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NOTE

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

A. The Judicial System

The Court System

The Latvian judiciary system is provided for by the Law on Judicial Power, which was adopted in 1992. The judicial structure is composed of district (city) courts, regional courts (which hear appeals from district courts), the Supreme Court (the highest appeal court) and the Constitutional Court. The Constitutional Court (7 judges) is authorized to hear cases regarding constitutional issues at the request of state institutions or individuals who believe that their constitutional rights were violated.

There are 34 district courts in Latvia. Civil cases generally are heard by the judge alone. Criminal cases and civil cases of specific categories are heard by a panel consisting of a professional judge and two lay judges. These courts also have the so-called administrative judges who hear administrative cases with the right to take decisions individually.

Public Prosecution

The basic principles of the prosecutors' work are provided for by the Law on Prosecution Office which was enacted in 1994. The Prosecution Office is a uniform centralized three-tier system of institutions administered by the Prosecutor General. It has been created in accordance with the (three-tier) judicial system. The structure is:

1) 34 District and City Prosecutor's Offices

2) Prosecutor's Offices of judicial regions (their number equals that of regional courts)

3) the Prosecutor General's Office

Every Prosecutor's office is administered by a Head Prosecutor. The Prosecutor General's Office consists of Departments. There exist three such structures: one specializes in criminal law matters, another in state and civil rights protection, and the third deals with questions of administration and work analysis.

The prosecutor's functions are:

- to supervise the field work of investigation agencies as well as other operational activities of other institutions;
- to organize, conduct and perform pre-trial investigation;
- to initiate and conduct criminal prosecution;
- to prosecute on behalf of the State in all instances of jurisdiction;
- to submit protests;
- to exercise oversight over the execution of penalties;
- to take part in court hearings related to the change of the imposed sentence term or conditions of imprisonment.

The Prosecutor General governs and controls the activities of the Prosecutor's institutions, defines their internal structure and staffing.

Several new amendments and additions (which are foreseen in the near future) should strengthen the position of the Prosecution Office as an institution of judicial power. They should promote the prosecutor's independence in the investigation of cases and ensure the Prosecution Office a more prominent role in the field of international co-operation in criminal matters.

Development Programme of the Judicial System 2001-2006

The programme's main reform areas are the strengthening of the independence of the courts and of the effectiveness of the court system, the speeding up of court proceedings, execution of court judgements, the modernisation of courts and the training of judges. In 2002, the budget for the Ministry of Justice was increased to 28.5 million LVL (compared to 25.8 million in 2001). The State Budget for the Training Centre for Judges increased from LVL 40.000 in 2001 to LVL 60.000 in 2002.

In order to create a more effective judicial system, 5 sub-objectives are aimed to be achieved:
-monitoring the length of case proceedings
-the elaboration of amendments to laws
-the enhancement of the prestige of court work
-decrease the opportunities for corruption at courts
-an improvement of the quality of court proceedings.

Main deficiencies identified in the field of justice[1]

The main deficiency is that the Ministry of Justice is seriously underfunded and that the administrative capacity is low even compared to other Ministries. The Ministry has an annual average staff turn over of +/- 70%. The budget was foreseen to increase to take a larger share of the state budget, but this has not come about. Two thirds of the personnel is under contract (so not a professional civil servant), usually being law students who leave the Ministry of Justice for the private sector right after graduation.

Further, the number of judges in Riga is too small and their training is insufficient. Within the region of Riga, there is a persistent backlog of pending civil and criminal cases, although the trend shows that this is receding.

Another problem is the lenght of pre-trial detention without judicial control, which especially concerns minors.

[1]Source: Answers from the Member States to the Council Secretariat Questionnaire

Enforcement of court decisions in civil matters is poor and last but not least, independence of the judiciary is insufficiently guaranteed. In order to tackle this, wages and social guarantees should improve substantially. The salaries, compared to the private law firms, are low.

B. Independence, appointment and remuneration

Independence (*Guarantees on independence of judges vis-à-vis the executive power)*
The Act on Judicial Power sets out the principles of judges' independence. When running a court trial, judges shall be independent and subordinate to the law only. Judges shall not be members of parties or other political structures. The Ministry of Justice does not influence judges in order to obtain any results in court proceedings. However, it retains extensive authority over the judicial administration, finances and partly over judges' career paths. It is reported that this situation can be tolerated. The role of the Ministry is to make the financial funds available for the functioning of the judiciary and to provide the courts with buildings and equipment. The relevant Acts provide that the Ministry shall not exert any influence on court budgets, which consist of basic costs and allocated supplementary funds. The Constitutional Court and the Supreme Court both have their own budget.

