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**EVAL 38
ELARG 274**

NOTE

From : the General Secretariat
To : the Collective Evaluation Working Party
Subject : Analysis of information on human rights in Latvia

Formal acquis

Latvia has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol 1-8, the European Social Charter as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its two Additional Protocols. Latvia has signed but not yet ratified the Framework Convention for the Protection of National Minorities and Protocol N° 12 to the ECHR. The ECHR Protocols N° 9 and 10 have not yet been signed.

Concerning asylum and refugees, in order to harmonize legislation with the EU Acquis on asylum, the Parliament has adopted a new Asylum Law which will come into force in September 2002. Further, the Cabinet of Ministers introduced in March 2002 new regulations on "Forced expulsion order of Aliens and Stateless Persons". The Government is currently preparing a new Immigration Law, which is expected to be adopted by the end of 2002.

In general, Latvian legislation is in line with international human rights standards.

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Administrative capacity

The main problem in the judiciary in police is that there is still a lack of understanding -at all levels- of the concept and meaning of human rights. Therefore, training and education in both areas is still needed. Most judges have inadequate judicial training and the court system is too weak to enforce many of its decisions. 40% of the Latvian judges are still from the Soviet period and -in general- many judges lack training and knowledge about new legislation and international law. Further, there is a shortage of (qualified) lawyers. Amongst other reasons, a shortage of judges has overloaded the courts to the point where the average case takes 2 years to reach judicial review.

Since 2000, a training project for Latvian judges on human rights issues has been going on with the support of the Soros Foundation. A group of 12 judges from regional courts and the Supreme Court received a 'train the trainers' course on human rights issues, and over 30 seminars for all judges of regional and district courts as well as the Criminal Chamber of the Supreme Court and Criminal Cases Department of the Supreme Court Senate were held. A total of 274 judges have taken part in these seminars. At the moment, a new human rights manual for judges is being drafted.

There has also been training for the police in human rights issues. International funding, the Latvian National Human Rights Office (LNHRO) and the Soros Foundation together with the Ministry of Interior have provided seminars and education for the police. Projects like these are ongoing. However, the number of complaints received by the LNHRO and the Latvian Center for Human Rights and Ethnic Studies in 2001 shows that more education is still needed¹.

The State Police has prepared Principles of Police Ethics which were expected to be adopted in July 2002.

Implementing performance

In general, human rights are respected. However, problems remain in certain areas.

One positive development concerned the implementation of several measures to facilitate the naturalisation of Latvia's large non-citizen population. While the number of non-citizens in Latvia remained huge and decreased very slowly, the Latvian authorities took a number of steps in 2001 to promote naturalisation. In 2001, the number of non-citizens decreased from 551.064 at the beginning of the year to 523.095 (or 22% of the total population) on 31 December. Most of the decrease derived from deaths or emigration, as only 10.637 became citizens through naturalisation. The monthly average for naturalisation applications in 2001 was 723, down from 891 in 2000 and 1.265 in 1999. Since the beginning of the naturalisation process in 1995, slightly fewer than 50.000 individuals have become citizens through naturalisation.

¹viz. Implementing performance

RESTRICTION OF THE EXTRADITION OF REFUGEES

Asylum/refugees

Since 1998, only 8 persons have been granted a Refugee Status in Latvia while 100 applications were received. Latvian NGO's consider that these numbers are due to the narrow definition of a refugee taking into account only the 1951 Geneva Convention and the 1967 Protocol. The new Asylum Law broadens the definition of a refugee by introducing temporary protection and alternative protection. It further provides for the possibility to review asylum applications at the border. Thus, border guards are given competence to reject asylum seekers if their applications are deemed groundless. It is unclear whether the border guards are capable of making such a judgement. Asylum seekers treated in accordance with this procedure are left with a time limit of only 1 day to file a complaint of rejection.

The new laws, which comply with the EU *acquis*, may improve human rights situations where necessary. For example, NGO's have been complaining about the situation of persons detained in the Olaine refugee camp, i.e. insufficient food and medical care. According to the Latvian Refugee Affairs Council, each detainee receives 10,5 LVL per week¹ in order to buy food and other necessities. Also, the fact that the detention camp is located in the same premises as Olaine's open prison treatment center for prisoners receiving TBC treatment is problematic. In several cases detainees have spent months, and in few cases even years, in the camp. Complaints about not receiving legal assistance are also common. Further, no activities whatsoever are provided in the camp to children.

However, the signing of a new co-operation agreement between the Latvian Red Cross, Latvian Border Guards and the Latvian Foreigner's Association marks a positive step. The aim is to subcontract NGO's to provide social and legal assistance to detainees in the Olaine camp².

