

0903639 [2009] RRTA 971 (12 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0903639

DIAC REFERENCE: CLF2008/159434

COUNTRY OF REFERENCE: Latvia - Stateless

TRIBUNAL MEMBER: Lilly Mojsin

DATE: 12 October 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas

STATEMENT OF DECISION AND REASONS

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APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be non-citizen residents of Latvia, arrived in Australia [in] November 2008 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] December 2008. The delegate decided to refuse to grant the visas [in] April 2009 and notified the applicants of the decision and their review rights by letter dated [in] April 2009.
3. The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] May 2009 for review of the delegate's decisions.

RELEVANT LAW

5. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
6. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or

insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicants, who are mother and son. As the first named applicant has only made Convention related claims I will refer to her as the applicant.
20. The Departmental file CLF2008/15943, relating to the applicants, contains the applicant's protection visa application (PVA), a copy of her passport and a decision by the Department rejecting the applicants' claims.
21. The documents in support of this decision are:
 - *Law on the Status of Former USSR Citizens Who are Not Citizens of Latvia or Any Other State*, sourced from <http://w-w-w.unhcr.org/refworld/publisher,NATLEGBOD,,LVA,3ae6b52a4,0.html>, accessed 23 March 2009
 - *United States State Department, Country Reports on Human Rights Practices for 2008, February 2009*
 - *Roxborough, Angus. "Citizenship row divides Latvia". British Broadcasting Corporation, 25 March 2005. Sourced from <http://news.bbc.co.uk/1/hi/world/europe/4371345.stm>.*
 - *UK Foreign and Commonwealth Office, "Country Assessment: Latvia", last updated 31 March 2009. Sourced from <https://fco-stao-e.fco.gov.uk/en/about-the-fco/country-profiles/europe/latvia/?profile=all>*
 - *Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Latvia : Overview, 2007. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/4954ce4fc.html>*
22. I have had regard to the evidence contained in those documents as it is relevant to the present application.
23. The applicant states that she was born in 1958 in the Lvov region of the Ukraine. Her son, the second named applicant was born in 1997, in Latvia. She states that she speaks, reads and writes Russian and Latvian. She claims to be an ethnic Ukrainian.
24. In her PVA the applicant states:

I had no options but to lodge my application for a Protection visa, because I consider myself to be a genuine refugee. I believe after reading my story you will also take the view that I am entitled to protection in Australia.

First of all let me tell you that my daughter, [Person A] was found to be a refugee by the Refugee Review Tribunal on 4 December 2006. I would like to refer to 'findings and reason' given by the Tribunal.

- The Tribunal found her to be a credible witness.
- The Tribunal accepted that she and her mother were attacked by Latvian nationalists in September 2005.
- The Tribunal accepted that the reason for the attack was that she and I had been fighting for our rights following our eviction from the apartment which I had purchased in 1995.
- The Tribunal accepted (having regard to our past experience and in particular the attack on my daughter and me in September 2005) that there is a real chance that, if she returns to Latvia now or in the foreseeable future, she will again be attacked by Latvian nationalists. The Tribunal accepted that it would occur for reasons of her political opinion based on her and her mother attempts to draw attention to their case and the treatment of the ethnic Russian minority in Latvia in general.
- The Tribunal noted that my daughter's evidence was consistent with the observation of the International Helsinki Federation for Human Rights that criminal cases have only been initiated in relation to incidents of racial violence in cases where physical injuries have been established.
- Given that the Tribunal accepted that despite the fact that my daughter suffered concussion and I also suffered injuries in the attack in September 2005, the police were able to avoid the need to conduct an investigation because we had not been taken to the hospital.
- The Tribunal referred to information which suggests that there is widespread hostility against Russians in the Baltic states and that the extreme right seems to have stronger position in Latvia than in Estonia or Lithuania.
- The Tribunal accepted that there is evidence in independent sources such as the Minorities at Risk Project report that there is a widely held view that the objective of the Latvian legislation on citizenship and language is to force members of the Russian community out of Latvia.

Let me tell you the reason I came to Australia and applied for a protection visa.

After I gave birth to my second child my partner left me. As I was not a Latvian citizen I was not entitled to any government assistance. When I applied to the police to find the child's father the police ignored all my requests.

There is a discrimination policy in Latvia and the Tribunal accepts the fact that *that the objective of the Latvian legislation on citizenship and language is to force members of the Russian community out of Latvia*. That's why on several occasions I had been told that I would be better off if I went to live in my "motherland".

One day I received an eviction notice from the authorities because of "my failures to make regular payments". It should be noted that it was my own apartment but it was a common practice to evict "aliens" who had been unable to pay the government's 'strata'. At that time I saw no other options but to sell the apartment. After I sold it I started renting it back from the new owner.

I was outraged by the state's failure to protect my basic rights. I disagreed with the government's policy to deprive people of their rights to live in their own apartments. That's why I started applying to authorities and human rights organisations.

Our story became known to public. That's probably why we started receiving threatening notes (since 2000). I went to the police and they had 'pretended' that they were going to investigate the matter but a couple of weeks later we received a letter from the police to say that the case had been dropped due to lack of evidence.

In September 2005 my daughter and I were severely beaten just meters away from our apartment. I reported the attack to the police, however no action has been taken to investigate the matter. A few days later someone with a Latvian accent telephoned and had told me that they would finish us off soon.

That's when I came to conclusion that we had to leave Latvia. My daughter applied for a visa to travel to Australia and the visa was granted (on 4 December 2006 the "Tribunal granted a protection visa). Soon after our "apartment" was robbed and all our valuables and money had been stolen (that's why my daughter was able to buy her ticket only a few months after that).

After my daughter left for Australia my situation became even worse. My financial situation deteriorated even further. Moreover, I suffered from constant stress, migraine headache, depression, etc.

I applied for a Humanitarian visa. However, my application was not successful. No reason of refusal were given, exempt that *'the aim of Australia's Humanitarian Program is to provide resettlement for those in greatest humanitarian need' and that 'places are limited so only those applicants who have the highest resettlement priori/v are likely to be granted a visa'*. They did not even ask me to come to an interview. They said that the decision is not reviewable. The decision to refuse me a visa was taken in November 2007.

Since November 2007 I made a number of attempts to relocate in EU Countries. I applied to: Embassy of Sweden, Embassy of Denmark, Embassy of Finland, Embassy of France and German Embassy. I was told (or written) that as a stateless person, I was not entitled to reside in the mentioned countries.

In February 2008 I applied to the Latvian Ombudsman. I was told that it would take no more than 3 months to investigate my complaint. After three months I telephoned them. I was said that they could not and would not do anything because the facts outlined in my complaint happened a long time ago.

Why I am applying for protection visa?