The Law on Prosecution Office contains a special article on independence. It stipulates that the prosecutor shall be independent in his/her activities from any influences of other public and administrative institutions or officials and shall comply only to law. The office of a prosecutor is incompatible with any affiliation to any party or other political organizations. Further, in order to secure that a prosecutor investigating a case is not manipulated by politicians through various parliamentary or governmental structures, the Law on Prosecution Office stipulates that neither the Parliament, nor the Cabinet of Ministers, nor any other public or local government institutions/officials or individuals have the right to intervene in the work of the Prosecution Office during the investigation of cases. The unlimited term of authority for prosecutors constitutes another guarantee for their independence.

In order to support the judiciary's independence, the Development Programme plans to establish the Judicial Administration. This new body's main tasks will be *inter alia* the organisational management and development of the judicial system (including preparation and administration of the court budget) and the development of training programmes for judges and court personnel. The decision on the establishment of the Judicial Administration, including on its staff and budget, is foreseen to be taken later in 2002 (specified date desirable).

Shortcomings in practice

One worrying situation is the fact judges' independence is endangered by criminal threats. The first murder of a judge in Latvia took place in October 2001. According to officials' assertions, the murder of the chairman of the Criminal Case Collegium of the Riga Regional Court was (probably) a work-related contract killing.

Further, although *impartiality and integrity of the judiciary* are guaranteed by law, improvements are needed with regard to practical implementation. For instance, impartiality of judges towards the private sector may be questioned, because there is no minimum legal delay between the end of a judicial assignment and employment in a private company whose activities are related to the former function of the judge. One (recent) example is the case where the prosecutor in charge of one of the investigations on the Parex Bank, after having dismissed the case for lack of evidence in 2000, became the legal council of this bank's president in November 2001.

Appointment

Both prosecutors and judges are appointed to their position on the basis of professional and ethical criteria. The Prosecutor General is appointed by the Saeima for the term of 5 years following the recommendation of the Chairman of the Supreme Court. To be appointed to this position a person shall have at least 3 years in-service time at a prosecution office, or shall have worked as a judge at the Constitutional, Supreme or Regional court for at least 3 years.

The Law regulates the Prosecutor General's resignation and dismissal. Regarding dismissal, the Law was changed 2 years ago in order to strengthen the PG's political independent position. In accordance with the new procedure, those Members of Parliament who propose to dismiss the PG have to specify what violations of the law have been permitted by the PG. After that, the request is examined by a Supreme Court judge who is specially appointed by the Chairman of the Supreme Court. If the judge carrying out the probe states the fact that there have been violations of law in the PG's activity and if the said violations are further stated by the Plenum of the Supreme Court, the Parliament may decide to relieve the PG from his/her position. In case the judge does not find any violations of the law in the PG's work, the dismissal is not further discussed.

Head Prosecutors are appointed to their position by the Prosecutor General for 5 years with the consent of the Attestation Commission. Renewal is allowed. Other prosecutors are appointed by the Prosecutor General for an unlimited term. A candidate to a prosecutor's position must have Latvian citizenship, speak Latvian, have a higher education in law and be politically neutral. After the candidate has passed the qualification examination, undergone in-service training and the Attestation Commission has considered the possibility of his prospective appointment, the PG decides on the candidate's appointment to the position.

The Qualification and Attestation Commission administers examinations to the candidates; takes decisions on their compliance with a specific prosecutor's position, on terms of the in-service training and fulfilment of the envisaged program. It is also examines the most serious breaches of labour discipline. The Council of the Prosecutor General yearly approves the staff of the Commission and the program for the in-service training.

The Prosecutor General's Council consists of the PG's General Department/Division Chief Prosecutors and the Regional Chief Prosecutors, and the PO's Administrative Director. The Council is a collegial consultative institution with an advisory status. It organises the work of the Qualification and Attestation Commission and is responsible for the Prosecutor Code of Ethics.

Appointment of judges is similar though there are some differences. For example, to be appointed to the position of a judge a person shall be 25 and have worked in the legal profession for at least 2 years. Candidates for a judge position must also undergo in-service training and pass a qualification examination.