Judiciary and Police

The Constitution provides for an independent judiciary, and the Government generally respects this principle in practice. The main problem in the area of judiciary and police is the implementation of legislation. Misuses, misreading, misinterpretation and misunderstandings of the laws are frequently reported phenomena, at all levels of Latvian society.

In 2001, legal mechanisms for the implementation of human rights gained importance as the European Court of Human Rights began to consider claims filed by Latvian residents and the Latvian Constitutional Court began to consider claims filed by individuals³.

¹ +/- 16-17 Euro

² in the past, it was difficult for NGO's to gain access to the camp

³ In the second half of 2001, the Constitutional Court received 314 applications from individuals, of which 121 were given to the Court's Collegium for review.

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Furthermore, corruption poses a serious problem to the judiciary. Despite the ongoing reform of the judicial system by the Government, more and better education and training of members of the judiciary and law enforcing entities is needed.

Pre-trial detention

The Criminal Procedure Law is outdated and urgently needs to be changed. Efforts are underway to improve the Criminal Code, but the pace of progress is very slow. Apart from the overload of the judicial system, specific provisions of the Code are also responsible for the huge number of pre-trial detainees (more than 40% of all inmates). Detainees -including juveniles- awaiting trial spend an average of 2 years in prison, and many of them even much longer. The lack of alternatives provided for in the Code (e.g. conditional suspension of prosecution with a probation period) to pre-trial detention and narrow discretionary powers of judges, only give the judges one alternative means of penalty.

Mistreatment

Both NGO's and the Latvian National Human Rights Office (LNHRO) received complaints about members of the security forces, including the police and other personnel of the Ministry of Interior, using excessive force and mistreating persons during investigations and interrogations. The report of the visit (in 1999) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was made public in 2001. It noted that "in some cases, the ill-treatment alleged (...) could be considered as amounting to torture".

The number of complaints and evidence about the police using harsh and non-human methods in the course of questioning and investigations has been rising. In 2001, the LNHRO received 14 written and 62 oral complaints about the State Police, 5 written and 29 oral complaints about the Municipality Police and one written and 31 oral complaints about the Traffic Police concerning police abuses during investigations. Although the burden of proof is not clear in all the cases, there have been clear and proven cases of violations of human rights by the police. The police has recently admitted that these problems exist and stated that measures are being implemented to improve the situation.

A *complaint procedure* on possible abuse by the police exists. However, the procedure is dealt with by the police meaning that complaints about police behaviour have to be filed with the Investigation Administration of the Police. Eventhough the Administration is supposed to investigate the complaints in an objective and exact way, most cases are turned down on the grounds of lack of e.g. witnesses or evidence. During 1995-2002, only one of the many cases has been resolved in favour of a complainant.

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Equal treatment/racism

In general, the situation in Latvia regarding equal treatment and non-discrimination does not give rise to major concern. The Latvian police reflect the demographic situation, e.g. the police in Riga is to a great extent of Russian ethnicity.

However, there have been some complaints from Roma about not being treated equally by the police. Claims by women and human rights groups state that the legal system tends to downplay the seriousness of for example domestic violence (of which the number of cases is significant and under-reported) and that the police are reluctant at times to make arrests in such cases. Women who are victims of abuse often are uninformed about their rights and the police do not compile figures for domestic violence as a distinct category.

Rights of the child

The UN Committee on the Rights of the Child, after having reviewed Latvia's initial report on steps the authorities had taken to implement the UN Children's Convention, has *inter alia* recommended that "cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, be properly investigated within a child-friendly inquiry". In April 2001, the first centre for child victims of violence was opened in Riga.

Further, the Committee issued a number of recommendations relating to the sexual exploitation and trafficking of minors, including programs to prevent and combat the phenomena and to rehabilitate and reintegrate the victims. The recommendations further addressed issues such as protecting children who have been victims of violence from having to testify repeatedly, long pre-trial detention periods for minors, and the need for rehabilitation programmes for children dependent on alcohol or narcotics.

Conditions for detainees, including the notification of custody, the right to a lawyer and medical care

Although some progress was made in renovating old and unsafe prison facilities, in general prison conditions remained poor. Overcrowding is still a problem¹, particularly in those facilities which house prisoners awaiting trial². Unlike convicted criminals, persons in pre-trial detention (including juveniles³) are not allowed to work or go to school, have limited contact with outside NGO's or family, and suffer from considerably worse living conditions than prisoners in general. Equally, contacts with legal representatives are severely restricted.

¹Based on measures of prisoners per 100,000 inhabitants, Latvia fell in the world rankings from the 14th to the 17th place

²For example, in April 2002, the remand section of the Ilguciems women prison reached an occupancy rate of 150%.