1. Due to nationalistic policy of Latvian authorities, which targeted such defenseless, stateless, 'foreigners' I was deprived of my home.
 2. All my attempts to draw attention to our case failed and we were subjected to terror and intimidation.
 3. Up to now I have no home nor means to live. I was forced to rent out 'corners' to survive. My son and I are alive because of my daughter and sister's help who live in Australia.
 4. I was a 'guest', occupant, immigrant, stateless person in a country in which I spent almost all my life.
 5. Due to a beating which took place in 2005 and subsequent terror I developed a sense of fear of persecution. I have been living in an atmosphere of permanent fear. I fear to go outside at night. Fear and depression are things which slowly killing me and if Australia does not protect me the consequences will be dreadful.
25. The applicant attended an interview with the Department [in] March 2009. She used the services of a Russian interpreter. I have listened to a tape recording of that interview. The applicant said at interview she was born in Lvov in 1958. She does not have any citizenship at all. She was 18 years of age when she came to Latvia Her mother died when she was 12 years of age, her father remarried, and had another child. She finished high school. When asked if she considered going back to the Ukraine she said that when she felt very uncomfortable she had an idea, but after reading the newspaper she thought they will not give her citizenship there. She has nobody there. She was in hospital for 3 months in February 2007 after an accident with boiling water. She had photos which her daughter gave the photos to the Tribunal. She was on anti-depressant medication when her daughter left and her hands shook so that she was burnt by the water. The delegate put to the applicant that her medical information did not suggest she had been hospitalised The applicant disagreed. The applicant described her situation before she left Latvia and how her friend took her in to live with her until she came to Australia. The man who bought her flat helped her find another flat. She sold her flat in 1999 but she remained in the flat and continued to rent.

26. When the delegate asked if she has been self employed until 2008 she said that until 1991 she had casual jobs. She could not get a job as she did not understand the language. Now she can speak and her son can speak Latvian. She was asked whether she had applied for Latvian citizenship or taken any steps to obtain it. She replied no, stating that she could not afford it. She had a baby. In the last 10 years she had depression and fear and she had no idea about it. She had to survive. When asked whether she had ever applied for citizenship in Latvia, the applicant responded at interview that she had not because she could not afford it.
27. The applicant told the delegate that her daughter came to Australia [in] March 2006. In relation to her attempts to relocate in the EU, she said that she does not have rights to live elsewhere. The delegate put to her that non-citizen Latvians have the right to freely move across the EU. She said non-citizens need a visa. The delegate put that non-citizens of EU do not have rights without a visa but the EU have recognised non-citizen Latvians and they have the same rights as citizens. When asked if she has letters from the Embassies where she applied she said that she left it all behind and she did not know she needed it.
28. The delegate asked her about her claim of writing to the Ombudsman. She said all her family knew how badly she was doing so her friend helped her write the letter. They got it from the internet and there was no response. They telephoned the number on the internet and they said her complaint was about incidents too long ago. She does not have a copy of the letter and she did not have any response. In relation to the dispute with the authorities over her apartment she said it was about the rent. She went to the authorities in charge of the house and then she went to the social security. They charged her some rent and sent her to someone one step up. She made an application and they said to leave it and they will sort things out. The applicant found out that a neighbor citizen had to pay less rent. She called them up after some time and said they did not want to talk to her at all. She went back and asked them why they did not want to talk to her.
29. When the delegate asked about her claim that her story became known to the public she said that when they sold the apartment and began to rent it, her friend introduced her to a Russian speaking lawyer who told her the agency she had to apply to. She wrote letters to all the agencies about the rent and about her case. She sent them her telephone number and they gave her a call and suggested she come to see them. They said they would publish her story in some leaflets and the internet. When asked who that was she said it was not government but human rights, a community group. She started to receive letters and telephone calls in the nature of threats about her ethnic identity. The delegate put that she continued to live at that place for 5 years. She went to the police and took the letters to the police. She made an application and described her situation, she was frightened for her children, but they ignored everything.
30. In relation to an event in September 2005 when someone rang her with a Latvian accent, when asked how they got hold of the telephone number she said before that she applied to an international agency through her acquaintances. When asked for the name of the agency she said that it was the organisation to defend Russian speaking population in ex-USSR republics. She could not provide the name. She had an acquaintance, a journalist who sent the letter. She has no copies of these letters as she had no idea she would need these letters. She did not know she needed the letters.
31. When the delegate asked what would happen to her if she returned to Latvia now she said that she would not survive. She cannot live there. This attack happened and nobody came to help them. If it were to happen again she would not survive.

32. The applicant appeared before the Tribunal [in] July 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Russian and English languages.
33. The applicant provided a medical certificate from a [Person B] dated 6 July 2009. That report suggested that the applicant's daughter should remain with her in the hearing room. I asked the applicant about the report and she said that she sees the doctor once a fortnight or once a month. The last occasion that she saw the doctor was 3 days prior to the Tribunal hearing. He has been prescribing Lexapro to her. She showed the Tribunal the packet of medication. When I asked the applicant why the medication had not been dispensed by a pharmacy, [the medication was marked Starter Pack and I observed that it did not have the usual dispensing notifications on the packet], she said that her Doctor had given her the packet. I put to her that the tablets were all intact and none appeared to have been taken, at all. She said that it is a new packet.
34. I explained to the applicant's daughter that if she wanted to remain in the hearing room with her mother I had no objection but if she wanted to give evidence to the Tribunal as well, I would not be able to inform her in advance what weight I would be able to give to her evidence. The applicant's daughter elected to remain in the hearing room. I explained to her that I would appreciate her not interjecting when her mother was speaking as it would be difficult for the Tribunal hearing tapes to distinguish who was speaking and it would be difficult for the interpreter and for the Tribunal. I explained to her that she would be given an opportunity to give her evidence after I had spoken to her mother.
35. Despite giving these instructions, the applicant's daughter on occasions prompted her mother and on one occasion the applicant and her daughter proceeded to have a conversation together, in Russian. At one time during the hearing, in order to avoid interjections by the daughter, I had to ask the daughter to sit at the back of the hearing room.
36. I asked the applicant if she was an ethnic Russian born in the Ukraine or an ethnic Ukrainian born in the Ukraine. She said that she is an ethnic Ukrainian born in the Ukraine. Both her parents were Ukrainian. She was born in 1958. Ukraine was then a part of the USSR. She said that she spoke Ukrainian and she learned Russian at school. She spoke Russian as a child. Her parents only spoke Ukrainian and they spoke Ukrainian at home. She now speaks Russian very well. Her first husband was Russian and they spoke Russian. She went to live in Latvia when she was 18 years of age in March 1977. She went to live there as her sister gave birth to a child and had to return to work so she asked the applicant to come and help her. Her child was small and there were no kindergartens in Latvia.
37. The applicant went to Latvia temporarily and she spent a year looking after the child. She married her first husband in Latvia. He was an ethnic Latvian/Russian. Her father had remained living in the Ukraine with her younger sister. Her father died in 1987. Her sister still lives in the Ukraine, in Lvov. Her sister is married with her own family.
38. The applicant's first husband died in 1994. Her son was born in July 1997. His father, her de facto husband, no longer lives with her. After their son was born her 2nd husband moved out. He was Latvian but his mother was Polish and his father Latvian.
39. I asked the applicant if she had applied for Latvian citizenship. She said that when Latvia became independent they were not citizens of Latvia, they took their citizenship away. I put to her that she is able to apply for citizenship. She said her daughter is Latvian and she has

been persecuted. I put to her that she has the right to apply for citizenship, but must pay a fee and pass a Latvian language and history exam and that by late 2005 about 100,000 non-citizens had been naturalised. She said that back then when she could apply she was discriminated and she could not prove her rights in that country. She said that she has read recently that if she had to sit an exam she had to admit that Latvia had been occupied by Russia Lots of people do not agree with that and she does not agree too.

