This

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[371] *Latvijas Administratīvo pārkāpumu kodekss* [*Code of Administrative Offences*], adopted 7 December 1984, in force since 1 July 1985, with amendments announced to 20 September 2005. Section 41^3.

[372] *Darba likums* [*Labour Law*], adopted 20 June 2001, in force since 1 June 2002, with amendments announced to 2 November 2005. Section 11(5).

[373] Ibid., Section 106(1): *An employer who intends to carry out collective redundancy shall in good time commence consultations with employee representatives in order to agree on the number of employees subject to the collective redundancy, the process of the collective redundancy and the social guarantees for the employees to be made redundant. During consultations the employer and the employee representatives shall examine all the possibilities of avoiding the collective redundancy of the employees employed in the undertaking or of reducing the number of employees to be made redundant and how to alleviate the effects of such redundancy by taking social measures that create the possibility to further employ or retrain the employees made redundant.*

demonstrates that it would be useful to have trade union representatives on boards of directors or council meetings (even without voting rights) of the enterprise; however, currently this perspective is rather unwelcome from the employers' perspective.

Article 28. Right of collective bargaining and action

Social dialogue

Legislative initiatives, national case law and practices of national authorities

On 20 September 2005, the Cabinet of Ministers approved amendments to the *Regulations of the National Tripartite Cooperation Council*, adopted on 30 October 1998, coming into effect on 1 January 2006. These *Regulations* constitute the principal legal act forming the basis of tripartite (i.e., among the employers' organization, the employees' organization, and the government) cooperation at national level.
These amendments provide for two significant developments. Firstly, from 1 January 2006 the secretary of the National Tripartite Cooperation Council will be located within the institutional framework of the State Chancery and functionally subordinated to the Prime Minister of Latvia. Financial resources necessary for the purposes of the Council will also be derived from the State Chancery. Up to now, the Council operated under the aegis of the Ministry of Welfare. Secondly, the number of Council members has been increased from 21 to 27 persons (i.e., 9 representatives from each government coalition party), while the minimum quorum necessary for adoption of Council decisions is raised to at least 7 representatives from each party.
Following the General Agreement on Cooperation, concluded between the Latvian Free Trade Union Association and the Latvian Employers' Confederation on 30 April 2004, both organizations together with the Cabinet of Ministers on 1 October 2004 agreed on a Social Economic Partnership Agreement. This Agreement aims to facilitate sustainable economic development and social welfare. It should be considered as a gentlemen's agreement for further cooperation in the area of fighting social exclusion, increasing the minimum wage, combating illegal employment, and developing professional education and fair competition.
Last year also saw purely technical amendments to the *Law on Trade Unions*[374]. These concern the legal basis for the State fee paid for registration or annulment of a trade union and issue of a copy of the registration certificate (previously, the legal basis for setting the State fee was found in the *Law On Taxes and Duties*). Fees range from LVL 2 to 8 (EUR 2.9 to 11.5).[375]
Article 3 of the *Law on Trade Unions* states that 50 members or at least one fourth of the employees of a given undertaking, organization, profession or industry is necessary for establishment of a trade union. According to statistics, 96% of all undertakings in Latvia can be regarded as small size undertakings with fewer than 50 employees. This means that the requirement of one fourth of the employees applies to these undertakings. The requirement of 50 members is used to establish trade unions within industry. Consequently, following the above clarification the requirement prescribed by Article 3 of the *Law on Trade Unions* is commensurate and in conformity with the *European Social Charter*, Article 5.
During the period under scrutiny, several legal enactments have also been adopted on the right to join trade unions. On 14 April 2005, the Parliament adopted amendments to the *Law on the Police* providing the right of police officers to form and join trade unions, but at the

[374] *Likums Par arodbiedrībām* [*Law on Trade Unions*], adopted 13 December 1990, in force since 2 January 1991, with amendments announced to 28 June 2005.
[375] Charges are determined in MK *Noteikumi par arodbiedrību reģistrācijas valsts nodevas apmēru, tās samaksas kārtību un atvieglojumiem* Nr.849 [*Regulation No.849 of the Cabinet of Ministers on the amount of trade union registration fee, order of its payment and reliefs*], adopted 8 November 2005, in force since 12 November 2005.

same time forbidding them to strike.[376] These amendments are regarded as the legislator's reaction to the constitutional complaint brought by the National Human Rights Office before the Constitutional Court concerning the unjustified restriction for policemen to form and join trade unions (the constitutional complaint was withdrawn after the amendments to the *Law On the Police* came into effect). On the other hand, on 2 June 2005 the Parliament adopted comprehensive amendments to the *State Security Institutions Act* (coming into effect on 7 July 2005). Amendments include a prohibition on employees of State security institutions both to establish and join trade unions. Moreover, the *Border Guard Law* still contains a prohibition for border guards to form and join trade unions.[377]

Reasons for concern

The *Laval and Partneri*[378] case in Sweden demonstrated that International Social Dialogue on the remuneration system is not efficient and developed.
Another issue is the lack of a consistent approach towards restricting the right to join trade unions. For instance, whereas policemen enjoy the right to establish and join trade unions, State border guard officials are still deprived of such right, without any apparent objective justification.

The right of collective actions (right to strike) and the freedom of the enterprise or the right to property and the issue of the intervention of the judiciary into collective actions

Legislative initiatives, national case law and practices of national authorities

On 30 November 2005 the Parliament enacted amendments to the *Strike Act* regulating the quorum and voting requirements for adoption of a decision to strike both by trade unions and employees[379].
These amendments provide for the following main conditions. Firstly, a trade union decision on declaring a strike should be taken at a general meeting at which at least half the members of the respective trade union (or employees of the relevant undertaking) participate. The decision is taken by majority vote of members of the trade union or employees of the undertaking concerned, who are present at the general meeting. Secondly, the same conditions apply with regard to a meeting of authorized representatives convened where it is not possible to hold a general meeting due to the large number of members of a trade union or employees of the undertaking or the specific nature of the work organization. Thirdly, the latest amendments have shortened several procedural terms in order to make judicial review of validity of strikes faster and more transparent. Whereas previously an application to strike had to be submitted to the employer at least 10 days before commencement of strike, now this term is set at 7 days[380]. Employers, in their turn, are entitled to submit a claim to court on the

[376] *Likums Grozījumi likumā Par policiju* [*Law Amendments to the Law on the Police*], adopted 14 April 2005, in force since 1 January 2006.
[377] *Robežsardzes likums* [*Border Guard Law*], adopted 27 November, 1997, in force since 1 January, 1998, with amendments announced to 25 November, 2005. Section 49(1).
[378] Case where Swedish Trade Unions blocked construction work of the Latvian firm *Laval and Partneri* in Sweden because the Latvian firm paid less to their workers (from Latvia) than provided by the collective agreement in Sweden. Latvia referred to the Latvian collective agreement; however, the Swedish Court found that the norms of the Swedish collective agreement prevail as imperative norms providing a minimum wage in the construction branch. Now the case is being referred to the European Court of Justice for review of two freedoms: free movement of workers and freedom of establishment within the European Union.
[379] *Likums Grozījumi Streiku likumā* [Law *Amendments to the Strike Act*], adopted 30 November 2005, in force since 14 December 2005.
[380] *Streiku likums* [*Strike Act*], adopted 23 April 1998, in force since 26 May 1998, with amendments announced to 30 November 2005. Section 14.

invalidity of a strike within 4 days after receipt of the application for strike, not 5 days as before[381].

Finally, the *Law on Processions, Meetings and Pickets* has been amended. It now includes a stipulation that pickets should be conducted in silence – without rallying-cries or slogans[382]. These amendments also prohibit picketing before municipal buildings, police stations, and prisons. As every municipality enjoys a wide margin of appreciation concerning regulation of meetings and processions, the organisers of such meetings or processions must be familiar with both national laws and local rules.

Positive aspects

The amendments to the *Strike Act* facilitate the organisation of collective action and strikes in Latvia. Trade union representatives regard this as a significant step towards effective enforcement of the right to collective action.
On 1 October 2005, the Free Trade Union Confederation of Latvia organised collective action against poverty and remuneration below the living wage (in October 2005 the living wage in Latvia was 109 lats 13 santims (155.83 EUR) whereas the minimum wage was 80 lats (114.37 EUR). This action gained public support and aroused considerable discussion.

Reasons for concern

Trade union experts still see the *Strike Act* as an "anti-strike" Act and recent amendments constitute only the first steps towards improvements in this regard. This opinion is based on the following considerations. Firstly, the *Strike Act* strictly prohibits any so-called "solidarity strikes" outside the given industry. What this means in practice is that there is no possibility for employees from one sector of industry to join employees from other industry sectors even though their demands are equal. This is considered a major drawback, because for a strike to be effective it is essential that it brings together as many people as possible. Secondly, no "strike funding" is provided for employees taking part in a strike. Therefore, usually employees are reluctant to join a strike because they are left with no income for the days they have been on strike.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The project *Strengthening Trade Union capacity*, co-financed by the European Social Fund, gives the Free Trade Union Confederation of Latvia an opportunity to carry out informative campaigns and training for employees on rights of trade unions and employees.

Article 29. Right of access to placement services

Access to placement services

Legislative initiatives, national case law and practices of national authorities

The State Employment Agency (SEA) fulfils the following functions:

- registers and records unemployed persons and persons seeking employment in SEA affiliates;

[381] Ibid., Section 24.
[382] *Likums Grozījumi likumā par sapulcēm, gājieniem un piketiem* [*Amendments to the Law on Meetings, Processions and Pickets*], adopted 3 November 2005, in force since 23 November 2005.

- helps unemployed persons and persons seeking employment to become involved in the labour market;
- organizes vocational training, qualification, and increase of competitiveness;
- organizes measures for unemployed persons and persons seeking employment to increase their competitiveness;
- advises unemployed persons and persons seeking employment on the subject of occupational suitability, selection of an appropriate occupation and vocational training;
- records vacant workplaces;
- informs unemployed persons and persons seeking employment about vacant workplaces, as well as their rights and obligations;
- organizes dialogue, cooperation, and exchange of information between employer and unemployed persons;
- issues licenses and supervises legal persons who provide work placement services for a charge (except work placements on ships);
- Helps students to find a job during summer holidays.[383]
- The SEA is financed from the State Budget, and receives additional income from provision of services, gifts and donations, as well as from other resources in accordance with regulatory enactments. The SEA comes under the supervision of the Ministry of Welfare.