Judges for district (city) and regional courts are nominated by the Minister of Justice who takes into consideration a resolution of the Qualification Collegium of judges. A candidate to be appointed to the position of a Supreme Court judge is nominated by the Chairman of the Supreme Court who also takes into consideration a resolution of the Collegium. The candidate to be appointed to the position of Chairman of the Supreme Court is nominated by the Cabinet of Ministers.

All judges are appointed to their position by Parliament. District (city) court judges are appointed for 3 years and, upon expiry, their appointment can be renewed for 2 years or they can receive an unlimited term of authority. Judges for the Supreme or a Regional Court are confirmed for the unlimited term of authority. The Chairman of the Supreme Court is confirmed for 7 years in office.

A potentially worrying situation is that judicial appointments are confirmed after a judge's initial period of tenure and only further extended with the approval of the Saeima. Thus, and understandably, judges are anxious not to get on the wrong side of politicians. This situation clearly has the potential to inhibit their objectivity.

In accordance with the Law, judges -unlike prosecutors- can remain in office till they reach the maximum age of 65 (for district or city court judges) and 70 (for judges of the Supreme Court). However, the judge's term in office may be extended for 5 more years if both the Minister of Justice and the Chairman of the Supreme Court receive a positive response from the Qualification Collegium of judges.

The Law allows rotation of personnel within institutions of judicial power, e.g. prosecutors have the right to transfer to work as judges and judges have the right to become prosecutors. A person cannot simultaneously hold both positions.

Persons who are morally unfit to hold the post (have a criminal record, have had criminal charges brought against them or are under investigation; have participated in organizations hostile to the State or banned in Latvia) cannot be nominated as candidates to a judge post. Disciplinary cases on administrative misconduct by judges are considered by the Judges Disciplinary Collegium. The Act on Judges' Disciplinary Responsibility regulates the procedure to be used for initiating a case. The Collegium consists of 11 members (elected by the Conference of Judges) and is chaired by the Chairman of the Supreme Court. Appeal against a resolution of the Collegium is not possible.

Code of Ethics

A Code of Ethics for judges exists since 1995. A violation is taken into account in disciplinary proceedings, which are reported to be effective. The Code will probably be amended during a Conference of Judges in March 2003.

A Code of Ethics for Prosecutors exists since 1998. Further, the Law on Prosecution provides for disciplinary liability in case of non-observance of norms determined by the Code of Ethics. A prosecutor may be called to disciplinary responsibility for *inter alia* intentional breach of law when perfoming office duties, administrative misconduct and disregard of rules defined in the Prosecutor's Code. A disciplinary penalty can be appealed to the courts. From 2000 to 2001, six prosecutors were subjects to disciplinary actions for violations of the Code.

Confidence of the public (including efficiency and trustworthiness of the judiciary)

Each month, official public opinion polls on trust in different institutions are conducted by the agency 'Latvijas Fakti'. Data from May 2002[1] show the rating of -15.8 for the Judiciary (in comparison: Tax Administration -17.2 and the Police at +4.7).

Eventhough many judges -although hampered by practical shortcomings- work seriously, public confidence in justice is generally low. Also, there is a public perception that corruption is not infrequent. From time to time, media reports about cases of corruption or abuse of influence. Corruption has been reported in regard to both prosecutors and court staff, but not to judges. Court staff may be used to speed up or to delay proceedings.

[1] on a scale of -100 to +100

Remuneration

Remuneration for the work of prosecutors is stipulated by the law and linked with the remuneration for the work of judges (equalling 90%-95% of the latter). Although the salaries are among the highest of civil servants, ranging from 513-658 euro per month, they are said to be too low to attract able legal professionals. Also, as stated before, inadequate remuneration may lead to corruption.

Latvia has recently worked out a new concept for the remuneration of judges and other court personnel. This concept presupposes new principles of calculating judges' remuneration and creates the possibility to increase wages. Since the system of remuneration for judges is linked with that for prosecutors, the wages for prosecutors will increase too. The concept remains to be adopted by the Cabinet of Ministers. However, its financial implications have already been included in the list of budgetary priorities for 2003.

On 1 January 2002, amendments to the Law on Judicial Power entered into force. According to these, judges will receive the same social guarantees and benefits as civil servants, including compulsory life and health insurance provided by the state.

C. Resources and Training

Concerning the administrative capacity of the judiciary (workload, administrative structures), the insufficient material resources of the judiciary constitute a problem. The backlog of court cases and lengthy periods of pre-trial detention show that the administrative capacity of the judiciary has to be further strengthened.