40. I asked the applicant why she had not registered her son as a Latvian citizen as since 1998 children born to non-citizen parents, in Latvia [after 21 August 1991] have the right to be registered as citizens. She said that she did not know about that, her understanding was that if she was not a non-citizen it would extend to her child.
41. The applicant's daughter stated that back then the family had already been discriminated against and you do not think about applying for citizenship. She is a Latvian citizen as her father was a Latvian citizen.
42. I put to the applicant that she has the right and entitlement to apply for citizenship and to register her child. She said that she did not want to because of the discrimination.
43. I put to the applicant that the Immigration Law of Latvia has in places procedures and processes regulating non-citizens. Neither Amnesty International nor US State Department Reports nor EU reports or Helsinki reports suggest that the Latvian state has instituted or intends to institute forcible expulsion of ethnic Russians and she can remain as a non-citizen resident in Latvia. She said they do not expel them by force but create conditions to make them pack their bags to go. She said that she suffered discrimination, not because she was not a citizen but because she is not Latvian.
44. The applicant's daughter said that she is Latvian. They would have applied for citizenship at the time her brother was born but as she was discriminated against that was why they did not apply. "We are Russians and we will continue to be Russian, many who became citizens still are discriminated".
45. The applicant said that she and her first husband lived with her father-in-law. They shared a common kitchen. She worked at a pharmaceutical factory for 10 years between 1980 and 1990. After that, in about 1991, the factory closed down and she worked in casual jobs to make ends meet. She worked at nearby markets and she also painted buildings. She worked at those jobs until her son was born. She could not return to work as she looked after her son and her daughter was still at school. She had casual jobs and she supported herself. She also sold some of her things as the government would not give her a penny. They stripped her of anything and they did not pay her at all. She supported herself when living in Latvia. Her sister helped her at a later stage.
46. After her daughter came to Australia [in] March 2006 the applicant said that she did not work. She had been doing casual work until then. She was in a pretty bad shape as she took medication for depression. She was not entitled to social security. She went to enquire about social security but she could not apply as in Latvia there is no law of unemployment benefits for anyone. As she has not had a job since 1991 officially she is not entitled to any benefit. I put to her that had she worked she would have had an entitlement to assistance. She said maybe she could and maybe she could not, she said that as she lost her job she was entitled to obtain payment for a year.

47. I asked her about how she came about owning a property. She said that she and her husband purchased a flat in 1995. The applicant, her daughter and her 2nd husband purchased a flat together in her name and her daughter's name. The trouble started after she gave birth to her son in 1997. Her 2nd husband dumped them and the government did not provide any assistance. Even though she was the owner of the apartment she had to pay outgoings however her bills were twice as high as her Latvian neighbour, a pensioner.
48. By chance she discovered that her outgoings on the unit were higher than those of her neighbours when she saw the neighbour's bill on the table. The applicant said she took a copy of the bill and went to various authorities. She asked for assistance to reduce the utility bill. She was met with humiliation and told to get out of the country. When she went to another government authority and had a discussion with a senior manager there, she was told her to give up her son to a foster home. She said that she will eat dirt rather than give him up for adoption.
49. I suggested to the applicant that perhaps the outgoings were different because her neighbour was a pensioner. She said that the reports she has read about the situation in Latvia was bad as everybody had to pay the same amount and the exception was made for those in difficulties. They had to pay 2/3 of the amount due, but in their case the bill was increased compared to others. Their neighbour said that she applied for assistance and they would give her coupons. Her neighbour gave her all the addresses of the authorities and she went there as well and got no assistance. Nobody cared that she had a small child. She had to sell that unit and with the sale proceeds they rented the unit. Because she could not afford to pay the bills, the unit would have been taken away through the courts. There were 53 000 in the same situation. The flat was bought by a friend who met her debts and gave them money to live on. She transferred the unit to the friend in 1999.
50. She had an agreement with her friend that if they were able to protect their rights and get their money back and some allowance or benefit or assistance, he would give her the unit back. The friend later said the unit price had gone up and it was against his financial interest to keep her there, so he told her he was going to sell it. [Person A], the daughter, interjected and said that her mother does not speak openly about many things. The friend sold the unit in 2005. She went to rented accommodation, it was a shed, in a seedy area of the city where normal people could not live. It was [address deleted: s431(2)] Riga. They had no money and could only afford the cheap area. There was no hot water, an outside toilet and the walls were all peeling. She stayed there for about a year or 1 ½ years. After her daughter left she stayed at that place for about a year and on one occasion she scalded herself, ended up in hospital and her girlfriend took her in. Then she rented another unit, in Riga, a unit in a better area. It was [address deleted: s431(2)] She lived there with her son and she stayed there until she came to Australia.
51. I indicated to the applicant that she resided in Riga and in Riga there is a very high proportion of ethnic Russians. I said that ethnic Latvians do not constitute a large majority in Latvia, about 56% of the population. She said that back then the ratio was up to 30% but the President of Latvia Freiburger wrote in a newspaper that the goal was to reduce them down to 4%. She thinks the ratio is much less. She states that the proportion of ethnic Russians has become less.
52. I asked her what had happened to her in Latvia causing her to come to Australia She said that she lost her flat and she had no means to support her son. She went and fought for rights and

for assistance. She and her daughter were bashed in September 2005. This was the only time she was bashed. They were bashed on one occasion, but they had numerous threats.