According to SEA statistics, in October 2005 the unemployment rate on average was 7,7% (with the lowest per cent in Riga region at 4,5% and the highest in Latgale region at 16,8%).[384]
A SEA Monitoring Commission has been established in order to consistently control the rule of law and quality of services provided by licensed placement companies. These are companies that provide placement services for a charge.
Licenses are issued by the SEA Licensing Commission.
Currently 54 companies in Latvia have obtained such license.[385]
Amendments to the *Law on Support for Unemployed Persons and Persons Seeking Employment*[386] provides stricter regulation for private placement services.

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

Legislative initiatives, national case law and practices of national authorities

Amendments to Section 98 of the *Labour Law*[387] have prevented the controversial situation in which interpretation of the norm in question was contrary to *ILO Convention No.158* since this *Convention* does not provide refusal to sign changes in the labour contract as a ground for dismissal. This situation was unfavourable to employees because in practice employers were entitled unilaterally to change labour contracts following judgments of the Supreme Court of Latvia. This incorrect interpretation of Article 98 of the *Labour Law* was also included in the

[383] Information available on the website of the State Employment Agency, http://www.nva.lv/index.php?cid=1.
[384] Ibid., http://www.nva.lv/index.php?cid=6&mid=89&txt=86&t=stat.
[385] Ibid., www.nva.lv.
[386] Likums *Grozījumi Bezdarbnieku un darba meklētāju atbalsta likumā* [Law *Amendments to the Law on Support for Unemployed Persons and Persons Seeking Employment*], adopted 23 March 2005, in force since 6 April 2005.
[387] *Likums Grozījumi Darba likumā* [*Law Amendments to the Labour Law*], adopted 13 October 2005, in force since 16 November 2005.

Conclusion of the Plenum of the Supreme Court of Latvia on application of the law resolving disputes concerning termination or modification of labour contracts[388], which made employees' representatives concerned about such order of dismissals.
Now the new version of Article 98 expressly states that employees can be dismissed only on the grounds provided in Article 101(1)[389] and not in cases where an employee refuses to sign changes in the labour contract.

Positive aspects

From 1 January 2005, Article 112 of the *Labour Law*[390] entered into force, providing higher severance pay depending on duration of employment.

Remedies against the decision of dismissal and compensation due in the event of an unjustified dismissal

Legislative initiatives, national case law and practices of national authorities

Employers bear the burden of proof during litigation, and employees should bring their claims within the period laid down by Article 122 of the *Labour Law*[391] - in general this is one month after notice of termination.

[388] LR Augstākās tiesas Plēnuma lēmums *Par likumu piemērošanu, izšķirot tiesās strīdus, kas saistīti ar darba līguma izbeigšanos vai grozīšanu*, adopted December 2004, published 5 January 2005, available in Latvian at http://www.at.gov.lv/index.php?a=21&v=lv. The Conclusions are not legally binding; however, courts of lower instance use them as guidelines.

[389] Article 101(1) of the Labour Law provides 10 grounds for dismissal:

1) the employee has without justified cause significantly violated the employment contract or the specified working procedures;2) the employee, when performing work, has acted illegally and therefore has lost the trust of the employer;3) the employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of employment legal relationships; 4) the employee, when performing work, is under the influence of alcohol, narcotic or toxic substances; 5) the employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons; 6) the employee lacks adequate occupational competence for performance of the contracted work;7) the employee is unable to perform the contracted work due to his or her state of health and such state is certified with a doctor's opinion;8) an employee who previously performed the relevant work has been reinstated at work; 9) the number of employees is being reduced; or10) the employer – legal person or partnership – is being liquidated.

[390] Article 112 of the Labour Law provides:

If a collective agreement or the employment contract does not specify a larger severance pay, when giving a notice of termination of an employment contract in the cases set out in Section 100, Paragraph five and Section 101, Paragraph one, Clause 6, 7, 8, 9 or 10 of this Law, an employer has a duty to pay a severance pay to an employee in the following amounts: 1) one month average earnings if the employee has been employed by the relevant employer for less than five years; 2) two months average earnings if the employee has been employed by the relevant employer for five to 10 years; 3) three months average earnings if the employee has been employed by the relevant employer for 10 to 20 years; and 4) four months average earnings if the employee has been employed by the relevant employer for more than 20 years.

[391] Article 122 of the Labour Law provides:

An employee may bring an action in court for the invalidation of a notice of termination by an employer within a one-month period from the date of receipt of the notice of termination. In other cases, when the right of an employee to continue employment legal relationships has been violated, he or she may bring an action in court for reinstatement within a one-month period from the date of dismissal.

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

According to statistical data, 36 employees have died and 132 were seriously injured in accidents at work during the first seven months of 2005.
To ensure improved labour protection in Latvian companies and to facilitate a more independent examination of accidents at work, expenditure for special examination of accidents at work will be disbursed by the state as of January 1, 2007.[392]
Regulations *On procedure for examination and account of accidents at work* were developed by the Ministry of Welfare and accepted by the Cabinet of Ministers[393] This decision will facilitate a more objective examination and clarification of causes of accidents at work, since the State may take a more independent viewpoint than the employer who has to pay for expert assessment of accidents of work in which it is the involved party.
So far, the employer had to pay expenses for inviting specialists and experts, providing expert assessment, transportation and communications. However, from 2007 these will be paid from State budget resources within the framework of resources assigned to the State Labour Inspectorate (SLI).

Positive aspects

The *Labour Protection Law*[394] includes all relevant provisions of EU Directives and provides effective legal protection.
Higher standards of labour protection have been achieved in several collective agreements of big enterprises.

Reasons for concern

The SLI is not capable of investigating all accidents and illegal acts in the sphere of health and safety of employees, especially in small and medium sized enterprises.

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

Regulation on prohibition of sexual and moral harassment exists from 8 May 2004[395]; however, no litigation concerning this issue has taken place - only academic debate where sexual harassment was defined as a kind of psychological terror.[396]

[392] Information available on the website of the Ministry of Welfare of Latvia, http://www.lm.gov.lv/index.php?sadala=428&id=1871.
[393] Ministru kabineta *Noteikumi Nr. 585 Nelaimes gadījumu darbā izmeklēšanas un uzskaites kārtība*, adopted 9 August 2005, in force since 12 August 2005.
[394] *Darba aizsardzības likums* [*Labour Protection Law*], adopted 20 June 2001, in force since 1 January 2002, with amendments announced to 28 December 2004.
[395] *Likums Grozījumi Darba likumā* [*Law Amendments to the Labour Law*], adopted 22 April, 2004, in force since 8 May 2004.
[396] Neimanis J. *Psiholoģiskais terors darba vietā: juridiskie aspecti* [*Legal Aspects of psychological terror in the workplace*], published in the official gazette *Latvijas Vēstnesis* on 19 October 2004, No.40(345), available at http://lv.lv/index.php?menu_body=DOC&id=95123.

Reasons for concern

General lack of awareness and understanding of issue, even though the problem is described and experienced rather frequently. Beyond lack of awareness, there is also little belief in the possibility of effective remedy.

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

Protection of minors at work and monitoring of the protection

Legislative initiatives, national case law and practices of national authorities

A State Inspection for Protection of Children's Rights is due to start from 1 December 2005. Its main tasks will be to supervise and control implementation of legal standards of child protection.[397]

Article 33. Family and professional life

Parental leaves and initiatives to facilitate the conciliation of family and professional life

Positive aspects

The Ministry for Children's and Family Affairs is carrying out a project called *Men Equal, Men Different* with the main purpose of involving more fathers in childcare and family matters. On 25 November 2005 the opening project seminar focused on two issues: firstly, what impedes fathers from involvement in care of children and, secondly, men in family: known and unknown facts. The seminar materials stated that women spend 21,52 hours per week for home and family matters, but men only 12,06. These statistics demonstrate that men are hesitant to be involved in family matters. This project will continue for 14 months, focusing on research work and information for society, thus trying to involve more men in family matters, thereby facilitating women's possibilities to combine work and professional life.

In conformity with amendments to Article 7 of the *Law on State Social Benefits*[398] and Regulation of the Cabinet of Ministers[399], from 1 January 2005 individuals are entitled to receive child care benefit for a child under one year for one year in the amount of 70% of their average insurance contribution wage, but not less than 56 lats (79,9 EUR) per month and not more than 392 lats (559,28 EUR) per month, if the person is employed and is on child care leave or is a self-employed person and generates no income until the child is 1 year old.[400]

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[397] Information published in the official gazette *Latvijas Vēstnesis*. Available at http://lv.lv/index.php?left_mode=PR&mode=DOC&id=122364.

[398] *Likums Grozījumi Valsts Sociālo pabalstu likumā,*[Amendments to the *Law on State Social Benefits*], adopted 11 November 2004, in force since 25 November 2004.

[399] Ministru Kabineta *Noteikumi Nr.1003 Kārtība, kādā piešķir un izmaksā bērna kopšanas pabalstu un piemaksu pie bērna kopšanas pabalsta par dvīņiem vai vairākiem vienās dzemdībās dzimušiem bērniem* [*Regulation No.1003 Procedure for grant and payment of child care benefit and supplement to benefit for twins or more children born from the same delivery*], adopted 7 December 2004, in force since 1 January 2005.

[400] *Law on State Social Benefits*, Section 7, and Regulation No.1003 *Procedure for grant and payment of child care benefit and supplement to benefit for twins or more children born from the same delivery,* see also website of the State Social Insurance Agency, http://www.vsaa.gov.lv/vsaa/content/?lng=en&cat=669.

The Constitutional Court found[401] that prohibition on working during child care leave for receiving child care benefit is inconsistent with Article 110 of the *Constitution* providing legal protection of family life. This norm was challenged in the Constitutional Court by three applicants basing their Constitutional claim on prohibition of discrimination[402], freedom of occupation[403], and protection of family life. The basic argument in favour of the applicants related to possible loss of skills and qualifications during child care leave (1,5 year) which could lead to long term unemployment or underpaid jobs in the future for the person in question (usually the mother of the child).
The Ministry of Welfare argued that a child's first year is very important so that a person raising a child and receiving social benefit should not work but dedicate full attention to the child.
The Constitutional Court ruled in favour of the applicants, basing its judgment on the protection of family clause (Article 110 of the *Constitution*)[404] thus allowing parents to work and simultaneously to receive child care benefit from 1 March 2006.
Currently the Ministry of Welfare is elaborating amendments which will implement the judgment of the Constitutional Court reviewing whether a working parent will be able to receive the full amount of social benefit in question or only half of it. The most recent statement of the Minister of Welfare was that parents would be able to work and receive only part of the child-raising benefit (depending on workload).[405]

Reasons for concern

Lack of kindergartens and day-care centres for children allowing mothers to go to work should be considered a reason for concern.[406] Only 8 per cent of women worked part-time compared to 26,2 per cent in the rest of Member States.