In this respect, the following legislative changes are necessary:
- adoption of the Law on Sworn Court Bailiffs,
- adoption of the amendments to the Law on Criminal Procedure,
- adoption of the amendments to the Law on Judicial Power.

Numbers:

-judges	436 of which
district courts	224
regional courts	99
Land Registry	67
Supreme Court	39
Constitutional Court	7
-prosecutors	589
-bailiffs	178
-notaries	96
-Lawyers	583 + 83 sworn assistant-lawyers

The (99) judges of the regional courts are being assisted by 70 deputy judges and 70 court session clerks. The district court judges are assisted by 195 deputy judges. According to Latvia, in order to ensure a proper quality of judicial performance, the situation should change in that each judge should have one deputy judge and one court session clerk. As the current situation thus shows shortages (29 deputy judges are needed at the regional courts, 39 deputy judges at the district courts and 68 clerks), the Ministry of Justice has prepared a detailed budget request for 2003 to employ the necessary judges and clerks.

In any case, the number of judges was foreseen to be increased by 38 in the regional courts (in July 2002) and 41 in the district courts (in September). The main reasons are that the judicial capacity to control the decisions taken by the public administrative bodies needs to be enhanced and that the number of administrative cases is expected to increase with the entry into force of the Administrative Procedure Law (on 1 July 2003). This Law provides the framework for an effective and transparent public administration, setting the rules for the administrative process and the process of appeal to the courts.

At the end of 2001, the total number of pending criminal court cases amounted to 6.278 and of pending civil cases to 24.529, as compared to 5.906 and 24.467 in 2000.

Training *(with special emphasis on a satisfactory system of training for judges, prosecutors, as well as other categories of personnel working within the legal system)*

Training to judges is provided by the Judicial Training Centre (JTC) within the special Training Programme 2000-2002. The programme includes *inter alia* Civil Law and Process, Criminal Law and Process and the European Convention on Human Rights. Moreover, a training project with Sweden has started in January 2002, which includes language training in legal English and training in European and international law.

The situation in practice shows that in general, the effectiveness of judges is reduced by insufficient specialization. Further, recruitment of qualified personnel is still a problem due to uncompetitive salary levels (although gradual adjustments were applied). The need to train personnel is considerable.

A satisfactory statute for judges and prosecutors and favourable working conditions, in particular with regard to the (objective) distribution of tasks and access to case law

With regard to (objective) distribution of tasks, the Ministry of Justice's instruction on case assignement took effect for the district and regional courts in January 2001. Flaws in the distribution of work were not reported.

Concerning access to case law, court cases currently are published in four main ways. First, the Courthouse Agency publishes selected court opinions, judgements, etc. from 1st and 2nd instance courts in the form of a limited series of books. Similarly, the Supreme Court Chancellery publishes selected court opinions, judgements etc., also as a limited series of books. The second publication mechanism is UCIS, an internal information system which is meant to collect court information into a centralized database. Third, some court information is published in the newspaper 'Latvijas Vestnesis'. The fourth one is Internet, through which decisions from the Constitutional Court and some other courts are published.

Equipment of the courts

There are still many shortcomings in lower instance courts. With regard to premises and technological facilities, the judicial system still needs considerable improvement.

Regarding premises, a renewal of the court buildings in Riga in order to accommodate three Riga District courts in one building is expected to be completed by November 2002. The construction of a court house in Daugavpolis is also underway.

The development of the Unified Judicial Information System (TIS) -with the aim to modernise the judicial information support- started in 1998. The project implementation is foreseen until December 2006. So far, all Regional Courts and 30 District Courts have been provided with local computer networks.

According to Latvia, all prosecutor's offices are equipped with computers (at present 314) which are linked to the internet and which have access to the databases of other institutions including law enforcement agencies. A database of crimnial cases is (being) established in the prosecutor's office and should be operational soon.

A high level of transparency within the court system, including access to previous judgements
Free access to all case material is granted only to participants in the case. All opinions in civil and criminal cases are pronounced publicly, except those which have been decided in closed hearings. If that applies to a civil case, only the concluding section of the court opinion is pronounced publicly. If the criminal case has been decided in the (partially) closed hearing, only the introductory part and concluding section of a judgment are pronounced publicly.

The general public has access to adjudications of the court only after these have come into force. The information on whether a title of execution has been issued and regarding progress of execution of judgments in civil, criminal and administrative cases is accessible to all (interested) persons.