53. I asked if she knew who bashed her and she said that she went to various authorities seeking assistance and that was useless. She had a girlfriend who said she knew a man who worked in some organisation, it was a rights protection organisation. She provided him with photos of the bills and told him it was much higher than others. She gave him the materials and he asked for permission for the materials to be published. She agreed and after that the trouble started. They started to receive threatening letters in Russian and Latvian with expletives, saying 'a good Russian is a dead Russian' The applicant said that she wrote a statement and took it to the police. The police said that they would investigate and told her to leave the materials with them. Sometime later she received a reply from police that the notes were anonymous and that they would not investigate.
54. After they were bashed she went to the police. Her daughter did not believe the police would help so she went to police on her own. The police failed to attend. She said that she and her daughter were coming home from the shop. It was fairly dark and there was a group of people standing there, they did not expect they were waiting for them. They had decent clothes on and looked normal. As they walked past the group they were set upon from behind. They threw them to the ground and started kicking them. Her daughter suffered brain concussion. After they bashed them they got in the car and drove away. Her daughter was unconscious. It was not an act of robbery and nothing was taken from them.
55. I offered the applicant a break, she declined the offer.
56. The applicant said she took her daughter home and called the ambulance service. In the area where they live it was populated by persons without a fixed address and drunks. The ambulance failed to attend and when her daughter came about, they walked to the local clinic. On the phone the ambulance had asked her stupid questions.
57. I asked if she had obtained the car registration of her attackers' motor vehicle and she said that it was dark, but neighbours who lived there said later they saw the people driving away. She went to the police and described in fine detail what had happened but they did not bother to go to the place where the injury occurred. I asked her if she lodged a report. She said they took the report. They said "ok" they would investigate. She received another phone call 2 days later and the person said "you belong to the cemetery".
58. She called the police after that phone call and they said they would investigate it. Two weeks later she received a letter from the police saying that they would not investigate this case as there is no criminal case. They said that they could not find any criminal motive. She did not see the people as they were attacked from behind. I asked if anyone else was able to identify them. She said that the people around said they saw the people leaving in a nice car.
59. She does not think it is a random act but the assault happened after the materials were published.
60. I asked her what she expected the police to do. She said it was dusk and they saw the people in the dark. She said nobody came to see them but the police spoke to the neighbours. The police did not follow up the case. She was subject to persecution as she stood up for her rights. [Secondary applicant's name deleted: s431(2)]'s father [her de facto husband] disappeared and they applied to the police to find out where he is and they would not assist.

61. I asked them if they complained to senior police about the lack of investigation. She said after her daughter left Latvia and travelled to Australia she was in a difficult condition. She was depressed and had headaches and her close friends saw the difficult situation she was in. Those friends provided her with the telephone numbers to complain. She had a girlfriend who knew a journalist from St Petersburg and the journalist connected with an organisation protecting Russian speaking persons. Their case ended up on the internet. She gave the material about her case to a friend who knew a journalist. She was in bad shape and someone told her there was information about her case on the internet. I asked when it was on the internet. She said that she did not see it, their friend told them he saw it on the internet, it was when her daughter was in Australia. I asked her what the significance was of an article being on the internet. She said that she thought somebody would help her to get her money back.
62. I asked her again if she lodged a complaint to senior police about her attack. She said that she did not lodge a complaint with the senior police authority, she lodged a complaint with the President. She wrote a letter describing her story and what happened to her. She did not get a response. She believes it did not reach the President as it was written in Russian. I asked why she did not write it in Latvian as she was aware the language of government is Latvian. She said if they wanted to read it they could get it translated. She said that the complaint to the police was written in Russian. I put that there are Russians in the police force and she agreed. She said that ethnic Russians have no rights. I put to her that non-citizens are excluded from certain rights not ethnic Russian Latvians.
63. I asked if she lodged a complaint with the Ombudsman and she said she did not. She said that her Australian relatives lodged a complaint with the Ombudsman, after her daughter arrived in Australia It was in early 2008. That was after they applied for a humanitarian visa for her. When asked if she had a copy she said that she did not keep anything as she did not think she would flee to Australia I asked if the relatives kept a copy she said they did not otherwise her sister would give it to her. They sent the complaint to her, she signed it and lodged it. She got a response from the Ombudsman that as it happened so long ago, they would not investigate it. I asked why she sent the complaint to the Ombudsman 3 years later and she said that she had no idea such an organisation existed until her relatives found out.
64. I asked the applicant if anything else happened to her in Latvia after 2005. She said that sometime after she developed a feeling of constant fear. She had to take strong tablets for depression. She said that she could not work as she was very sick. All the time she was very deeply depressed and the only good thing she knew was that her daughter was safe.
65. I asked her when the telephone threats and the letters stopped. She said that there were a few after she was bashed. Maybe there were a couple of notes, she does not know exactly. She disconnected the phone from time to time.
66. I put to the applicant that there are no reports of ethnic strife in the streets of Latvia. The two peoples [ethnic Russians and ethnic Latvians] live peacefully together. But politicians on both sides, and in Russia itself, stir things up. Despite the bitterness and insecurity on both sides, they have succeeded in forging a peaceful co-existence - somewhat separate, but together. She responded that other people live their own lives, she had a normal life until her son was born. She had a job and a living, she could afford rent or bills. She did not pay attention of paying more, it was only when she was pushed in the corner. It was only after the birth of her son that she started to pay attention for the high bills and did not receive assistance from the government. Perhaps if she had a family with a husband who provided she would be able to go on living. She came face to face with all this after her son's birth.

67. The applicant provided to the Tribunal the following articles written in Russian. I marked those articles as follows:
- 1) The Truth Should be Known
 - 2) Untold Stories
 - 3) Housing Rights in Latvia
 - 4) Newspaper Article showing a photograph of group of people and an article marked in green by the applicant
 - 4a) Newspaper 'People Do Not Believe Authorities of Latvia'
 - 4b) Articles marked green in Russian newspaper
68. At a 2nd Tribunal hearing held [in] July 2009 I referred to documents that had been handed to the Tribunal at the previous hearing and I asked the applicant to explain those documents written in Russian. The articles in Russian were marked (4), (4A), (4B), (5).
69. The applicant said that the newspaper was on behalf of Russian people. The article (4A) stated that people wanted to get rid of the government. It was from a weekly newspaper called 'Chas' or 'Our' dated 19 June – 24 June 2009. In relation to article (4B) the applicant said that report refers to the government getting rid of people. The newspaper was issued in Riga. The article she refers to is 'People Do Not Believe Authorities' and says that Latvia is the poorest country in Europe and there is nowhere in EU is there is such poverty as in Latvia. It is an addition to what happened to them. Russians are against politics of the authorities and think people should be protected. People do not believe the authorities. I asked if the article refers to any specific occurrences or if the article was a general commentary. The applicant responded that it is a general commentary, it is written about a demonstration. The photo is of a demonstration in the centre of Riga.
70. In relation to (4), a number of articles marked in green in 2 newspapers, these articles say the government may have different priorities, people are nothing and bureaucrats are important.
71. The daughter explained that the article's photo (4) was taken in the middle of Riga, Explanada, and there was a demonstration [no date mentioned] and the people were demonstrating saying they are protesting against the government, with general slogans, it did not indicate who the protestors are. The applicant's daughter believed that the demonstrators are Russian as the signs were all in Russian.
72. Article (5) was from MK newspaper. The applicant's daughter said that she circled the articles in MK newspaper because she felt they were important. Another article referred to conditions being created in Latvia so that people have to leave. It is written about the situation in the country.
73. I asked the applicant if she could speak, read and write Latvian. She said that she can. I asked her why she had written her police complaint and a letter to the President in Russian and not in Latvian and she said that she was writing in different languages in Russian and Latvian and even English. I put to her that Lettish is the language of government and she said that only once did she write in Russian. She wrote everything in Russian that her rights were breached, she wrote the letter everywhere to different organisations. I asked to whom she wrote the

letter in Russian. She said that it was to the Ombudsman, it was about 1999 or 2000 when she lost her flat. After that she wrote letters in English. After her daughter left about in 2007 or 2008 she wrote to the Ombudsman. She wrote to the government, it was to the President, she wrote in 1999 or 2000 when she lost her flat.

