



MINISTRY OF FOREIGN AFFAIRS
OF THE REPUBLIC OF LATVIA

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Terry Davis
The Secretary General
Council of Europe
F – 67075 Strasbourg Cedex
France

Dear Sir,

Referring to Your letter of 21 November 2005 asking to furnish the explanations of the manner in which the internal law of the Republic of Latvia ensures the effective implementation of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), the Ministry of Foreign Affairs of the Republic of Latvia has the honour to convey the following.

The Ministry of Foreign Affairs of the Republic of Latvia submits that the internal law of the Republic of Latvia further is fully compatible with the Convention, acceded to by the Republic of Latvia on 4 June 1997, which currently forms an integral part of the Latvian domestic legal system. The provisions of the Convention are directly applicable, and can be invoked before the domestic courts and executive authorities. The rights presented by the Convention are foreseen by the Satversme of the 15 February 1922 (the Constitution of the Republic of Latvia). Furthermore, adequate remedies and safeguards exist within the internal law of the Republic of Latvia to ensure the effective implementation of the Convention's provisions. These safeguards are able to prevent unlawful deprivation of liberty of any person within national jurisdiction, whether such deprivation of liberty is linked to an act or omission directly attributable to the Republic of Latvia or whether the Republic of Latvia has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty.

Article 89 of the Satversme provides that the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international treaties binding upon Latvia. Furthermore, Article 13 of the Law on International Treaties of the Republic of Latvia of 13 January 1994 stipulates that if an international treaty ratified by the Saeima (the Parliament of the Republic of Latvia) contains other provisions than the domestic legislation, the provisions of the international treaty shall prevail.

The primary instrument safeguarding the right to liberty is Article 94 of the Satversme, which provides that everyone has the right to liberty and security of person and no one may be deprived of or have their liberty restricted, otherwise than in accordance

with law. Article 92 of the Satversme provides an effective remedy in terms of Article 13 of the Convention prescribing that 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. Furthermore, Article 104 of the Satversme provides that everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply.

The authorities responsible for protection of the human rights and fundamental freedoms as recognized by the Satversme, the Convention and the domestic law are the Satversmes tiesa (the constitutional Court of the republic of Latvia), the domestic courts (including the specific investigative judges), the Police, the Prosecutor Office, municipalities, as well as the National Human Rights Office (an Ombudsperson-type institution).

The Satversmes tiesa recognized the direct effect of Article 92 of the Satversme in its judgment of 5 December 2001 in the case No.2001-07-0103, where it held that every person who believed that his/her rights had been violated had the right to submit a claim for compensation for damages to a court of a general jurisdiction on the basis of Article 92 of the Constitution. According to the Constitutional Court, the duty of the court of a general jurisdiction is to evaluate the legal ground and the length of detention in every individual case and, in cases where a violation has been established, to determine and award an adequate compensation. The absence of specific legislative provisions cannot restrict or endanger the applicant's rights to enjoy the constitutional protection.

The Law on the Prosecutor Office determines functions of the Prosecutor Office, including *inter alia* the protection of the rights and lawful interests of persons and the State. The Satversmes tiesa in its judgment of 11 October 2004 in the case Nr. 2004-06-01 stressed this fact and recognized the Prosecutor Office as an independent institution offering an effective protection to individuals during the pre-trial investigation stage, in cases of alleged violations of procedural and constitutional rights.

According to Article 4 of the Law on Police of the 4 June 1991, the legal basis for the operations, among others, of the Police is the Satversme of the Republic of Latvia and international agreements.

Article 1 of the Criminal law of the 8 July 1998 states that only a person who is guilty of committing a criminal offence, that is, one who deliberately (intentionally) or through negligence has committed an offence, which is set out in that Law and which has all the constituent elements of a criminal offence, may be criminally liable and sentenced. No one shall be found guilty of committing a criminal offence and criminal punishment shall not be imposed upon anyone other than by judgment of a court and in accordance with law. In addition, Article 2 of the Criminal law provides that the liability of a person who has committed a criminal offence in the territory of Latvia shall be determined in accordance with this Law.

Furthermore, Chapter 15 of the Criminal law of the 8 July 1998 provides for criminal offences against personal liberty, honour and dignity of a person. Article 152 penalizes unlawful deprivation of liberty providing that

- 1) for a person who commits illegal acts depriving a person of the possibility to freely determine where he or she may be (unlawful deprivation of liberty), if the elements of a criminal offence by a State official are not present, the applicable sentence is custodial arrest, or community service, or a fine not exceeding thirty times the minimum monthly wage;
- 2) for a person who commits the same acts, if such are committed in a manner dangerous to the life or health of the victim, or if they are associated with the causing of physical suffering to him or her, or they have continued for more than a week, or they have been committed

repeatedly, or they have been committed by a group of persons pursuant to previous agreement, the applicable sentence is deprivation of liberty for a term not exceeding three years; and

- 3) for a person who commits unlawful deprivation of liberty, if serious consequences are caused thereby, the applicable sentence is deprivation of liberty for a term not exceeding ten years.

The acts mentioned above are in conformity with the European Convention for the protection of Human Rights and Fundamental Freedoms and establish the right to liberty and security as prescribed by Article 5 of the Convention.