Courts do not have instructions regarding persons having access to archives, so the situation varies from court to court as does accessibility to court opinions. In some courts court decisions are accessible as an exact copy of the original and are not revised prior to the handing out. In some courts, persons can get only extracts from the decisions written out by hand, and not a copy of the whole document.

D. Criminal Law and Procedure, Conventions

Criminal Law and Procedure

In general, the principles of the rule of law and human rights are respected in all proceedings within the judiciary. However, the length of criminals trials is a permanent problem and there is no control of detention, an issue which is essential to avoid violations of human rights.

The main emergency is to reform the Criminal Code of Procedure. Although reform of the Code started already in 1994, today no viable text is yet in view despite many public declarations and the present Code is still based on the former Soviet Code. It currently contains more amendments and patches than original items and is said to be unreadable, even for judges (whose legal training is reportedly often poor). Another problem is that the Code enforces principles that severely hamper the operation of the criminal police. A practical example is the conflicting situation of separation between the investigating and arresting services, and between the investigating and interviewing services. The judicial relationship between the prosecutor's office and the police is also unclear. Further, because of the independence of the prosecutor's office, there is insufficient co-ordination with the judiciary.

Uniform implementation of the laws in criminal procedures must also be improved. The Ministry, which is aware of this need, is examining instruments and procedures to improve this situation. Better training of judges would be one important measure in this respect.

Amendments to the present Code of Criminal Procedure, which concentrate on the principle of judicial co-operation, internal proceedings and division of competence between authorities and which implement several requirements of EU Conventions, were foreseen to enter into force on 1 June 2002 (this needs to be verified).

The new Criminal Procedure Law should have been submitted to the Government in June (2002). This new Law is necessary to align Latvia's legislation with the relevant provisions in the field of judicial co-operation in criminal matters (mutual legal assistance, extradition, transfer of proceedings etc.). After its adoption in Parliament, it is expected to enter into force on 1 January 2004. EU requirements on judicial co-operation (including Schengen) have been taken into account.

The courts' handling of criminal cases

The main problems are the long delays of trials and the (too) long pre-trial detention periods. Also, a large number of the criminal cases which reach the Prosecutor General's Office are not pursued. Experienced Latvian experts/commentators states that possibly as much as 75% of cases which get this far are then quietly put aside for non-judicial reasons.

Questionmarks are put to the very high rate of dismissed cases on the grounds of lack of evidence, especially in severe criminal matters (assassination, high level financial crime). Even taking into account the low efficiency rate of the criminal police as regards handing over of evidence, the gap between police and actual court sentences is considerable. The problem is worsened by the unclear judicial relationship between the office of the prosecutor and the police and the afore-mentioned separation of services.

Effective access for all citizens to justice including the right to defence and the existence of an effective system of legal aid (including civil matters)

Free legal aid in criminal trials is provided and lawyers are available. However, excessive fees which are charged because of the lack of a regulation on fees impede many persons. A regulation about lawyers' fees and bar rules is needed.

In civil matters, poor parties can be exempted from court costs, but a system to provide legal aid by a lawyer is lacking. During a transitorial period this is acceptable, as in civil cases the courts and the Civil Procedure Code are still near to official investigation practices.

The respect of 'reasonable delays' (ECHR Article 6) for judicial procedures (incl. pre-trial detention, particularly as concerns minors)

In order to reduce the length of court proceedings, amendments to the Code of Criminal Procedure entered into force in July 2001. These provided for a more coherent separation in the geographical jurisdiction and ensured a uniform case distribution among the district and regional courts. It also permitted case transfer from one court to another in the same instance.

The new rules have also been used to shorten proceedings in juvenile cases. Given the large number of cases under consideration in the Riga Regional Court a number of cases will be transferred to other regional courts in November 2002. The average length of court proceedings in criminal matters is +/- 5 months.

Pre-trial detention periods[1] continue to be too long. The share of pre-trial detainees on the total number of prisoners shows this: in April 2002, 43,6% of the inmates in Latvian prisons were pre-trail detainees, compared to 44% in 2001. Lengthy periods of pre-trial detention are particularly problematic for minors, although figures are improving. The share of pre-trial detainees among juvenile prisoners decreased from 70% in 2001 to 63,4% in April 2002.