Protection against dismissal on grounds related to the exercise of family responsibilities

Positive aspects

The *Marta* Resource Center for Women is carrying out the project *Opening the Labor Market for Women*[407] during which special attention will be drawn to possibilities to reconcile family and professional life.

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[401] Latvijas Republikas Satversmes tiesas 2005. gada 4. novembra spriedums lietā Nr. 2005-09-01. [Judgment of 4 November 2005, No. 2005-09-01 of the Constitutional Court].
[402] Article 91 of *Satversme* (the *Constitution*) provides: *All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind*. The English version of the Latvian *Constitution* is available at the official Website of the Latvian Parliament, http://www.saeima.lv/LapasEnglish/Con.
[403] Article 106 of the *Satversme* (the *Constitution*) provides that *Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour.*
[404] Article 110 of the *Satversme* (the *Constitution*) provides that *The State shall protect and support marriage, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence.* http://www.saeima.lv/LapasEnglish/Con.
[405] Speech of Minister of Welfare, available at website of Ministry of Welfare of Latvia, http://www.lm.gov.lv/index.php?sadala=512&id=1891&PHPSESSID=b0c4bd003a6ade885435e87a0f801769.
[406] Information available at website of Ministry of Finance of Latvia, http://www.esfondi.lv/events.php?id=1&action=event&category=45&eid=689,.
[407] More detailed information available at webpage of the *Marta* Resource Center for women, http://www.marta.lv/?url=equal1&lang=en.

Reasons for concern

Due to lack of child care centres and kindergartens as well as balanced social services, usually women fall out from the labour market since they are in general taking care of children, handicapped children, and older people.

Article 34. Social security and social assistance

Social assistance and fight against social exclusion

Legislative initiatives, national case law and practices of national authorities

Individuals are entitled to unemployment benefit on obtaining unemployed status (*the Law on Unemployed and Job Seekers Support*) and if the person is insured against unemployment (*the Law on State Social Insurance*), and if the total social insurance record is not less than 1 year and not less than 9 months for social insurance contributions made before unemployment in Latvia. If insurance contributions prior to obtaining unemployed status have been made for less than 9 months, but they have continued after obtaining that status, then the right to benefit and the necessary 9 month contributions are determined for the period of the last 12 months before the day of applying for benefit.[408]

Positive aspects

During 2005 much public discussion and debate was organised on this issue. For example, recent public discussion on social exclusion and poverty was organised on 23 November 2005 by the Ministry of Welfare and the union *Pilsoniskā alianse* with a view to formulating proposals for the *National Action Plan on Poverty and Social Exclusion 2006-2008*. This new plan will cover nine groups at risk: homeless persons, ex-prisoners, handicapped persons, large and incomplete families, victims of trafficking, ethnic minorities (especially Roma), old people, children, youth, and unemployed persons.

From 2005, pensions for older people will be indexed twice a year – on 1 April and 1 October. In spring, indexation was performed taking into account only consumer prices, but in the autumn – increase in consumer prices and 50% from the average social insurance contribution wage increase in the country. The insurance contribution wage is the wage from which social insurance contributions are paid.[409]
Indexation is foreseen in order to compensate for decrease in pensioners' purchasing power due to inflation and to ensure real increase of smaller pensions.
From 1 July 2005, persons taking care of handicapped children receive benefit for handicapped child care at the rate of 50 lats (71.43 EUR) monthly.[410]

[408] *Likums Par apdrošināšanu bezdarba gadījumam* [*Law on Insurance Against Unemployment*], adopted 25 November 1999, in force since 1 January 2000, with amendments announced to 31 October 2002. Sections 3 and 5.
[409] Information available on website of the State Social Insurance Agency, http://www.vsaa.gov.lv/vsaa/content/?lng=en&cat=2697.
[410] MK 2005. gada 26. jūlija *Noteikumi Nr.562 Par ģimenes valsts pabalsta un piemaksas pie ģimenes valsts pabalsta par bērnu invalīdu apmēru, tā pārskatīšanas kārtību un pabalsta un piemaksas piešķiršanas un izmaksas kārtību* [*Regulation of Cabinet of Ministers No 562*], adopted 26 July 2005, in force since 1 July 2005.

Social assistance for undocumented foreigners and asylum seekers

Legislative initiatives, national case law and practices of national authorities

The Republic of Latvia considers an asylum seeker to be a person who has submitted a written application to receive refugee status and requested asylum, because of fear of persecution in their country of citizenship or previous host country (if the person is stateless) due to race, religion, ethnicity, social status, or political conviction.[411] During examination of the application, asylum seekers are accommodated in the *Mucenieki* Centre for Accommodation of Asylum Seekers, where the necessary living conditions exist, and receive subsistence as set by the Cabinet of Ministers.[412] (See also Article 18.)

Positive aspects

The Office of Citizenship and Migration Affairs has started implementing the European Community initiative *EQUAL* project *Step by step*. The overall objective of the project is integration of asylum seekers in the social life of Latvia. The direct aim of the project is to establish an effective social integration system for asylum seekers.[413]

Social security in favour of persons moving within the Union

Legislative initiatives, national case law and practices of national authorities

See Article 45.

Article 35. Health care

Access to health care

Legislative initiatives, national case law and practices of national authorities

Latvian health care insurance relies on the principle of residence. The tasks of health insurance in Latvia are to cover the costs of health services provided to insured persons, to prevent and cure diseases, and to finance a certain part of medicines and medical products.

Health insurance is organized by the Health Compulsory Insurance State Agency[414], and its three local branches and three municipal sickness funds. The agency performs the functions of the liaison body.
There is no refund system in Latvia. If the health service provider has a contract with the Agency, all costs incurred are directly reimbursed by the Agency. The patient should pay only the amount of own contribution – the patient fee.[415]
General principles of the reimbursement system of pharmaceuticals are set by *Regulation of the Cabinet of Ministers*.[416] Reimbursement for pharmaceuticals should be provided according

[411] *Patvēruma likums* [*Asylum Law*], adopted 7 March 2002, in force since 1 September 2002, with amendments announced to 20 January 2005.
[412] Ibid., Section 20; MK *Noteikumi Nr.119 Par uztura, higiēnas un pirmās nepieciešamības preču iegādes izdevumu apmēru patvēruma meklētājam un šo izdevumu segšanas kārtību* [*Regulation of Cabinet of Ministers No.119*], adopted 8 February, 2005.
[413] Information available on website of the Office of Citizenship and Migration, Affairs, http://www.ocma.gov.lv/?_p=446&menu__id=122
[414] Veselības obligātās apdrošināšanas valsts aģentūra (VOAVA).
[415] Information available on website of VOAVA http://www.voava.gov.lv/eng/health/
[416] LR Ministru kabineta *Noteikumi Nr. 418 Ambulatorajai ārstēšanai paredzēto zāļu un medicīnisko ierīču iegādes izdevumu kompensācijas kārtība* [*Regulation No.418 Procedures on Reimbursement of*

to the character and severity of the disease. Diseases are listed in *Appendix No.1* of the mentioned *Regulation*.
The following reimbursement categories according to the character and severity of the disease are applied: 100%, 90%, 75%, and 50%. Reimbursed pharmaceuticals are prescribed by family doctors and certain specialists who have an agreement with the Health Compulsory Insurance State Agency. Reimbursement is provided through pharmacies on the basis of a special reimbursable prescription, patients having to pay only the part-payment in the case of 90%, 75% or 50% reimbursement or getting the pharmaceuticals without payment in the 100% reimbursement case. The main criteria for a pharmaceutical product to be reimbursed are: the burden of the disease; the therapeutic value of the product; cost-effectiveness data; impact on the healthcare budget.[417]

Reasons for concern

The fee for emergency assistance was raised comparatively so high that people (especially pensioners) were afraid to call an ambulance simply to avoid paying the high price in case the situation were considered a false emergency. (See also Article 3.)

Drugs

Legislative initiatives, national case law and practices of national authorities

On 26 January 2005, the Constitutional Court issued a ruling in a case on compliance with Section 96 of the *Constitution*[418] of provisions of the *Criminal Law* that foresee liability for using narcotics or psychotropic substances repeatedly in a year without medical prescription.[419] The applicant claimed that the provision of the *Criminal Law* which foresees a sanction for such offence of imprisonment for a term up to two years, or community service, or a fine up to 50 minimum wages set by the Government, violates her right to private life, particularly as liability applies also to cases of use of drugs at home. The applicant's view was that there should be a distinction in law for use of drugs in private and in public. The Constitutional Court found that the challenged provision of the *Criminal Law* indeed restricts persons' private life; however, this restriction is legitimate and justified in the public interest – protecting the security of society and the health of the individual, thus the restriction is proportionate and necessary in a democratic society.

Article 36. Access to services of general economic interest

Access to services of general economic interest in the economy of networks: transports, posts and telecommunications, water-gas-electricity

Legislative initiatives, national case law and practices of national authorities

Currently, postal services are provided mainly by the state enterprise *Latvijas Pasts*. In order to implement the tasks of *Directive 2002/39/EK*, the state enterprise *Latvijas Pasts* has a monopoly on deliveries to 100 grams, but from 2006 – only 50 grams. Statistics on 1

pharmaceuticals and medical equipment for ambulatory treatment], adopted 14 June 2005, in force since 1 July 2005.

[417] Information available on website of the State Medicines Pricing and Reimbursement Agency http://www.zca.gov.lv/english/principles.html

[418] Section 96 provides that *Everyone has the right to inviolability of their private life, home and correspondence.*

[419] Latvijas Republikas Satversmes tiesas 2005. gada 26. janvāra spriedums lietā Nr. 2004-17-01 [Judgment of the Constitutional Court].

November 2004 indicate 35 enterprises focusing on internal and international express postal services.[420] In 2009 according to EU policy it is planned to fully liberalise the postal services market.

Positive aspects

In mobile communications now it is possible to change operator without losing the previous telephone number. Competition among mobile operators is growing (from this year there are 3 mobile phone operators), which also makes this service accessible to those on lower incomes.

Reasons for concern

Liberalisation of the telecommunications market continues implementing the tasks of EU Directives; however, there are threats of monopoly from the international enterprise *TeliaSonera* owning capital in the biggest state Communications Company *Lattelekom* and the biggest mobile operator *Latvijas Mobilais Telefons*.
The state enterprise *Latvijas Gāze* still has legal and actual monopoly status in gas supply and this year gas tariffs were increased.