The Criminal law penalizes both, participation (Article 19) and joint participation (Article 20) in a criminal offence as well as criminal offences performed in an organised group (Article 21).

In case of alleged violations or arbitrary acts committed by state officials Article 6 of the Criminal Procedure Law of 21 April 2005 shall apply, establishing an obligation for a criminal procedure, when a ground and basis for that is established. Furthermore, it provides for an investigation of criminal offences, prosecution and trial in accordance with this law and general principles of the Satversme and international law. Article 8 of the Criminal Procedure Law establishes principle of equality for all the persons involved in the criminal proceedings, notwithstanding their origin, social and material status, occupation, citizenship, race and nationality, religion, sex, education, language, place of residence and other conditions. As prescribed by Article 12 of the criminal Procedure law, the criminal process has to be carried out in accordance with international human rights and not allowing any unlawful acts. Article 40 and Article 41 of the Criminal Procedure law authorises the investigative judge to examine complaints about the alleged breaches of human rights during the criminal process.

Article 15 of the Criminal Law establishes the right for the case to be heard before just, objective and independent court.

Article 22 of the Criminal Procedure Law provides for a right to compensation for the damage caused by the criminal offence. In accordance with the Article 29 of the Criminal Procedure Law responsibilities of the investigator, among others, are to examine the information in order to initiate or derogate from initiating criminal proceedings, to carry out criminal investigation as well as to take all necessary measures prescribed by law in order to ensure compensation for damages caused by criminal offence.

The Section 3 of the Criminal Procedure Law vests some specific functions on the Prosecutor Office, as well as the investigative judges to ensure the observance of human rights within the criminal proceedings. The prosecutor shall examine the complaints against the decisions of the person in charge of preliminary inquiry and his superior. The prosecutor is also authorised to take over the investigation, providing he is not satisfied with the performance during the investigation. The high-level prosecutor (including Prosecutor General) is authorised to examine the complaints against persons in charge of the inquiry and low-level prosecutors. In particular, Article 40 appoints investigative judges to control the compliance with human rights in the criminal procedure. Furthermore, Article 41 provides for the rights and duties of the investigative judges that, among others, are to make the decision on imposition of the measures of compulsion as well as changing and repealing of such decisions.

Section 13 of the Criminal Procedure Law regulates lawful measures of compulsion requiring it to be proportionate and well based as well as providing the possibility for an appeal. In particular, Article 245 appoints the guide of procedures or the investigative judge to make a grounded decision regarding detention of a person. The decision must provide the information on the possibilities to alter and repeal such decisions. Article 271 (3) sets out the requirement for the investigative judge or the court to determine the scope of detention individually in each case and taking into account all the relevant views. Article 274 appoints the investigative judge to decide on the detention of a person in the stage of pre-trial investigation, who takes into account the person's opinion and the reason and basis for the detention. Furthermore, Article 277 sets out the

terms for the detention which can be prolonged only by a judge and by enabling the detained person, as well as one's advocate and representative and prosecutor to express their position. The terms are:

Article 277 (4) - not more than 3 months, not more than 2 of which in the pre-trial process for a person suspected or convicted for a criminal violation;

Article 277(5) – not more than 9 months, not more than 4 of which in the pre-trial process for a person suspected or convicted for a less serious crime;

Article 277(6) - not more than 12 months, not more than 6 of which in the pre-trial process for a person suspected or convicted for a serious crime; the investigative judge or a high-level judge can prolong the detention for another 3 months if there has not been unjustified delay of the process by the action guide, if the advocate has delayed the process intentionally, or if the process has been too complicated to finish it earlier;

Article 277(7) - not more than 24 months, not more than 15 of which in the pre-trial process for a person suspected or convicted for an especially serious crime; the investigative judge or a high-level judge can prolong the detention for another 3 months if there has not been unjustified delay of the process by the action guide, if the advocate has delayed the process intentionally, or if the process has been too complicated to finish it earlier; the high-level judge can prolong the detention for another 3 months if there has been no unjustified delay of the process by the action guide and no other security measure can ensure the security of the society.

Article 2 of the Regulations on the Rules of the Establishment of the Prisons of Investigation of the Cabinet of Ministers of 29 April 2003 establishes that the basis for detention of a person can only be a decision of a court (judge). In accordance with the Article 4 of the Regulations on the Rules of the Establishment of the Investigation Prison, a personal file is processed.

Based on the above mentioned, the Ministry concludes that the Latvian domestic law ensures a set of remedies allowing to deal with almost any complaint alleging a violation of human rights arising in the criminal proceedings and provides for an adequate response to any alleged infringements of the rights set out in the Convention, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies, in particular, the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims.

The Ministry of the Foreign Affairs has no information on any cases within period running from 1 January 2002 until the present where aid or assistance would have been given to agents of another State in conduct amounting to unacknowledged deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty within Republic of Latvia and therefore there no official investigation is under way or has been completed in the Republic of Latvia in this respect.

Please accept, Mr. Secretary General, the assurances of my highest consideration,



Helēna Demakova

For Minister of Foreign Affairs

The Minister of Culture