74. I asked if her friend gave her any money for the unit, she said “we had an agreement” She lived there until they moved in August 2005. She still paid the bills for the electricity or gas. Before she sold the unit she paid communal services such as electricity water heating. At that time they did not have privatisation, it started later. The person to whom they sold the flat said that he would privatise the flat for himself and in his name. He privatised the flat in his name and the agreement said “if we got the flat then we will have some money. Then we will be able to give him back the borrowed sum and be able to return our flat”. “This contract will take force because we will give him back the money”.
75. She had moved into a government flat. They paid US1 000 to a private person. The flat was privatised in 1999. She sold the right to the property when it was privatised. The person who is the main tenant of the flat has the right to privatise the flat. She gave the right to the person as she did not have the money. It would have cost her 2200 lats. In 1991 when everything started they did not give to the Latvian people and everyone started to sell.
76. I asked her to whom she lodged complaints. She said that after she sold the flat her acquaintance gave her the phone number of a person looking after the rights of Russian people in Latvia She met this person and she brought him the application where she complains more than her neighbours. She described to him the situation why she did not get the benefits and collected the payments. He said there are many cases like hers and he asked her if he can write about that in a small newspaper and she agreed to that. After it was published in the newspaper they started to receive threatening letters and telephone calls, they were using swear words. She realised that her issues were published in the newspaper and they started to get those threats.
77. I again asked her to whom, in 1999, she lodged the complaints. She said that she made an arrangement with [Person C] about the flat. She complained to an organisation that looks after flats, it was the local council. She went personally herself and they told her it is different and told her to go to social security. They told her to make an appointment and she brought all the documents and put in writing the application form. She said that she does not agree with all the payments. They told her they will look into it. She went again but no-one explained to her anything. Her complaint was that she paid more than others.
78. She went herself and they told her to go to the Social Security Department. At Social Security they told her to make an appointment. She also made an application in writing that she does not agree with the payments. They accepted her complaint and she called after a month and made an appointment again and no-one explained anything to her, they said “you have to pay what you pay” Her complaint was that she pays more rent than all the bills in comparison with her Latvian neighbour.
79. She met a person who wrote an article about her problem in a small newspaper. After it was published she received threatening letters and phone calls. I asked her to confirm that in 1999 she did not lodge a complaint with any government Department but saw [Person C] and filled out a form complaining about losing her flat and her benefits.

80. The interpreter and the applicant appeared to discuss the interpretation. I asked the applicant's daughter about what appeared to be a problem with the interpreter. The applicant daughter said she understood what her mother was saying. The interpreter indicated she had difficulty with the words used about the Latvian system. The hearing was adjourned to obtain a different interpreter.
81. On 20 August 2009 the Tribunal held a 3rd hearing. At that hearing the applicant provided the Tribunal with 2 articles written in Russian.
82. I told the applicant that at the previous hearing I was unable to understand her evidence about complaints she had made in Latvia. I asked her to confirm what I understood her evidence to be that in 1999 she sold her apartment to [Person C]. She sought government assistance for child benefits after her son was born. She made enquiries for social security assistance when her son was born. She did not receive any social security in Latvia. She went to the Council responsible for people renting. She complained to the Council first and then to another organisation, the Social Security Department. They did nothing to assist her to receive those payments. After she sold the apartment she continued visiting Social Security and she wrote to a particular organisation, she does not know its name. It was possibly called 'Russian Population Human Rights' The organisation said to her that they took the complaint, it was about the utilities and not getting social security. She met a person from the organisation who suggested her complaint be published. It protects the rights of people who are defenceless. They provide legal assistance and advertise people's complaints in newspapers and it names the people. Her complaint was not published in a newspaper but leaflets distributed in the street. I put to the applicant my view that it is implausible that she would go to an unknown organisation who published complaints in a leaflet that was distributed with the applicant's name on it.
83. [Person A] said that they have the name of the organisation. I told her that I had difficulty accepting such an organisation existed. She said that it is not really popular as it is not very well liked. It provides protection against discrimination and it stages protests and demonstrations. [Person A] said they have the story on the internet. It shows the profile of the organisation.
84. The applicant said that the leaflets were distributed in 1999, in spring or summer somewhere between April and September. I asked when they stopped distributing pamphlets about her and she said that she cannot say, maybe they continued to publish on the internet, maybe not, she does not know. I asked if she had a copy and she said that if she knew then that information was important she would have kept it. She cannot say how many times this pamphlet was distributed. She met a person called [Person D] in a café from this organisation. She knew he was from the organisation as her girlfriends kept searching the internet. They found the organisation on the internet and she called them. After this meeting she did not contact [Person D] again as she handed all the material over to [Person D]. She did not go back to that organisation. I asked her what she thought the organisation would achieve for her and she said that the information would reach the public and the authorities and find other people. I put that there are organisations in Latvia that assist people through the legal system and that I could not understand what she thought such an organisation would do for her.
85. She said that it is just that in 2000 they began receiving telephone threats, they continued for quite a bit of time, a few weeks. Initially the phone calls came at night and she would disconnect the telephone at night. I asked if she changed her number and she said that she just

disconnected the telephone set. Initially she was not able to understand, it was only later that she came to realise that after her case was made public it prompted the phone calls. She received letters, only 2 or 3 letters. She took the letters and wrote a statement to the police and said that she was a possible target of threats. She went to the police about 10 days after she started to receive the telephone threats. The threats stopped about 2 weeks later. After she went to the police the threats and telephone letters stopped. The next time she received telephone threats was in 2005.