Other services of general interest

Reasons for concern

In Latvia on October 2005, annual inflation reached 7.6%, the highest rate within the last twelve months. This increase partly resulted from the rising prices of energy (fuel, gas) on the global markets, affecting the price level in Latvia as well.[421]
In view of inflationary developments of recent months as well as the expected rise in several administered prices (e.g. higher heating tariffs in Riga) by the end of the year, the Bank of Latvia has raised its average annual inflation forecast for 2005 to 6.7%.[422]
At present, the annual growth of mortgage loans exceeds 90% whereas industrial credit has been growing 30% on average.
The Bank of Latvia has resolved to increase the applicable bank minimum reserve ratio from 6% to 8%, at the same time pointing to the limitations of monetary policy decisions under a fixed exchange rate regime and the need for a stricter fiscal policy.[423]

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

On 17 November 2005, the Ministry of the Environment announced a draft *Environment Law* which after enforcement will replace the law currently in force, *On Environmental Protection*. The purpose of the draft law is to ensure a qualitative living environment by establishing an effective environmental protection system and promoting sustainable development. Compared to the law currently in force, the draft lays down general principles incorporated in the law.

[420] Information available on the website of the Public Utilities Commission http://www.sprk.gov.lv
[421] Information available on the official website of the Bank of Latvia, http://www.bank.lv/eng/main/sapinfo/lbpdip/
[422] Ibid.
[423] Ibid.

One essential addition in the new draft law is requirements for responsibility in the environmental field. It is necessary to identify, prevent, and reduce environmental damage or direct threat of such damage as well as to regulate responsibility for causing environmental damage or threat of direct damage.
The draft law specifies what exactly is understood by environmental damage and what are the natural resources for whose damage a person or operator is responsible, and in which cases and for what actions a person or operator is responsible for damage caused to certain natural resources by certain action.
Conditions of responsibility for environmental damage incorporated in the draft law will be in force on 30 April 2007.[424]
On 4 October 2005 the Cabinet of Ministers accepted a new edition of the law *On Natural Resources Tax*. This draft law proposes subjects of tax, taxation objects, tax rates, procedure for tax calculation and payment, tax exemption, and allocation of natural resources tax payment income among state and local government budgets.
The new draft law edition elaborated by the Ministry of the Environment was prepared in accordance with the Government Declaration and Paragraph 16.5.2. of the *Government Plan of Action* and further proposes tax assessment on electric and electronic equipment to which the *Waste Management Law* is applied. Taxpayers, who will implement the principle of responsibility of manufacturers and will take responsibility for electric and electronic equipment waste management in compliance with amounts defined by the State, will not have to pay the tax.
The draft law, compared to the current law in force *On Natural Resources Tax*, specifies legal terminology in compliance with that used in related legislation. [425]

Positive aspects

Latvia was recognised as the second best among European Environment Agency (EEA) member states during the annual meeting of national co-ordinators of the EEA in Copenhagen. Main attention was paid to elaboration of a *Work plan 2006-2008* in compliance with priorities of sustainable policy, improvement of work organisation and cooperation in the EEA environmental information and observations net EIONET as well as evaluation of member states' performance from May 2004 until April this year.[426]
The State enterprise *Latvijas Valsts Meži* successfully initiated a campaign *Do not litter in the forest!* and in October received an award for preventing littering.[427]

Reasons for concern

One of the biggest rivers in Latvia (the Lielupe) is in adverse condition and state institutions blame the sugar refinery in Jelgava (near Riga) for causing this pollution. Analysis made by environmental institutions proves that sewage from the Jelgava sugar refinery, which is drained into the Lielupe, is beyond allowed pollution norms. For example, in the permission for pollutant activity issued to the Jelgava sugar refinery, limits of emission are defined – for biological oxygen consumption (BOC) - 30 mg/l, but for chemical oxygen consumption (COC) - 360 mg/l. Analysis shows that the concentration in sewage from the factory at its output into the Lielupe is as follows: BOC - 405 mg/l (norm – 30), but COC - 638 mg/l (norm 360). VOC concentration is exceeded 13,5 times, but COC – 1,7 times. This means that the Jelgava sugar refinery drained off sewage into the Lielupe with organic pollution (Food and

[424] Information available on the website of the Latvian Ministry of the Environment, http://www.varam.gov.lv/varam/NOT/prese/english/051117f.htm
[425] Ibid., http://www.varam.gov.lv/varam/NOT/prese/english/051004b.htm
[426] Ibid.
[427] Information available on the website of the campaign www.cukmens.lv

Veterinary Service data – sucrose, glucose and fructose) in an amount that causes lack of oxygen in the water.[428]
Although these are very serious indicators, the reaction from responsible state institutions was delayed and *post factum*.

The right to access to information in environmental matters

Legislative initiatives, national case law and practices of national authorities

The importance of environmental communication and education is determined by the *Environmental Protection Policy Plan for Latvia* (2004-2008)[429], such national legal acts as the Constitution, the Law *On Environmental Protection*, *Information Openness Law*, the Law *On Environmental Impact Assessment*, the Law *On Spatial Development Planning*, as well as the European integration process and the *UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (*Aarhus Convention*).

Reasons for concern

Sociological research within recent years has shown that the public is not properly informed on different environmental issues. More than one half of respondents had evaluated that they are not properly informed on the environmental situation. Mostly the public receives information from the mass media and own observations. The role of the state institutions - ministries and municipalities as well as different experts - is evaluated as quite low.[430]

Article 38. Consumer protection

Protection of the consumer in contract law and information of the consumer

Legislative initiatives, national case law and practices of national authorities

Amendments to the *Consumer Protection Law*[431] are implementing the tasks of the following *Directives: No 87/102/EEC, No. 85/577/EEC, No. 93/13/EEC, No. 94/47/EC, No. 97/7/EC, No. 98/27/EC, No. 99/44/EC and No. 2002/65/EC* providing (e.g.) an elaborated definition of consumer, and norms in case a consumer's payment card has been used illegally.
In October 2005 the Parliament discussed consumer protection in cases of breach of prohibition of discrimination or prohibition to create unfavourable consequences for consumers. It is planned to include in the *Law* that consumers who suffer damage should be entitled to compensation for actual loss plus a moral award. In case of dispute the amount of compensation will be determined by a court.
Currently debates are in progress on the necessary amendments to the *Latvian Civil Law* and *Consumer Protection Law* concerning prohibition of discrimination while offering goods in order to implement all tasks of *Directives 2000/78* and *2004/113*.
The main institution handling consumer complaints and implementing Consumer Protection policy is the Consumer Protection Rights centre (CRPC). The CRPC has received 907 complaints within eleven months of 2005. Officials of the centre have provided 18 032

[428] Information from the website of the Latvian Ministry of the Environment, http://www.varam.gov.lv/varam/NOT/prese/english/051006a.htm
[429] Ibid., http://www.vidm.gov.lv/skd/vide/Esab_apz.htm
[430] Ibid.
[431] *Likums Grozījumi Patērētāju tiesību aizsardzības likumā* [*Law Amendments to the Consumer Protection Law*], adopted 27 October 2005, in force since 25 November 2005.

consultations advising consumers. Significant advertising monitoring work, evaluating 7181 ads, has been carried out: almost 150 items are not in compliance with legislation.[432]

Positive aspects

Much work has been done improving the Market Surveillance system in Latvia after joining the EU and still much effort is needed in the future to progress in many consumer protection issues. For example, an information campaign for the CRPC was carried out, in order to strengthen awareness of consumers about their rights and business representatives of their responsibilities as to product quality and safety requirements through opening a successful dialogue.
Considering the results of *Consumer awareness research* in the frame of the project *Market Surveillance in the Non-food Sector in 2005*, only 29% of respondents describe their awareness about their consumer rights as sufficient and around 60% do not distinguish product safety aspects from product quality aspects. Therefore the campaign *Get to know the product you are buying!*[433] consisted of advertisement videos broadcast on TV about different product safety aspects, while *Product safety weeks* were also organized. The campaign gained considerable attention and publicity from different mass media. For example, more than 70 articles were published and several spots were broadcast on TV news. As a result of the campaign, people have come forward requiring consultation and submitting complaints.[434]

Legislative initiatives, national case law and practices of national authorities

In general, the legislative basis of Consumer protection in Latvia is the *Consumer Protection Law* that maintains and comprises all basic EU regulations on Consumer rights protection. Thus, the priority is to implement the normative acts in question.

Reasons for concern

The most urgent problem is the lack of financial and administrative resources to ensure all the competencies of the CRPC.

- To ensure that only safe products are available for consumers, regular testing should be provided. Considering the high costs of the different tests, funding for these purposes is insufficient.
- The withdrawal process of unsafe products should be improved, in both legislative and enforcement aspects.
- To continue dialogue-building with the business sector, information activities should be organised on a regular basis.
- Work regarding consumer awareness-building should be continued.[435]

[432] Information provided by Sanita Biksiniece, an employee of the Consumer Rights Protection centre of Latvia.
[433] *Iepazīsti savu preci!*
[434] Information provided by Sanita Biksiniece, an employee of the Consumer Rights Protection Centre of Latvia.
[435] Information provided by Sanita Biksiniece, an employee of the Consumer Rights Protection Centre of Latvia.

CHAPTER V. CITIZENS' RIGHTS

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

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

Legislative initiatives, national case law and practices of national authorities

The *Law on Elections to the European Parliament*[436] transposes the norms of *Directive 93/109/EC*. The law provides that EU citizens have to reside in Latvia if they want to benefit from this right. It remains unclear what 'residence' means, since there are different types of residence such as permanent and temporary. Residence of EU citizens is regulated in secondary legislation adopted by the Government.
Article 11 of the *Law* requires that candidates announce whether they have had affiliations with USSR, Latvian SSR or foreign state security, intelligence or counterintelligence services, or following 13 January 1991 have been active in the CPSU (CP of Latvia), the Working People's International Front of the Latvian SSR, the United Council of Employees' Bodies, the Organization of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees. No other measures follow. Thus, this provision is less stringent than that in other election laws, where these affiliations rule out the possibility to stand as a candidate.
According to Section 9 of the *Law*, a list of candidates may be submitted whether by a political organisation (party) or a party association registered in Latvia.
However, in accordance with Article 43 of the *Law on Public Organizations and Their Associations*[437], the founders of a party must be Latvian citizens, and their number should not be less than 200. According to Article 45 of the *Law*, only Latvian citizens and Latvian non-citizens over 18 can become members of a party; however, not less than 200 Latvian citizens or not less than a half the membership, should be Latvian citizens if the political party has over 400 members.
Since EU citizens cannot become members of political parties in Latvia, their right to stand as candidates for elections to the European Parliament does not even arise in practice.
Discussions are in progress on the new draft law on political parties, adopted at its second reading on 1 December 2005.[438] Generally, the draft law on political parties provides stricter conditions for activities of parties. For instance, a party will have to cease its activities if it does not submit candidate lists for two consecutive Parliamentary elections and two local government elections, or the number of members falls below 150.