³At the end of 2001, 383 minors remained in prison, of which 62.4% were on remand.

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During 2001, the renovation of decrepit detention facilities in the framework of the Public Investment Programme continued. In 2002, the budget allocated to the programme was slightly higher than in 2001. Seven out of the total number of detention centres and prisons continue to be guarded by a special regiment of the Ministry of Interior. In October 2001, the Cabinet of Ministers accepted a document which foresees to transfer 3 prisons to professional guards in 2002 and complete the reform by the end of 2003. For 2002, an amount of LVL 2.109.945 was attributed to the reform.

While the number of TBC cases in prisons has further decreased, the number of HIV infections has continued to increase. HIV patients in prisons account for 30% of all new HIV infections registered in Latvia in 2001. 89% of those who got infected with HIV in prisons are intravenous drug users, the number of which has also been increasing lately.

Every person has the right to hire a lawyer. However, the system of legal aid counselling does not exist placing indigent persons in a vulnerable situation. A council of voluntary lawyers has been established. In general, there is a shortage of lawyers and voluntary lawyers are not renowned for their commitment to the cases they work on. Another problem is that people are often unaware -due to a lack of information on their rights- of the fact that they have the right to a lawyer. The State is obliged to provide legal assistance for disabled and handicapped persons and minors and lends funds to indigent defendants to be able to hire an attorney.

Prisoners have the right to medical care. However, there is a persistent shortage of medical care; prison hospitals are overloaded with work and understaffed. If special treatment is needed, the prisoner has to apply in writing and in general it takes a long time before the required treatment is provided. Some of the prisoners even infect themselves on purpose with serious diseases, hoping to benefit from better prison conditions that way. In reality however, inmates infected with e.g. HIV do not receive better treatment nor have special conditions, even though they are ill.

Abuse by prison staff is not considered to be a serious problem. However, the prisons in general are understaffed and the employees not well educated, which results in low standards of job performance. Reportedly, fights between inmates without staff intervention is a frequent phenomenon.

The quality of prison facilities in general depends on the occupancy rate, quality of the management and the state of the building. The worse conditions are currently found in the prisons situated in Daugavpils. In general, more funds are needed to improve prison conditions and the educational situation. It is considered that European standards will not be reached in the foreseeable future.

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Though the prison system is getting more and more open to the public, it is still considered to be a rather 'closed' system. However, the new Director of the Prison Administration is very open and cooperative with NGO's, which is promising for the development of the system in the future. The Government permits independent human rights monitors to visit prisons. Domestic groups, such as the LCHRES, monitor prison conditions during this year.

Ombudsman

The Latvian National Human Rights Office (LNHRO) partly carries out the functions of an Ombudsman. The LNHRO is an independent national institution which aims to promote the observance of human rights and which is a full voting member of the International Ombudsmen Institute. The LNHRO was established as a human rights office/human rights ombudsman, entitled to examine legislation and administrative practices to ensure their conformity with fundamental principles of human rights. The office is also authorized to hear and consider complaints. The mandates of the LNHRO extend beyond the governmental sector into the private sector, in which respect they differ from the traditional ombudsman model (generally restricted to consider abuses by governmental or administrative authorities).

However, the fact that LNHRO has such a wide mandate causes problems with regard to its main aim and functions. For example, cases concerning housing crisis and property disputes are regularly submitted to the office -usually these areas don't fall within either the mandate of a national human rights institution (unless there is a human rights element involved) or that of an Ombudsman unless there is some misconduct in office or misadministration issue underlying the case. But as no other institution is legislatively empowered to engage in these cases, the LNHRO staff makes efforts to provide at least some guidance to clients.

From the number of complaints the LNHRO receives each year it can be concluded that the public is well aware of its existence. However, the number of complaints which do not concern human rights violations indicate that the public does not have knowledge about the Office's exact tasks.

In its annual report 2000, the LNHRO expressed its concerns relating to conditions in short-term police detention centres, which frequently amounted to "inhumane treatment" and were "degrading for human dignity". In addition, the LNHRO believed that prolonged periods in pre-trial detention violated the right to a trial within a reasonable time.

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In November 2000, a special working group was convened to consider the institution of an Ombudsman in Latvia. Despite the fact that it was concluded that an independently functioning and more effective Ombudsman office was needed, neither the conclusion nor recommendations directed to improve the system have been implemented.

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Sources:

- ◆ Answers from the Member States to the Council Secretariat Questionnaire
- ◆ European Commission Regular Report on Latvia (2001)
- ◆ Amnesty International Report on the Republic of Latvia 2002
- ◆ International Helsinki Federation Report on the Republic of Latvia 2002 (events 2001)

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