86. In 2005 they re-located to an unsuitable apartment as there were unsavoury people. Her daughter said that she provided some photos. She put some material together and gave it to her girlfriend who gave it to a journalist. The material was a copy of the apartment rent and she wrote a statement that she did not receive social security. She stated that she paid for the apartment more than her neighbour, and included 2 copies. She was complaining about the payments made in 1997 to 1999 as they were inequitable. She gave the material to a journalist and later a friend of [Person A] said he had seen the case on the internet. She said that because of her continuous complaining she was making a political protest.
87. I asked why she did not go to lawyer to find out her legal situation and she said that in Latvia it takes a long time for a law suit to go before court, it takes years, 3 years or more. The official language in court is Latvian and there is no interpreting assistance provided. I put to her that she could speak Latvian, and she said that she can speak street language. I asked why she did not go to the Russian organisations that provide court assistance. She said that she provided a brochure to the Tribunal that even if she went to court the system back then was inefficient. I put to her that she did not go to an organisation that assists Russians take court actions and she said she would not have achieved anything as the court system is just a link.
88. As a consequence of that internet article she received telephone threats and letters in 2005 either at end of August or beginning of September. I asked what was written in that article and she said that the family lost the apartment and did not receive social security benefits and they were forced to move to an area inhabited by persons without a fixed address and the article said that any organisation she went to never provided her with assistance. I asked who would have seen the article. She said everyone. I asked who she thought was doing this to her and she said that it was the nationalists groups. I asked why they were so interested in her. She said that she expressed a political protest, maybe other people were attacked. The telephone threats and letters stopped about 2-3 weeks later, after they threatened to kill them they knew who it was. The attack on them happened in that 2 to 3 week period. She understood that it was the nationalists. There are many nationalists, they are legionnaires that carry slogans and are connected with the government. When someone looks at Latvia it is a nice country. I asked if she received any more threats and telephone calls until she came to Australia. She said no as they achieved their purpose and scared them and there was no point to continue.
89. I put to the applicant that independent evidence before me indicates that there is high unemployment in Latvia and reduced economic opportunities have pushed much of the population towards poverty including ethnic Russians and Latvians. As a consequence, people are increasingly unable to cover housing and other living expenses. I put to the applicant that she had stated at the previous Tribunal hearing that she sold her unit to a friend with whom she had an agreement as she could not afford to pay the utility bills and the unit was not taken away through the courts. She said that there was a court hearing set. I put that she was not evicted by the state. She said if she waited for the hearing she would have been evicted. I put that it was all people affected by this situation, not only Russians.

90. I put to the applicant that all resident in Latvia are only entitled to social security based on their length of employment and contributions made. I suggested that this was not discrimination as non-citizens were equally affected as citizens. She said that she worked in the USSR but not in Latvia That is as far as the government pension but as for the child benefit she was entitled to receive it. One year later she did receive a social benefit of about 5 lat. The amount of the benefit varies.
91. I put to the applicant the independent evidence before me indicated that the rising utility costs (particularly heating costs) caused housing costs to rise dramatically. In some instances, the costs of utilities have risen over 400% in the last several years. This rise has had the most detrimental impact on households with fixed incomes, such as pensioners, the unemployed (a high and rising percentage of the labour force), and on households with low incomes. The independent evidence did not suggest that utility costs were charged differently to non-residents. The applicant said that is right however her Latvian neighbour who had exactly the same apartment as she was paying less.
92. I put to the applicant that in Latvia many people, both Latvian and ethnic Russians criticise the government. I put that now Latvians both citizens and non-citizens are able to complain to the European Court of Human Rights and decisions have been made requiring Latvia to meet those standards. This means that there are mechanisms in place for aggrieved people to make a complaint. She responded that the European court takes a long time for a hearing to take place and the complaint to be heard.
93. I put to her that as she had been evicted from the unit by her friend some 4 years after he had bought the unit and I did not understand why claimed that she was fighting for her rights when this was a civil action and had nothing to do with the Latvian state.
94. I put to her that the LCHR provides legal assistance to individuals with human rights cases since 1993. Anyone can submit an oral or a written complaint to the LCHR lawyers, which will be handled confidentially and free of charge. Legal assistance includes, providing information on rights guaranteed by the law, consulting individuals on the possibilities of solving a human rights case according to the legislation, recommendations as to which state or municipal organization a person could apply for assistance in the case, helping in achieving a friendly settlement between the parties involved, providing legal opinion, assistance in composing legal documents – in special cases, representing an individual in civil or administrative court – in special cases. After reviewing a complaint, the LCHR concludes whether human rights have been violated and provides its opinion and recommendations. On that basis I had great difficulty accepting that she was fighting for her rights in the manner claimed. She said that maybe such organisations exist but the organisation she went to gave her no assistance at all. On one occasion she was provided with a free lawyer and he expressed his opinion on her case. She said that maybe she did not know about the organisations. It is possible. Maybe she went to the wrong organisation.
95. I put to the applicant that independent evidence before me indicated that had she lodged a report about police inaction there would have been a report and she could have complained to the LHRO. [In the 2007 report <http://www.unhcr.org/refworld/country,,IHF,,LVA,4562d8b62,469399bfd,0.html> no mention was made of criminal cases only being initiated in relation to incidents of racial violence against ethnic Russian non-citizens in Riga Rather the report confirms other reports about reports on police misconduct and corruption, and attempts at a cover-up by senior police

authorities. The report goes on to discuss police being disciplined and a judge dismissed for knowing about a police cover up]

96. I put to the applicant that a report from the LHRO, outlining racist violence in Latvia in 2005, against Roma, Indians, Egyptians and Armenians did not suggest or refer to attacks on ethnic Russians or Ukrainians. Rather the report stated that visibly different minorities are most exposed to racism i.e. persons of darker skin colour, originating from outside Europe, and Muslims are particularly vulnerable. Surveys indicated that racist and xenophobic attitudes are equally widespread among Latvians and established minority groups. Russians and Ukrainians are an established minority group. I put to the applicant that this evidence suggested to me that if any attack had occurred to her it was not motivated by racial violence but was an attack with some other motive. I suggested to the applicant that the Latvian state was attempting to combat racist attitudes. She does not agree and said that all the Russian speaking population is subject to discrimination.
97. I put to her that the independent evidence indicated that resident noncitizens have full rights to employment, except for some government jobs and positions related to national security, and to most government social benefits. However, they cannot vote in local or national elections and cannot organize a political party without the participation of an equal number of citizens. She said "it happened to me".
98. I put to the applicant that in 2007 the European Union (EU) granted non-citizen residents visa-free travel and work rights within the EU and I could not understand why she told the Department that she was not entitled to reside in EU countries. She said that she asked for political asylum and she was told she had no rights there. I put that she did not have a high profile of anti-political activity. She said she was afraid of staying in Latvia.
99. I put to the applicant that there is available in Latvia a police complaints mechanism should there be police inaction. There is a Human Rights Ombudsman with investigative functions. She said that Latvia looks nice from the outside but not for those who live inside the country inside. I put to her that there are lot of reports on Latvia.
100. I put to the applicant that under s.78 there is no statutory limit to prosecution for hate crime speeches and that had she complained to the Ombudsman there would have been an investigation because the LCHR reported about an internet hate crime in 2004 that occurred and it was opened later. She said her sister did write to the Ombudsman and initially there was no reply and they would not consider her complaint. I put she has not brought copies of this complaint. She said she did not know she would need this information.
101. I put to the applicant that the Latvian Human Rights Centre has indicated most of the written appeals to it concern housing issues and the report explains the transition of the property in Latvia It does not suggest that ethnic Russian non-citizens are singled out for attention. She disagreed.
102. I put to the applicant that in Latvia there is an independent non-government federation, which works nationally to extend and protect consumer rights in Latvia as well as to co-ordinate the work of local and regional groups. Today PIAA consists of 11 independent consumer organisations with a total of about 700 individual members. She said she applied to many organizations, in Latvia they learn how to conceal what is happening in the country and not made public or expressly.