Reasons for concern

A number of concerns can be mentioned. Firstly, the minimum number of Latvian citizens required for founding and acting in a party is fairly high. This is to be considered as a barrier to the right to stand as a candidate in EU elections for both Latvian citizens and EU citizens,. Secondly, it is unacceptable that EU citizens cannot form a political party in Latvia for the purposes of EU or municipal elections. It should be noted that Latvian non-citizens cannot do

[436] *Eiropas Parlamenta vēlēšanu likums* [*Law on Elections to the European Parliament*], adopted 29 January 2004, in force since 12 February 2004.
[437] *Likums Par sabiedriskajām organizācijām un to apvienībām* [*Law on Public Organizations and Their Associations*], adopted 15 December 1992, in force since 29 December 1992, with amendments announced to 8 April 2004.
[438] *Likumprojekts Politisko partiju likums* [*Draft Law on Political Parties*], Reg. No 1027, submitted to the Parliament on 25 November 2004, passed its 2nd reading on 1 December 2005.

that either, except in conjunction with a sufficient number of citizens. Moreover, Latvian non-citizens do not have the right to vote or stand as candidates for election in any elections in Latvia.

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

Participation of foreigners in public life at local level

Legislative initiatives, national case law and practices of national authorities

Latvia has neither signed nor ratified the *Council of Europe Convention on the Participation of Foreigners in Public Life at Local level*. Currently, Latvia is not considering signing the *Convention*.
Although foreigners can be employed in local government, the public service is limited to Latvian citizens[439] and a stringent Latvian language policy is applied[440].

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Legislative initiatives, national case law and practices of national authorities

The *Law on City Council, District Council and Parish Council Elections* has been amended accordingly to transpose the requirements of *Directive 94/80*.[441] This provides that the right to vote in local elections belongs not only to Latvian citizens but also to European Union citizens who are not Latvian citizens but are registered in the Register of Residents. The right is guaranteed on the same terms as for Latvian citizens, i.e., they have to be 18 years old, registered in the Voters Register[442] and at least 90 days before the day of elections be registered in the territory of the respective local council, or have a property registered there. EU citizens have the right to vote in local elections, if not deprived the right to vote in the state of which they are nationals. Additionally, to become a candidate for local elections or to be elected to the local council, EU citizens should not be deprived of this right by a court decision in their state of nationality.

Reasons for concern

Non-citizens are still not granted the right to vote or stand as candidates in local elections (see below).
Arnis Cimdars, the Chairman of the Central Election Commission[443], has voiced concerns that a number of difficulties are involved in ensuring effective application of the Laws in relation to citizens of other EU Member States, including the requirements of *Directive 94/80/EC*. He mentioned two examples: (1) there is no capability to verify whether EU citizens have submitted correct information in relation to eligibility to stand as a candidate in elections in their country of origin; (2) there is no capability to check whether EU citizens elected observe

[439] *Valsts cilvildienesta likums* [*Law on the State Civil Service*], adopted 7 September 2000, in force since 1 January 2001, with amendments announced to 26 April 2005.
[440] *Valsts valodas likums* [*State Language Law*], adopted 9 December 1999, in force since 1 September 2000.
[441] *Grozījumi Pilsētas domes, novada domes un pagasta padomes vēlēšanu likumā* [*Amendments to the Law on Elections to the City Council, District Council and Parish Council*], adopted 11 November 2004, in force since 26 November 2004.
[442] The voters Register is compiled on the basis of the Register of Residents and includes Latvian citizens who are at least 18 years old and are not subject to other limitations set by Election laws.
[443] National News Agency LETA, 15 October 2003.

the limitations set by Latvian laws on different activities for persons elected in the European Parliament or local councils.

Right to vote and to stand as a candidate to municipal elections for third country nationals

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

On 23 November 2005, the Council of Europe Parliamentary Assembly closed its post-monitoring dialogue with Latvia. This was done despite critical views from Gyorgy Frunda, the Monitoring Committee's Chairman. He visited Latvia in mid-October and argued that Latvia should grant the right to vote in local elections to non-citizens and to ease the naturalization process for the elderly.

Legislative initiatives, national case law and practices of national authorities

Third country nationals and non-citizens in Latvia have no right to vote or to stand as a candidate in local elections. Proposals to extend the right have been voiced several times both by opposition politicians and human rights NGOs.

Several protests by left-wing politicians were organized before local government elections that took place on 12 March 2005.[444] After the elections, on 2 April 2005, several organizations claiming to represent the Russian community approached the European Parliament and EU Member States complaining that local government elections in Latvia were undemocratic because non-citizens were denied the possibility to vote.[445]

Reasons for concern

Extending to non-citizens the right to vote in local elections has been denied a place on the political agenda by a majority of elected politicians for a long time. Despite frequent reminders of the issue by international observers and some opposition politicians, it does not seem that any changes in the policy are possible under the current political establishment. The problem will become more acutely visible if the numbers of resident EU citizens rise, since they do have this right.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Latvia is awaiting the judgment of the Grand Chamber of the ECHR in the *Tatjana Zhdanoka case*.[446] The case was appealed on the basis of a decision of the Cabinet of Ministers on 6 July 2004 and the European Court dealt with the case during 2005. The complaint of T. Zhdanoka essentially concerned her right to stand as a candidate for parliamentary and municipal elections, which was denied on the basis of lustration clauses in the law due to her affiliation with an organisation acting against Latvian independence in 1991. The Court found that there had been violation of Article 3 of the *ECHR* (right to free elections) and Article 11 (freedom of assembly and association).

[444] National News Agency LETA, 12 March 2005.
[445] National News Agency LETA, 3 April 2005.
[446] *Ždanoka c. Lettonie*, requête No.58278/00, arrêt de la Cour européenne des Droits de l'Homme, 17 juin 2004.

Legislative initiatives, national case law and practices of national authorities

Elections to city, district, and parish councils were held on 12 March 2005. After the last amendments to the *Law on City Council, District Council and Parish Council Elections*, EU citizens were allowed to vote, while a provision disqualifying persons held in pre-trial detention from voting, was excluded from the law. Convicted persons are still not allowed to vote in city, district, and parish council elections, as well as in Parliamentary elections and elections to the European Parliament.
Persons proved to have cooperated with the KGB were not allowed to stand as candidates. This restriction was challenged by twenty MPs in the Constitutional Court. The basis for the application was the adoption of amendments in the umbrella law on the fact of co-operation with the KGB, which provided for prolongation until 2014 of the period when this fact can be verified (before the amendments, the date was 2004).[447] The Court dealt with the case on 22 February 2005, and adopted its judgment only on 22 March 2005.[448] The Court declined jurisdiction because the applicants did not challenge the constitutionality of special laws providing for restrictions on the rights of persons due to the fact of cooperation. According to the Court, this amounted to insufficiency that does not allow evaluation of the constitutionality of the contested amendments.
The turnout in local elections was 52,85% of citizens eligible to vote. This was the lowest turnout in comparison with previous local and national elections.
The number of EU citizens who actually took part in elections cannot be identified. Some 3981 EU citizens - representing 22 EU Member States - registered in the Voters' Register and are thus eligible to vote. According to the Central Election Commission, only 19 EU citizens took part in elections to the European Parliament[449]. According to one estimate, the number of EU citizens taking part in local elections could be similar.[450]
No citizens of other EU Member States stood as candidates in the elections.

Reasons for concern

It is argued that the voting system according to domicile is still problematic; however, in these elections the possibility to vote at another location was provided for the first time, if the authorities were notified ahead of time. Although the number of those participating in local elections was slightly higher than in the European Parliamentary elections (49% of voters participated), this still falls considerably below the common turnout before the change (during previous local government elections, around 60% of voters participated). Another reason mentioned for low participation is a general decline in political activity.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

[447] *Grozījumi likumā Par bijušās Valsts drošības komitejas dokumentu saglabāšanu, izmantošanu un personu sadarbības fakta ar VDK konstatēšanu* [*Amendments to the Law on storage and use of documents of the former KGB and attesting to the fact of cooperation between a person and the KGB*], adopted 27 May, 2004.
[448] Latvijas Republikas Satversmes tiesas 2005. gada 22. marta spriedums lietā Nr.. 2004-13-0106.
[449] National News Agency LETA, 13 June 2004.
[450] Information provided by Daiga Plūme, Senior Legal Advisor of the Central Election Commission, 23 November 2005.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union..

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residence

Right to social assistance for the persons who have exercised their freedom of movement

Legislative initiatives, national case law and practices of national authorities

The social security system in Latvia is not based on residence but on the principle of payment of social security contributions. The *Law on State Social Insurance*[451] provides for five modes of insurance: state pension, unemployment, accidents at work and occupational disease, disability, maternity and health insurance. According to Article 5, all persons over 15 years of age employed in Latvia are subject to the Law. Article 6 identifies the categories of persons subject to specific kinds of insurance.
In accordance with the *Law on Social Services and Social Assistance*[452], the right to receive social services and social assistance is enjoyed by citizens, non-citizens, aliens and stateless persons who have been granted a personal identity number except for persons who have received a temporary residence permit (Article 3). Social services and assistance are financed from the resources of local government. The Cabinet has adopted *Regulation No.373 on Procedure for Receiving Social services and Social assistance*.[453] No provisions exist that would allow either a person with a temporary residence permit or EU workers to apply for social services.

Prohibition to enter certain zones or portions of the national territory during particular events

Legislative initiatives, national case law and practices of national authorities

No legislation prohibits entry of certain zones or portions of the national territory during particular events. However, controversies arose in relation to possibilities to enter certain zones when US President George W. Bush visited Latvia on 6-7 May 2005. Checkpoints, and

[451] *Likums par valsts sociālo apdrošināšanu* [*Law on State Social Insurance*], adopted 1 October 1997, in force since 1 January 1998, with amendments announced to 25 November 2005.
[452] *Sociālo pakalpojumu un sociālās palīdzības likums* [*Law on Social Services and Social Assistance*], adopted 31 October 2002, in force since 1 January 2003, with amendments announced to 29 December 2004.
[453] MK *Noteikumi Nr. 373 Sociālo pakalpojumu un sociālās palīdzības saņemšanas kārtība* [*Regulation No. 373 of the Cabinet of Ministers on Procedure for Receiving Social services and Social assistance*], adopted 31 May, 2005.

restricted entry into a specified area in the centre of Riga, were introduced. Residents in Old Riga and other security zones were requested to declare their actual residence. They also had to show identity documents on request by security services when present in security zones. Special lists were made to identify those having an office in Old Riga. Moreover, persons present in security zones during President Bush's visit had to be reported to the Security Service of the President and Parliament. Apart from free movement limitations, other individual rights were restricted, such as the rights of peaceful assembly and freedom of expression.[454]

Reasons for concern

Precautionary measures taken by State security institutions during the visit of the US President can be considered excessive. The way the precautionary measures were introduced and applied was also unacceptable. Hardly any explanations were offered to campaigners and the public in general to justify the proportionality of the measures taken. Although information was available on security zones and restrictions on *inter alia* free movement rights, further comments were not provided on the grounds of confidentiality and high security alert.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Free movement of EU and EEA citizens remains subject to regulation by a number of legislative acts. A plan to introduce a law incorporating all relevant norms during 2005 has not materialised.