In order to shorten the pre-trail detention period and simplify the procedure of court proceedings, the Code of Criminal Procedure has been amended and should have been submitted to the Government in June (2002). After its adoption in Parliament the new Law is expected to enter into force on 1 January 2004. The new Law will maintain the provisions on pre-trial detention (allowing pre-trial detention for two months with the possibility for extension to maximum 18 months for adults and 6 months for minors). However, the new Law provides for a broader selection of measures which can be imposed through a fast-track procedure and which offer alternatives to detention as well as the possibilities for faster completion of investigations through simplified proceedings. The new Law further provides for a maximum length of detention during the court proceedings adjusted to the severity of the crime prosecuted. The maximum length of pre-trial detention and court proceedings can normally not exceed 24 months. Finally, the new Law should introduce a control mechanism to control detention by courts (which is currently lacking).

Within the framework of negotiating chapter 24, the EU has asked (urged) Latvia to avoid as much as possible lengthy pre-trial detention for juveniles, and to improve short term detention conditions in police premises. The EU has further underlined the importance of qualitatively and quantitatively adequate detention conditions.

[1] However, it is unclear and thus remains to be checked which period of time is covered. Probably the Latvian figures take into account the time until non-appeal ability is reached (the end of proceedings in the highest instance). European figures often take into account only the time until the proceedings in the first instance starts.

A satisfactory policy, with sufficient means, as regards dealing with minors

The dealing with minors is still unsatisfactory. The main deficiencies are excessive pre-trial detention in institutions where also adults are held and the (current) lack of specific legislation about criminal procedures against minors.

Exchange of magistrates

Latvia has stated that it will be ready to implement the provisions of the Joint Action of 22 April 1996 upon its accession. Latvia has established contacts both with Eurojust and the European Judicial Network. Within the Prosecutor General Office, representatives of the special unit dealing with international judicial co-operation are in charge of the co-operation with Eurojust and the EJN. The amendments to the present Code of Criminal Procedure aim to increase the efficiency of judicial co-operation in fighting international organised crime. They provide *inter alia* for the detailed procedure in regard to the establishment and management of joint international investigation teams, exchange of information and the use of technical equipment.

Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation

No information available.

Trafficking in human beings and sexual exploitation of children

In November 2001, the Parliament passed several amendments which add to the Criminal Law new Articles (154 (1-3)) criminalising trafficking in human beings. Measures are strengthened and punishment against trafficking in human beings is toughened. The new Articles are in conformity with the provisions of the UN Convention Against Transnational Organised Crime (2000). They were adopted on 25 April 2002 and are foreseen to enter into force in 2003.

Racism and Xenophobia

No information available.

Effective system of witness protection

Latvia introduced amendments in legislation on witness protection in June 1997. There have been no new changes since. The implementation of witness protection is based on special amendments to the Criminal Procedure Code and the Law on Police Intelligence Activities. This Law describes protective measures including physical protection, change of residence, change of identity and other. Protective measures can be taken before (as an exception), during and following proceedings. In February 1998, a special Criminal Police agency was created to deal with all aspects of special procedure protection. The agency is allocated at the Main Criminal Police Board of Latvian State Police. Currently the system -taking into account the limited resources to implement the law- is effective.

Extradition and Mutual Assistance in criminal matters[1]

Latvia has ratified the European Convention on Extradition and its two Additional Protocols as well as the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol. The Second Additional Protocol to this Convention has not yet been signed.

In order to prepare the implementation of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters and its Protocol, Latvia is drafting amendments to the Criminal Law providing for the criminal liability of legal persons. Amendments to the current Code of Criminal Procedure, providing for the hearing by video conference, have already been adopted. The technical equipment for the hearing by video conference has been installed in the Riga Regional Court and procurement of such equipment for 5 more courts is being prepared. The new Criminal Procedure Law, which entry into force is expected for 1 January 2004, will *inter alia* provide for the direct service of procedural documents, for the carrying out of controlled deliveries and for the setting up of joint investigation teams.

Information on Latvia's preparation/state of play with regard to the following instruments is desirable: the European Arrest Warrant, Eurojust, the EU Extradition Conventions of 1995 and 1996.

[1] Council of Europe Website: Main Framework Conventions (Status on 19/03/02)

Latvia has ratified the Convention on the Transfer of Sentenced Persons (1983) and signed but not yet ratified its Additional Protocol. It has also ratified the European Convention on the Transfer of Proceedings in Criminal Matters. Latvia has not signed the European Convention on the International Validity of Criminal Judgements.

Eventhough difficulties with regard to implementation exist, the rate of ratification by Latvia of the international JHA instruments is satisfying.