103. I put to the applicant that as she was an ethnic Ukrainian born in the Ukraine who had lived in the Ukraine until she was nearly an adult and whose sister currently lives in the Ukraine, I asked her why she had not either returned to the Ukraine after her daughter left Latvia or made any attempts to obtain Ukrainian citizenship. She said that she does not know where her sister lives as she lost contact with her. Her sister married earlier and she is closer to her sister in Australia.
104. I also put to the applicant that 70 000 non citizens had obtained citizenship. I suggested to her that she had chosen not to apply for Latvian citizenship, the Latvian state did not prevent her. She said that the reason she fled Latvia was not because she is a non-citizen but because she was terrorized and bashed.
105. I put to the applicant that there is no independent information before the Tribunal to suggest there is systemic discrimination against ethnic Russians in Latvia and ethnic Russians comprise about 65% of the ethnic minority. The Latvian state does not expel Russians. I put to the applicant that positive developments have included abolition of language restrictions in the election law, further facilitation of naturalisation with a view to increasing the rate of naturalisation, the inception of the Society Integration Foundation and an increase in its funding, and extended language training. There are pro-Russian political parties in government in Latvia eg. Coalition for Human Rights in a United Latvia. I put that there is freedom of religion. The law accords registered religious organizations certain rights and privileges, including separate legal status for owning property or for other financial transactions, and tax benefits for donors. There is very little violence directed against ethnic Russians. She said that what is happening inside the country is not advertised. Back then some intolerable conditions were created. She could receive no benefits and had to pay higher for utilities and all efforts of government to push Russians out of Latvia She said it does not apply across the board but in some areas people's rights are abused.
106. The applicant said that the 2 reports handed to the Tribunal at the commencement of the hearing were taken from the internet. The reports state that non citizens are discriminated against in certain occupations, they cannot practice law, cannot work as public notaries or police officers or armed security guards.
107. [Person A], the applicant's daughter, gave her evidence to the Tribunal. She said that when her little brother was born the Latvian government had an obligation to provide a benefit irrespective of whether she was employed or not. They went to various organisations asking them to deal with their situation and asked them to sort it out. They said that to go back to where she came from and claim her rights there. Latvians were trying to reduce the Russian speaking people. Many left the country and they stayed on and continued to fight for their rights. Her mother wrote letters and lodged complaints to many organisations and included copies and there was no response. After they applied they received threats and mistreatment and in the end they gave up. After her departure her mother developed deep stress and it was impossible to talk to her on the phone. She could see that her health was deteriorating. She developed a severe loss of memory. She said that on one occasion she went somewhere and lost her bearings. It could be distressful or shameful. She and her aunt became concerned about the child's situation. Her aunt and she sent letters to various countries asking them to accept her mother and applied for a visa to come to Australia I asked why they did not apply to the Ukraine and she said that there were human rights issues in Ukraine. She said she would live in the street in Ukraine The government in Ukraine would not have provided her with accommodation initially. Rights have been taken away. She was a Latvian citizen and what difference does that make. Surely Latvia is a European country and would not agree that

there are human rights abuses. After the time she was bashed, she was in bed with concussion of the brain. Some teenagers at 16 years of age are independent but she was mum's daughter. When she had her interview at the Tribunal she provided reports in English. When a person is being thrown out of their premises then they cannot get interpreters to go to court. There are courts that a person can apply to, the commissions "do bugger all" for them. What is the point of their existence and they just say go back to your country.

108. Her mother did not tell the Tribunal a lot of things as she went to all possible organisations and the journalist is pretty irrelevant to the whole picture. If her mother were a healthy person she would fight for her rights but the country reduced her to a wreck. If a person went through what her mother did it inflicts incurable wounds, they tried to push them out of the country. Their utility bill was higher. Their payments were twice as high. I put to [Person A] that the independent evidence she had provided to the Tribunal does not suggest they suffered discrimination. She said that she had to pay more than everyone else in the apartment. A different rent was set for Latvians and non-Latvians. They never received a single reply. It was hidden discrimination. As for the organisations, they did not function properly. What is the point of changing the phone number, the brochures had many other names. As far as the internet is concerned she did not know how to use the internet and she heard that an article was published. As for eviction, she said that for those Latvians like her they were Russian speaking people who had citizenship or like low society, drunks. It is well known fact most Russians were evicted. She wished she had never been born in that country. The country reduced her to a wreck. She said that her mother would not be able to survive there, her mother only survives with her and her aunt's support. She cannot even take care of herself so how can she take care of her brother.
109. I asked the applicant if there was anything further and she said that she wanted her situation to be understood. It is true that a lot of evidence is lacking and maybe they did not prepare their papers properly, because they do not have money to hire a lawyer.
110. The applicant requested additional time to make further submissions and this time was granted.
111. The applicant submitted to the Tribunal, by letter of 31 August 2009, as follows:

It appears, however, that you were not prepared or did not want to accept our accounts regarding political situation in Latvia, the issue of adverse treatment of ethnic minorities in Latvia and the issue related to Latvian eviction policy and discrimination, etc.

I noticed that you appeared to be very sympathetic to Latvia and its policies. You said that Latvia in fact had been occupied by Russia; that Latvian people had been suffering; that "eviction issue" had nothing to do with 'discrimination' but with difficult economical situation resulted from 'Russian occupation'; that Russians have been treated well in Latvia; that human rights have been observed in Latvia, etc.

I also noted that on several occasions (as soon as I started addressing political or discrimination issues) you interrupted me and asked another question. From that, we can draw the inference that you did not want any information which contradicted your line to be addressed or heard at the hearing.

Furthermore, I tend to believe that you purposely tried to conceal relevant information which was consistent with my mother's claims and highlight irrelevant information. For example, when we mentioned that according to COHRE report 53,000 eviction cases having been brought to the Latvian courts you said something to that effect, 'under the law in Latvia evictions cannot be

undertaken without a court order and tenants are entitled to notice and an opportunity to be heard before they can be evicted'; you said that my mother did not apply to the court'; that she could, in fact, 'apply to the court to sort the matter out' and that 'even in Australia there are injustices and problems in certain areas'.