The reactive adoption of amendments is still taking place and problems persist. For instance, it is still easier for EU citizens to acquire a residence permit if they move as workers than if they move for reasons of family reunification with Latvian citizens.[455] This has resulted in a number of cases when EU citizens were fined by local government officials for not declaring their place of residence[456]. In addition, some provisions cannot be effectively applied. Since there are no procedures for registration of the date of arrival and departure of EU citizens at the border, the requirements for grant and annulment of residence permit have no practical effect.

According to Section 51 of *Regulation No.914*, a residence permit can be refused if a person has previously been a Latvian citizen or non-citizen and this status has been withdrawn in accordance with the *Citizenship Law* or the *Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any Other State* (the so-called *Non-citizens law*).[457]

In 2004, the Parliament adopted amendments to the *Non-citizens law* providing that non-citizen status can be withdrawn if a person has permanent residence in another State after 1 June 2004. The amendments were challenged in the Constitutional Court, which delivered its judgment on 7 March 2005.[458] The Court regarded the amendments as unconstitutional.

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[454] National News Agency LETA, 29 April 2005, and 6 May 2005.

[455] *ES pilsonim sarežģīti būt precētam Latvijā*, Daily newspaper *Diena*, 28 June 2005.

[456] *Dzīvesvietas deklarēšanas likums* [*Law on Declaration of Residence*], adopted 20 June, 2002, in force since 1 July 2003, with amendments announced to 3 April 2003. The administrative committee of Riga City Council alone has dealt with 68 cases of EU citizens during 2004. The amendments to the *Law on Declaration of Residence* were passed at the second reading in Parliament on 26 October 2005. They aim at simplifying the declaration procedure.

[457] *Pilsonības likums* [*Citizenship Law*], adopted 22 July 1994, in force since 11 August 1994, with amendments announced to 27 October 1998. *Likums par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības* [*Law on status of former USSR citizens who are not Latvian citizens or citizens of any other State*], adopted 12 April 1995, in force since 25 April 1995, with amendments announced to 9 March 2005.

[458] Latvijas Republikas Satversmes tiesas 2005. gada 7. marta spriedums lietā Nr. 2004-15-0106.

Firstly, the Court clarified the status of non-citizens in Latvia by stating:

> " 13. [T]he opinion that Latvia was under a duty to grant citizenship automatically to those individuals and their descendants who have never been Latvian citizens and arrived during occupation is unfounded.
> 17. Status of non-citizens is not and cannot be considered as a mode of Latvian citizenship. However, the rights given to non-citizens and international obligations which Latvia has undertaken in relation to these persons, signify that the legal link of non-citizens with Latvia is recognized to a certain extent and on that basis mutual obligations and rights have emerged. This is derived from Article 98 of the Constitution, which inter alia states that anyone who possesses a Latvian passport has a right to protection of the State and a right to freely return to Latvia*."*

The Court acknowledged that introduction of the status of non-citizen was a complicated political compromise as a result of which a category unknown in international law has been created. The Court noted that Latvia has consistently defended its position that non-citizens cannot be qualified as stateless persons and this view has been accepted by international monitoring bodies of human rights[459].
This line of argumentation was also adopted by Administrative courts in Latvia during 2004.[460]
Secondly, the Constitutional Court referred to Article 12 of the ICCPR and Article 98 of the *Constitution* providing for the right of return and diplomatic protection for anyone holding a Latvian passport (including a non-citizen passport), Article 3 of Protocol 4 of the *ECHR* and the principle of reduction of statelessness. It concluded that non-citizens cannot be deprived of their status due to permanent residence in other States. It evaluated the applicable procedures for expulsion and extradition of non-citizens, which cannot be arbitrary and collective.
The Court declared the disputed provisions null and void as from 1 September 2005.

On 28 April 2005, Parliament adopted amendments to the *Immigration Law*. These provided that those who apply for a temporary residence permit must submit an "integration declaration". By signing the declaration, applicants would have to undertake an obligation to pass a language exam, and to respect Latvian language, traditions, and culture. After the amendments were rejected by the President, who motivated her refusal to sign by the vagueness and broadness of the amendments, the provisions on integration declaration were abolished.
However, the Parliamentary Commission of Defence and Interior requested the Cabinet of Ministers to draft amendments to the *Immigration Law*, which would provide detailed

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[459] Concluding Observations of the Human Rights Committee: Latvia. 3 Oct, 1995. CCPR/C/79/Add.53; A/50/40, paras. 334–361. *http://www.unhchhr.ch/tbs/doc.nsf/0/21ac2e3a885a28b6c12563f000518518*. Concluding observations of the Committee of the Elimination of Racial Discrimination: Latvia. 12 April 2001. CERD/C/304/Add.79. *http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.79.En*.

[460] Others are from administrative courts. Thus, for instance, the Department of Administrative cases of the Supreme Court Senate gave the following definition "*The link of a non-citizen with the Republic of Latvia is closer than in the case of a stateless person or alien. Therefore, revocation of status of non-citizen is a significant limitation of the rights of the person*". Case of Oganess Saakjan, Decision 2004, no. SKA-89, C27261801. In another case the Regional court faced the situation where a child was born to parents one of whom was a non-citizen and the other a Russian citizen but the parents wished to register the child as a non-citizen. The court concluded that "the Republic of Latvia has also acknowledged its jurisdiction over non-citizens, and a Latvian non-citizen in his rights is closer to the status of citizenship. It shall be also acknowledged that the link of a non-citizen with the Republic of Latvia is stronger than that of a stateless person or alien. Taking into account that the parents of the child have chosen Latvia as their place of residence, it can be concluded that the human rights of the child are not limited in Latvia if she has been granted the status of non-citizen". Case of Sergej Zaharov, Decision of 2004, no. AA 1218-04/4, A42173104.

regulation of the integration declaration. The government has formed a special working group to draft provisions on integration of immigrants. Discussions continue and views are divergent.[461]

The SOLVIT coordination centre, which deals with disputes arising within the common market, has dealt with one complaint from a Latvian citizen. He was working in Belgium and paid taxes for his daughter born after 1 May 2004 and living in Latvia. He was denied childcare benefit by the Belgian social security authority on the grounds that the family is residing in Latvia. The Belgian SOLVIT centre has intervened to settle the dispute.[462]

Positive aspects

The judgments of the Constitutional Court and Administrative Courts have tended to protect the status of non-citizens in Latvia. However, it remains to be seen how this status will be accommodated on the EU level.

Reasons for concern

Legislation in relation to free movement of persons remains untested, because immigration from EU Member states was low.[463] However, lack of a coordinated system for transposing directives raises concerns in relation to possible contradictions between different laws and regulations. This may become acute when *Directive 2003/109/EC* becomes applicable, because the number of third country nationals residing in Latvia is relatively high.[464]
The approach according to which Latvian non-citizens are considered to be third country nationals for the purposes of EU law has already been criticised by the EU Network of Independent Experts.[465] It also raises questions to what extent Latvia can live up to its international human rights obligations, i.e., especially those under the *International Covenant on Civil and Political Rights*. Non-citizens are not citizens of any other State as is the case with most third country nationals in the EU.
The recent case law of the Constitutional Court and Administrative courts should be taken into account by the Latvian authorities when working on the transposition of *Directive 2003/109/EC*.

Article 46. Diplomatic and consular protection

Protection of EU citizens by diplomatic and consular representations abroad

Legislative initiatives, national case law and practices of national authorities

As a result of the Tsunami and several attacks on Latvian citizens in the UK and Ireland at the end of 2004, the Ministry of Foreign Affairs organized a special information seminar on necessary documents, insurance, and formalities when Latvian citizens travel abroad. The

[461] Kuzmina I., *Bez aizspriedumiem*, Daily newspaper *Latvijas Avīze*, 28 June, 2005; National News Agency LETA, 2 August 2005.
[462] National News Agency LETA, 21 February 2005.
[463] Immigration increased by 22%, while emigration by 24%. In total numbers, during 2004 1665 people took up residence in Latvia; 40% of these are from the EU (mostly Lithuania). Central Statistical Bureau data of 31 March 2005.
[464] According to OCMA statistics, 78% of all resident aliens are citizens of the Russian Federation. Only 16% of all resident aliens are EU citizens, most of them being Lithuanian citizens.
[465] *Synthesis Report for 2003*, p.88.

seminar also covered services offered by the Consular department and possibilities to turn for consular assistance to embassies and representations of other EU Member states[466].
All Latvian citizens and non-citizens travelling abroad are invited to register at the Consular Register and buy insurance. Both these measures are voluntary, but compliance enables avoidance of financial and moral harm. The Consular Department noted that when travelling to EU Member States, form E-111 should be obtained. This allows access to emergency medical assistance on the same basis as for citizens of the respective EU Member State.
Between July 2004 and July 2005, altogether 1960 persons applied to Latvian embassies for a temporary document allowing return to Latvia. Almost 200 Latvian citizens and Latvian non-citizens were arrested by police abroad. In 80 cases the Consular department assisted in the return to Latvia of the bodies of those who died abroad.
Latvian citizens and non-citizens used the assistance of embassies of other EU member states when their passport was stolen in Cuba, Panama, and Peru.[467]

Decision 96/409/CSFP of 25 June 1996 on the establishment of an emergency travel document

Legislative initiatives, national case law and practices of national authorities

Latvia has not adopted necessary measures to ensure the transposition of *Decision 96/409/CFSP of 25 June 1996* on the establishment of an emergency travel document (ETD).