Practical experience

Judicial co-operation in criminal law matters is generally good, co-operative and efficient although sometimes delayed. However, problems of enforcement and implementation of Conventions in the field of JHA (especially related to crime and money laundering) exist. Implementation difficulties come either from the lack of specialised enforcement personnel (police and justice), or when the departments exist, inter-departmental competition and lack of co-operation between sections. Examples of poor implementation include investigation of a series of money transfers related to Muslim fundamentalist terrorism, investigation of cases of pirated bankcards, series of related cases (cross-border trafficking, assissination of a high level civil servant), involving one state department used for police investigations. Poor results were obtained in some cases, even when judges or criminal departments from at least one EU Member State were leading the case with cleared International Rogatory Letters[1] (International Execution Warrant). The problems are considered to arise from the fact that the implementation of legal texts is limited by the very long legal drafting process in Latvia, and the multitude of amendments that many lobbies (bank, oil, real estate, wood, industry, commerce) will propose and pass at the Parliament in order to reduce the coercive powers of the document.

The practical implementation of the Convention on Extradition is reported to be good. In 2001, 30 requests in criminal matters were received and 19 requests sent. Within the framework of agreements on legal assistance, 494 requests were received and 386 requests sent.

[1] banking institutions were targeted by the investigation and inspite of a formal request to act by the foreign investigators non-execution followed

Efficient international judicial co-operation bodies, with sufficient human and material resources

Regarding the unit responsible for judicial co-operation, the Ministry of Justice is designated as the central institution for execution and co-ordination of legal assistance requests. The unit is staffed with 3 senior experts but the number of staff is foreseen to be increased by 2004. The unit is subordinated to the Courts' Department.

Judicial co-operation in the framework of Schengen

As to direct contacts between judicial authorities, the Criminal Code of Procedure provides (Article 472 (2)) that, for criminal judicial co-operation purposes, a Latvian competent authority may agree with a foreign competent authority to arrange and support direct communication. Article 473 (3) has been amended in March 2002 as follows: "If and when permitted by international laws, requests and applications for specific criminal judicial co-operation may be sent to get a response on the part of a competent authority's officer who is in direct communication with a foreign competent authority's officer (with the competent authority to be notified to this effect)."

Drugs

Latvia has signed but not yet ratified the 1995 Council of Europe Agreement on Illicit Traffic by Sea, implementing Art. 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Terrorism

Latvia has ratified the 1977 European Convention for Suppression of Terrorism. The UN International Convention for the Suppression of the Financing of Terrorism (9 December 1999) has been signed by Latvia and its ratification was foreseen for July 2002.

Information would be desirable on the state of play with regard to the following Conventions/instrument:

- Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic agents, adopted by the General Assembly of the UN on 14 December 1973;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
- 1995 La Gomera Declaration on Terrorism.

E. Civil Law and Procedure, Conventions

The Civil Code

There have been no amendments made to the Civil Code in the last 3 years. Several amendments are currently pending in Parliament.

The Code of Civil Procedure

The Code of Civil Procedure was adopted on 14 October 1998. Several amendments entered into force 1 July 2001 (e.g. adoptions, insolvency, rights of representation) and a number of amendments will be submitted to the Cabinet of Ministers by September 2002. Their main features are the introduction of simplified court procedures including procedures for warning and judgement by default. The amendments will enter into force at the end of 2003.

Length of court proceedings, procedural delays, the quality of decisions

According to information provided by the Ministry of Justice, in the first instance courts, the percentage of civil cases which are heard within

-3 months: 45%
-3-6 months: 30%
-6-12 months: 17%
-1 year: 92%

In first instance of regional courts, the percentage of civil cases which are heard within

-3 months: 29%
-3-6 months: 21%
-6-12 months: 23%
-1 year: 73%
-2 years: 87%

In the appeal instance, the percentage of civil cases which are heard within

-3 months: 60 %

-3-6 months: 15%

-6-12 months: 19%

-1 year: 94%

The quality of decisions is still affected by inadequate training and/or lack of specialization. The poor acknowledgement of evidence and inexperience with difficult law terms cause a poor acceptance of legal decisions by the public, though in most cases professionals agree with the results.

Practical, effective enforcement of court decisions, in particular in civil matters (which implies the existence of qualified professionals[1])

At present, bailiffs are not adequately educated and trained. Moreover, (effective) enforcement of court decisions suffers from the fact that a *Law on Sworn Court Bailiffs* is still pending in Parliament even though the first reading of the Law took place in June 2001. Today, 60-70% of all civil judgments are not enforced.