According to the Latvian Ministry of Foreign Affairs, there is delay in implementing the new ETD in new Member States.[468] There are a number of reasons for this delay, namely, the need to elaborate security of the document against falsification as well as to establish new numeration. Therefore, the old form of ETD is still in use. At the same time the EU is working on possibilities to add biometric data to passports in the form of a microchip that could be read from a distance.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

According to the Ministry of Foreign Affairs, Latvia is applying *Decision 95/553/CE Regarding protection for citizens of the European Union by diplomatic and consular representations* since the decisions are directly effective. The ministry is prepared to assist and has assisted EU citizens in cases of necessity. However, no statistics or other information is available on assistance given. It should also be noted that Latvia does not have embassies in all EU Member States and, due to limited resources, Latvian embassies have been opened in very few countries outside the EU region. Therefore, the capacity of Latvia to provide practical help in cases of necessity is very limited.

[1] National News Agency LETA, 14 July 2005.
[467] *Ceļotājiem palīdzēs Konsulārais departaments*, *Latvijas Vēstnesis*, 15 July 2005.
[468] Information provided by Ieva Lapina, Head of Functional Division of Consular Department of the Ministry of Foreign Affairs, 24 November 2005.

CHAPTER VI. JUSTICE

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

Access to a court and, in particular, the right to legal aid / judicial assistance

Legislative initiatives, national case law and practices of national authorities

On 1 June 2005, the new *Law on State-provided Legal Aid* came into force[469], providing State support in granting legal aid. The categories of those entitled to legal aid funded by the State are Latvian citizens, Latvian non-citizens, stateless persons, EU nationals legally residing in Latvia, third country nationals legally residing in Latvia and granted a permanent residence permit, persons entitled to legal aid provided by the State according to international agreements concluded by the Republic of Latvia, asylum seekers, refugees, and persons under subsidiary protection. The condition for their receiving legal aid, further regulated by Regulation of the Cabinet of Ministers, is that their particular situation, property status, and income level does not ensure partial or full protection of their rights. The State provides free legal aid to all persons whose status is defined as low-income or poor.
Legal aid provided by State covers resolving disputes both out-of-court and in court, as well as legal consultations in order to protect a person's rights. Asylum seekers can receive legal aid for appeal procedures within the process of granting asylum.

In 2005 legal aid free of charge was provided in civil proceedings and, since the *Criminal Procedure Law* came into force on 1 October, in criminal proceedings as well. Legal aid for administrative proceedings will be available from 1 January 2006. For implementing the *Law on State-provided Legal Aid*, the Legal Aid Administration will be established under the Ministry of Justice from 1 January 2006.[470] Persons who can enter into agreement with the Legal Aid Administration in order to provide legal aid are those who can practise in Latvia as sworn advocates, sworn notaries, sworn court executives, State-recognised universities implementing a programme for obtaining of a law degree over not less than 5 years, as well as natural persons who have obtained a law degree in a higher education establishment, who know the state language, have a high reputation, and have work experience in the legal profession for not less than 5 years.[471]

Positive aspects

As access to the courts for those on low incomes was indeed difficult because of lack of institutions as well as NGOs that provide legal aid, the adoption and implementation of the *Law on State-provided Legal Aid* should be evaluated as a significant development towards equal access to justice.

Reasons for concern

As the reward for providing legal aid is comparatively low for lawyers practising in the capital, not many of them are interested in providing legal aid under the *Law on State-provided Legal Aid*. A lack of lawyers in rural areas leads to the same result. Up to the end of

[469] *Valsts nodrošinātās juridiskās palīdzības likums* [*Law on State-provided Legal Aid*], adopted 17 March 2005, in force since 1 June 2005.
[470] Information available at website of the Ministry of Justice http://www.tm.gov.lv
[471] *Valsts nodrošinātās juridiskās palīdzības likums* [*Law on state Provided Legal Aid*].

2005, 38 sworn advocates were providing free legal aid, of whom 22 are practising in the capital. In some regions in the country, no-one is providing legal aid paid for by the State.[472]

Publicity of the hearings and of the pronouncement of the decision

Legislative initiatives, national case law and practices of national authorities

In 2005, the *Law on Judicial Power* was amended by addition of a new chapter, regulating access to information on judicial decisions.[473] It stipulates that judicial decisions pronounced in open court is generally accessible information from the moment of pronouncement or, if not pronounced, from adoption. If a decision is taken in closed session, general access is available to the introductory and resolution parts of the decision.
Case materials should be considered classified information, and access to them after a decision has come into force is possible in line with the *Law on Openness of Information*. If a decision is taken in closed session, then the case materials are available only to persons entitled by law to see them, and become classified information after 20 years, but if the case examined in closed session involves maters on adoption, establishing the parentage of a child, divorce or nullity of marriage, or depriving a person of legal capacity because of mental illness, than 75 years after the decision came into force. If the case examined in closed session involves a State secret, than the materials are available after expiry of the term of secrecy of the particular information.

State institutions and judicial power institutions have access to materials of cases heard in both open and closed sessions, if necessary for implementing their functions, and have a duty to protect information received.

If the court refuses to provide information requested, it is possible to appeal the refusal to the Ministry of Justice and further to the court under the Administrative Procedure Law.
The amendments also provide regulations for maintenance and development of a Court Information System, which contains classified information, and a Judicial Data Base within this system, which contains generally accessible information.

Reasonable delay in judical proceedings

Positive aspects

After the *Criminal Procedure Law*[474] came into force, the time limits for preparing and hearing a case at first instance under the criminal procedure have been reduced, and differ accordingly to the gravity of the crime. (See Article 6.)

A long waiting time for reviewing cases under the criminal procedure in the appeal instance court is gradually decreasing. In the first half of 2005, appeal instance courts reviewed 71,4% of criminal cases within 3 months, 11,9% within 6 months, and 8,4% within 12 months. However, some cases were under review even about 3 years. All cases involving minors were reviewed within a period not exceeding 18 months.[475]

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[472] Information available at website of the Ministry of Justice http://www.tm.gov.lv/lv/noderigi/advokati_saraksts.html

[473] Likums *Grozījumi likumā par tiesu varu* [Law *Amendments to the Law on Judicial Powe*r], adopted 22 September 2005, in force since 21 October 2005. Chapter 3^1.

[474] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005.

[475] Information available at website of the Ministry of Justice http://www.tm.gov.lv/lv/ministrija/imateriali/tiesu_statistika/jaunaakie/06_Krim_2005P1.xls

Reasons for concern

The efficiency of the administrative procedure is seriously endangered, as the Administrative Court is overloaded at both first and second instances. At the end of the first half of 2005, there were 2351 unexamined cases in the first instance Administrative Court, and 991 in the second instance Administrative Court.[476] The reason for such delay is the insufficient number of judges in administrative courts, as well as the situation that up to now only one administrative court is operating (in the capital) reviewing cases submitted from all regions of the State.

Article 48. Presumption of innocence and right of defence

Presumption of innocence

Legislative initiatives, national case law and practices of national authorities

In 2005, the new *Criminal Procedure Law* came into force, stipulating that the presumption of innocence is one of the key principles of the criminal procedure.[477] However, the *Criminal Procedure Law* also contains a provision which stipulates a presumption of guilt in cases where a person has infringed copyright, related rights or trademark rights and cannot give a reasonable justification for acquisition or origin of these rights.[478] In September of 2005, after calls from the Prosecutor General and Latvian President Vaira Vīķe-Freiberga, a working group led by the Minister of Justice elaborated amendments to the *Criminal Procedure Law* and several other laws, providing that the principle of presumption of guilt should be applied in investigations concerning acquisition of financial means or other property. On 17 November 2005 the amendments to the *Criminal Procedure Law* were submitted to committees of the Parliament.[479]

Positive aspects

Until the *Criminal Procedure Law* came into force in 2005, the number of pre-trial detainees in Latvia had been considerable, especially among juveniles. It is now decreasing, as the *Law* has introduced more strict regulation for application of pre-trial detention and the institution of investigating judges. Their task is to control the observance of human rights during the criminal procedure[480]. The investigating judge now decides on pre-trial detention, after assessing the reasons and grounds for it[481] [482].

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[476] Information available at website of the Ministry of Justice http://www.tm.gov.lv/lv/ministrija/imateriali/statistika.html

[477] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005. Section 19.

[478] Ibid., Section 125(2).

[479] Likumprojekts *Grozījumi Kriminālprocesa likumā* [Draft law *Amendments to the Criminal Procedure Law*], Reg. No 1436.

[480] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005. Section 40.

[481] Under Section 272 of the *Criminal Procedure Law*, pre-trial detention can be applied only in cases where particular information or facts create a reasonable belief that the accused has committed an offence for which the law provides a custodial penalty, and other measures cannot ensure that the accused would not commit a new offence, disturb or avoid the investigation, trial, or execution of sentence. If an individual is suspected or accused of a particularly grave crime, then pre-trial detention can also be applied if the victim is a minor or person dependent on the suspect or accused, or has been unable to defend their rights because of age, sickness, or for other reasons, or if the suspect or accused is a member of an organised group, or his identity is not ascertained, or he has no permanent place of residence or work, or has no permanent place of residence within the country.

The rules governing the evidence in criminal matters

Legislative initiatives, national case law and practices of national authorities

Before the new *Criminal Procedure Law* came into force, special investigatory methods could be used only under the *Investigatory Operations Law*. Moreover, data obtained in this way became evidence only exceptionally, that is, if it was possible to verify them in accordance with the requirements of the *Criminal Procedure Law*. Now the use of special investigatory methods is permissible also under the *Criminal Procedure Law*, for secretly obtaining direct evidence on the facts of the case. The use of such methods is allowed only for investigating a serious or particularly serious crime and following a ruling by the investigating judge[483], or in urgent cases by consent given by the prosecutor (in which case the decision of the investigating judge must be obtained no later than on the next working day).[484]
The *Criminal Procedure Code* previously allowed only phone tapping and acquisition of information through technical means, as well as arrest and collection of correspondence.[485] Now 11 types of special methods of inquiry are included in the *Criminal Procedure Law*[486]. (See also Article 7.)
The inclusion of use of special methods of investigation for obtaining direct evidence has raised a sharp debate between criminal procedure law experts. Some are of the opinion that the regulation creates a threat to the democracy of criminal law policy and contradicts other provisions of the *Criminal Procedure Law*[487]. Others are convinced that the procedure where the decision on use of special methods of investigation has been taken by the investigation judge at the suggestion of the investigator, guarantees the lawfulness of this method of obtaining evidence, further pointing out that the *Criminal Procedure Law* also contains a strict regulation on use of information obtained as evidence.[488]
Regarding use of testimony of a witness under special procedural protection, this can be considered as evidence only where the witness is present at the court hearing. However, the witness may give testimony by using technical means, staying outside the court room, as well as being allowed not to answer questions that might disclose the identity of the witness.[489]

The right to freely choose one's defence counsel and the right to an interpreter

Legislative initiatives, national case law and practices of national authorities

The new *Criminal Procedure Law* regulates the right to defence in more detail than the previous *Criminal Procedure Code*. It provides that defendants in person or others in their interests can conclude an agreement with freely chosen defence counsel. In cases of obligatory defence[490] or at the request of the person concerned, an agreement can be

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[482] Ibid., 274.
[483] Up to 1 April 2006, the function of issuing decisions on use of special methods of investigation is divided and should be exercised by a judge of the Supreme Court, authorized by the Chair of the Supreme Court or by a prosecutor authorised by the Prosecutor General, as laid down in the Transitional Provisions of the *Criminal Procedure Law*.
[484] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005. Sections 211, 212.
[485] *Kriminālprocesa kodekss* [*Criminal Procedure Code*], adopted 16 January 1961, in force from 1 April 1961, annulled since 1 October 2005, Section 176, 176[1].
[486] *Kriminālprocesa likums* [*Criminal Procedure Law*], Section 215.
[487] Dombrovskis Reinhards, *Speciālās izmeklēšanas darbības Kriminālprocesa likumā*. Nedēļraksts J*urista Vārds,* Nr. 41 (396), 2005. gada 1. novembrī.
[488] Kavalieris Anrijs, *Speciālo izmeklēšanas darbību būtība*. Nedēļraksts J*urista Vārds,* Nr. 43 (398), 2005. gada 15. novembrī.
[489] *Kriminālprocesa likums* [*Criminal Procedure Law*]. Section 309.
[490] Section 83 of the *Criminal Procedure Law* provides that the participation of defence counsel is obligatory in criminal procedure if the defendant is a minor or a person deprived of legal capacity or a

concluded by the institution responsible for guaranteeing legal aid – the Administration of Legal Aid.[491] The investigator would not be allowed to conclude an agreement or to invite a particular defence counsel, but will have an obligation to provide the person concerned with necessary information and allow use of means of communication for inviting defence counsel.[492] In cases of obligatory defence, if the person concerned has not concluded an agreement, then the investigator should inform the responsible institution that defence counsel should be provided. If an agreement is not concluded, then the investigator should invite defence counsel to participate in particular investigation activity as necessary.

However, the *Transitional Provisions of the Criminal Procedure Law* provide that until 1 June 2006 if it is not possible to invite counsel under an agreement, then the investigator is allowed to invite a defence counsel who has not entered into an agreement with the Administration of Legal Aid.

If for financial reasons the defendant cannot pay for the services of defence counsel, then the court can decide to exempt him/her and pay for the defence from State means.[493]

The *Criminal Procedure Law* provides that the process should be held in the State language, and persons involved who do not understand the State language have a right to use the language they know and to receive interpretation services free of charge. The investigator is responsible for guaranteeing the services of an interpretor. Additionally, documents issued during the criminal procedure to persons involved should be translated into a language they understand.[494]

Reasons for concern

Many practical problems exist concerning access to defence counsel, especially in rural areas where only some defence counsel are available. Moreover, not all of these have entered into an agreement with the Administration of Legal Aid. In the capital, the number of defence counsel is sufficient. However, as the reward that the State provides for the services of defence counsel is comparatively low, defence counsel from the capital are not interested in entering into agreements with the Administration of Legal Aid. Thus by the end of 2005 only 38 defence counsel throughout the country had an agreement with the Administration of Legal Aid. In cases of obligatory defence or at the defendant's request for participation of defence counsel in a particular investigation activity, the investigator has to provide this. Failing that, the investigation activity would not be valid under criminal procedure. In such cases, investigators frequently have to use their personal contacts, especially in rural areas and during holidays, when it is almost impossible to invite defence counsel. The investigator is also responsible for providing a translator, if the defendant does not understand the State language.

The police are claiming a disproportionate burden on investigators, pressing them to fulfil many organisational tasks. Proposals to amend the *Criminal Procedure Law* are being prepared in order to resolve this situation.[495]

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person with limited legal capacity; if the process concerns imposing coercive medical measures; in the process of rehabilitation of a deceased person; if the defendant cannot exercise his/her rights because of physical or mental disability, illiteracy or under-education. The participation of defence counsel is also obligatory in the process of plea bargaining from the start of negotiations with the accused.

[491] A newly established institution under the Ministry of Justice.

[492] *Krimināl*procesa likums [*Criminal Procedure Law*], adopted 21 April 2005, in force since 1 October 2005, with amendments announced to 28 September 2005. Section 80.

[493] Ibid., Section 85.

[494] Ibid., Section 11.

[495] Information provided by J. Reiznieks, Head of the State Police Board of Supervision of Pre-trial Investigation.

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

Legality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

In 2005 the definition of terrorism in the *Criminal Law* was concretised and widened.[496] Now it provides for criminal liability for acts committed with the purpose of intimidating the population or inducing the State, its institutions or international organisations to take any action or refrain therefrom, or harming the interests of the State, its population or international organisation, such as blasting; burning; production, storing, use, distribution, scientific research or developing of nuclear weapons, chemical, biological, toxic or other weapons of mass destruction; kidnapping; hostage taking; unlawful actions with guns, and a number of other specified actions, as well as threats to carry out such actions, if a reason exists to believe that these threats can be implemented. The penalty for such offence is life imprisonment or imprisonment for eight to twenty years, with confiscation of property. A more severe penalty is envisaged for the same actions if committed by a group of persons by preliminary agreement (terrorist group) (life imprisonment or imprisonment for ten to twenty years with confiscation of property) and for leadership of a terrorist group (life imprisonment or imprisonment for fifteen to twenty years with confiscation of property).
After amending the *Criminal Law*, financing terrorism is qualified as a separate crime[497], the penalty envisaged being life imprisonment or imprisonment for eight to twenty years with confiscation of property, but if the offence is committed by a group of persons or for a sum exceeding 50 minimum wages as set by the government, then the penalty is life imprisonment or imprisonment for fifteen to twenty years with confiscation of property.
No criminal cases have so far been initiated under these provisions.

Proportionality of criminal offences and penalties

Reasons for concern

According to estimates from the International Organisation of Migration, about a hundred people become victims of human trafficking every month in Latvia[498]. However, during the first half of 2005 only 9 cases were initiated for sending a person for sexual exploitation[499], and 3 cases on human trafficking[500].[501] As it is indeed difficult to prove the existence of an

[496] *Likums Grozījumi Krimināllikumā* [*Law Amendments to the Criminal Law*], adopted 8 December 2005.
[497] *Likums Grozījumi Krimināllikumā*" [*Law Amendments to the Criminal Law*], adopted 28 April 2005, in force since 1 June 2005.
[498] National News Agency LETA, 6 September 2005.
[499] Section 165^1 of the *Krimināllikums* [*Criminal Law*] provides criminal liability for sending a person with his or her consent to a foreign state for sexual exploitation. A more severe penalty is envisaged for the same acts, if committed for purposes of enrichment or with respect to a minor, and for the same acts if committed by an organised group or with respect to a juvenile.
[500] Section 154^2 of the *Krimināllikums* [*Criminal Law*] defines human trafficking as the recruitment, conveyance, transfer, concealment or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, or by giving or obtaining material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent. The recruitment, conveyance, transfer, concealment or reception of minor persons for the purpose of exploitation shall also be recognised as human trafficking in such cases, if it is not connected with the use of any of the means referred to before. Within the meaning of this Section, exploitation is the involvement of a person in prostitution or in other kinds of sexual exploitation, compelling a person to perform activities or to provide services, holding a person in slavery or other

organised group in such cases, the penalties imposed by the court are quite often considerably lower than those requested by the prosecutor. For instance, on 24 August, 2005, the Supreme Court found the evidence as not sufficient for proving the existence of an organised group and re-qualified a case on sending of persons for sexual exploitation, reducing penalties for two accused persons from imprisonment for eight years with confiscation of property to imprisonment for five years, and from 3 years on condition with confiscation of property to two years on condition.[502]

As a reaction to the particular political situation, amendments to the *Criminal Law* passed the first reading, providing that a criminal penalty should be imposed for violation of order of organising and processing public events, if such violation is committed more than once in the course of the year. The penalty for such offence would be imprisonment for up to two years, or arrest, or community service, or a fine of up to forty minimum wages as set by the government.[503]

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

Right not to be tried or punished twice

Legislative initiatives, national case law and practices of national authorities

In 2005, the *Criminal Procedure Law* was adopted. This contains some provisions regarding the right not to be tried or punished twice for the same offence that were not included in the previous *Criminal Procedure Code*.
An article about the inadmissibility of double punishment (*ne bis in idem*) stipulates that a person may be tried and punished for the same offence only once. The following should not be considered as repeated trial: trial of a criminal case in any court instance if the previous court decision was annulled after judicial review foreseen by law, before it entered into force, as well as new trial of a criminal case on the basis of newly-discovered circumstances, or a new trial of a criminal case in order to improve the conditions of the convicted person in cases provided by law,.
If a person has already received an administrative penalty for the same offence, then the administrative punishment should be cancelled and taken into account when determining a criminal punishment.
A person may not be tried and punished in Latvia if already sentenced or acquitted in a country that has an agreement with Latvia about mutual recognition of decisions in criminal cases or an agreement about respect for the principle of *ne bis in idem*. If a person has been tried in another country, then the part of the punishment fulfilled should be counted in the new punishment in case of a repeated trial.
The principle *ne bis in idem* should not be considered as infringed where a legal person has been punished and a physical person who has acted illegally in the interests of that legal person is also punished.[504]
Latvia does not execute a punishment imposed in another country if the person concerned has already fulfilled a punishment for the same offence imposed by Latvia or the third country,

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similar forms thereof (debt slavery, serfdom or compulsory transfer into dependence upon another person), and holding a person in servitude, as well as unlawful removal of a person's tissues or organs.
[501] Brence L., *Cīņa ar cilvēku tirdzniecību*. Daily newspaper *Rīgas Balss*, 12 July 2005.
[502] National News Agency LETA, 13 August 2005 and 24 August 2005.
[503] *Likumprojekts Grozījumi Krimināllikumā* [*Draft law Amendments to the Criminal Law*], Reg. No 1237, passed the first reading in the Parliament on 16 June 2005.
[504] *Kriminālprocesa likums* [*Criminal Procedure Law*], adopted 21 Apr, 2005, in force since 1 October 2005, Section 25.

was sentenced without determining a punishment, released from the punishment due to amnesty or pardon, or is acquitted of the same offence.[505]

[505] Ibid., Section 799.