The Law was expected to enter into force on 1 July 2002 (this needs to be verified). The new Law defines sworn court bailiffs as a free legal profession though in terms of executing court decisions they should be compared to state officials. The new Law aims to ensure a high quality of court judgement execution and to enhance the role of the bailiff in the judicial system. To be assigned as a court bailiff, a person must have Latvian citizenship, speak Latvian, be at least 25 years old, have a bachelor degree in law and relevant professional experience.

After the entry into force of the new Law, the functions of the (current) Court Bailiffs Department of the Ministry of Justice will be taken over by the Sworn Court Bailiffs Council. Its main duties are to make recommendations on the appointments and removal from office of court bailiffs and their deputies, to consider complaints and statements filed against court bailiffs and impose disciplinary penalties, and to organise the deputies' training.

[1] Such personnel must be competent and subject to satisfactory recruitment procedures and control.

Supervision of the court bailiffs is done by the district (city) court of the region where the bailiffs' office is located. A complaint on the professional performance of a bailiff may be filed to the Sworn Court Bailiffs Council, whose decisions in such cases can be appealed to the relevant district court.

Alternative methods of dispute solving

A well functioning arbitration procedure does exist. The Civil Procedure Law contains settlement provisions, but they are not frequently used in practice.

Conventions/bilateral agreements

Latvia has ratified the 1980 European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and the 1954 Convention on Civil Procedure. It has acceded to the Convention on Juridiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996), the Convention on the Civil Aspects of International Child Abduction (1980), the Convention on the Taking of Evidence Abroad (The Hague, 1970) and the Convention on International Access to Justice. It has further acceded to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters and to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. The European Convention on the Adoption of Children and the Convention on the Exercise of Children's Rights have been ratified.

Practical experience

Judicial co-operation in civil law matters is reported to be good though sometimes slow. The authorities are co-operative. At present, no bilateral agreement with EU Member States with regard to the execution of judgments exists. The Lugano Convention remains to be ratified by Latvia. In 2001, 50 requests in civil matters were received and 129 requests sent.

F. Data Protection *(with special emphasis on the effective protection of personal data)*

Latvia has ratified the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. It has not yet signed the Additional Protocol regarding supervisory authorities and transborder data flows. Some amendments to the Law on Personal Data Protection, extending the application to the police sector, were expected to enter into force in July 2002.

Further amendments to the Law on Personal Data Protection are currently being debated in Parliament. They should strengthen the independence of the Data State Inspectorate and fulfil the requirements of the Directive 95/46/EC and Directive 97/66/EC of the European Parliament and the Council of 15 December 1999.

Some efforts have been made to strengthen the administrative capacity of the Data State Inspectorate and its budget grew from 176.376 EUR in 2001 to 400.001 EUR in 2002. Also, the number of employees has increased from 10 in 2001 to 17 in 2002.

However, privacy and data protection are considered not to be enforced at the level of European standards. Many data base operations are conceded to the private sector without any efficient control. "Black boxes", operated by state security services beyond any official control, are installed within the technical infrastructures of telecommunication operators. Further, the capability to perform criminal intelligence analyses is lacking. There is a lack of trained personnel, specific software and of computers. Beyond the strong will not to communicate operational information between competing departments, there is neither standardisation of data collection nor specific circuits of data communication. Moreover, the approach of police work is, most of the time, purely reactive and the data, when processed, is not exploited with operational ends.

The only notable counter example is the Directorate of the State Police of Riga (RGPP) where an analytic department concentrates all the information from patrols and criminal branches in order to adapt the deployment of the units. Under an efficient management and in spite of lack of finances and the competition with the municipal police, the RGPP started a crime and sector focus approach that gives Riga the possibility to enjoy a street safety rate that few western European cities achieve.

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ANNEX

Sources:

- Answers from the Member States to the Questionnaire from the Council Secretariat
- Open Society Institute: Monitoring the EU Accession Process: Judicial Independence (2001) and Minority Protection (2001)
- The Council of Europe Website, Main Framework Conventions
- Hague Conference on Private International Law Website
- The Council of Europe Website on Legal Co-operation, information from Latvia on Public Prosecution (29 May 2002)
- Jurist, the Legal Education Network (World Law, Latvia)
- Conference on Accession to the EU: EU Common Position on Chapter 24, Co-operation in the Fields of Justice and Home Affairs - Latvia (29 May 2002 CONF-LV 20/02)

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