What you did not say was that the report also stated that, 'despite such protections, however, poorly informed judges, lack of legal representation or legal aid, under funded advocacy groups and general ignorance about rights and responsibilities have limited the utility of normal tenure rights'. The report notes that, while some judges have found that the children's rights law is applicable in cases involving the non-payment of rent, many judges are not informed about the applicability of the law and therefore ignore it you do not believe that it is applicable in the context of evictions'.

On a number of occasions you said that we did not provide any evidence to prove that Russians were not treated equally in Latvia You however, forgot about the provided report according to which Latvia had been criticised for violating the human rights of non-citizens and Russians in particular you forgot that a poll conducted by the Latvian Human Rights Office had found that 22.6 per cent were of the opinion that their human rights had been violated only following the independence of Latvia.

You also failed to remember the information set out in Research Directorate of the Canadian Immigration and Refugee Board, relied upon by the Refugee Review Tribunal (File no. 060619793). According to the report, the extreme right seems to have a somewhat stronger position in Latvia than in the other two Baltic republics. This has resulted in more serious instances of discrimination against Russians and in a law on citizenship and naturalization that sets limits on the number of non-citizens who can be naturalised. This law was passed against vociferous opposition from Russian minority groups, international human rights groups and even the Latvian president. Other laws passed by the Saeima, such as a series of laws requiring small business owners, teachers, public servants, and police officers to be fluent in Latvian or face forced unemployment, have been seen as a threat to Russians in Latvia On the whole, Latvian legislation does not bode well for the future status of Russians in the country. It has been speculated that the object of the legislation is to force most of the Russians to emigrate from Latvia. Latvian politicians recently voted down even the Framework Convention on the Protection of National Minority Rights, which was signed back in 1995. The atmosphere of social intolerance toward the ethnic Russians has been expressed in mass demonstrations coloured in nationalistic and sometimes even explicit Nazi tones.

Note, it was not me who provided the above mentioned information but the Refugee Review Tribunal.

I would like to refer to my case, heard by the Tribunal in 2006. The Tribunal said: while the report of the COHRE fact-finding mission does not directly sustain the Applicant's contention that the government's policy in relation to evictions discriminates against Russian-speaking Latvians or that the government is trying to expel members of the Russian community from Latvia, there is evidence in independent sources such as the Minorities at Risk Project report referred to in the earlier of the two Canadian research reports quoted above that there is a widely held view that the objective of the Latvian legislation on citizenship and language is to force members of the Russian community out of Latvia.

You said that even in Australia there are injustices and problems and some people are unable to pay rent and are to be evicted. What you 'forgot' to mentioned, however, was that we do not have significant problems including inefficiency and corruption, poorly informed judges, lack of legal representation or legal aid, under funded advocacy groups and general ignorance about rights and responsibilities.

Do you seriously believe that if one went to the Australian authorities to tell about her financial situation she be advised to put the child in an orphanage or to go back to her `motherland'? What if I spoke no English and wanted to apply to the court or tribunal in Australia would I be deprived of an interpreter?

I would like to make it clear. We were evicted from our apartment because our rights had been violated. Firstly were forced to pay higher utility bills. Secondly, my mother did not receive a child birth payment bonus. Thirdly she did not receive family payment during the next 12 months. I must underline - were we entitled to the mentioned above bonus and payments but we did not receive them. That's why we were evicted, that's why we had been desperate to attract public attention and as a result had been severely beaten and had had our lives threatened.

Latvia did not protect the legal rights of people who were evicted and could not afford to pay for lawyers. Note, that we are talking about the most vulnerable people, who had no money to pay utility bills, rent, etc. but all documents in legal cases had to be filed in the Latvian language, there is no legal aid, nor any government-funded assistance or help.

According to a report prepared by Nils Muiznieks, Angelita Karnenska, Ieva Leimane and Sandra Garsvane of the Latvian Centre for Human Rights and Ethnic Studies (LCHRES) - now the Latvian Centre for Human Rights (LCHR), the Latvian Human Rights Office and a number of NGO's had been inundated with complaints and requests for help from people who had been threatened with eviction or who were already homeless. The report said that the response of the government and the municipalities had been woefully inadequate. Why? Because the objective of the Latvian legislation is to force members of the Russian community out of Latvia

Finally I would like to refer to the G. Short's decision. Having regard to the Applicant's past experiences in Latvia, and in particular the last attack on her and her mother, I accept that there is a real chance that, if she returns to Latvia now or in the reasonably foreseeable future, she will again be attacked by Latvian nationalists. I accept that if this occurs it will be for reasons of her real or imputed political opinion based on her and her mother's attempts to draw attention to their case and the treatment of the ethnic Russian minority in Latvia in general. I consider that the persecution which the Applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves significant physical harassment or ill-treatment. I consider that the Applicant's real or imputed political opinion is the essential and significant reason for the persecution which she fears, as required by paragraph 91R(1)(a), and that the persecution which she fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves her selective harassment for a Convention reason, namely her real or imputed political opinion. I consider on the evidence before me that there is no part of Latvia to which she could reasonably be expected to relocate where she would be safe from the persecution which she fears.

BACKGROUND INDEPENDENT INFORMATION

112. According to the *U.S. Department of State 1998 Latvia Report on Human Rights Practices*

Latvia is a parliamentary democracy, having regained its independence in 1991 after forced annexation and more than 50 years of occupation by the Soviet Union.

113. Latvian government statistics show that 630,380 ethnic Russians live in the Baltic state. Some 367,662 are Latvian citizens, and around 22,000 hold Russian passports. Another 235,908 people are neither Russian nor Latvian and are classed as "non-citizens". They have a special passport which enables them to travel in most of the EU and Russia.

<http://www.eubusiness.com/news-eu/1244175421.97/>

114. By way of background according to *US State Department Report Human Rights Latvia 2009*
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119087.htm>

The Republic of Latvia, with a population of approximately 2.25 million, is a parliamentary, multiparty democracy. Legislative authority is vested in the unicameral Saeima. Elections for the 100 seat Saeima in 2006 were free and fair. Civilian authorities generally maintained effective control of the security forces. The national police, security police, special immigration police, border guards, and other services were subordinate to the Interior Ministry. Municipal police were under local government control. The Military Counterintelligence Service and a protective service, as well as the National Guard, were subordinate to the Ministry of Defense.

Allegations of corruption and bribery within law enforcement ranks were frequent and continued to affect the public's perception of police effectiveness. During the year, the Bureau for the Prevention and Combating of Corruption (KNAB) pursued investigations of several security officials for bribery or extortion. In September the Riga District Court sentenced the chief of the Riga city traffic police to six years in prison and confiscation of property for repeatedly accepting bribes.

The constitution and law provide for an independent judiciary, and the government generally respected this provision in practice; however, there were significant problems, including inefficiency and corruption. The judicial system is composed of district (city) courts; regional courts, which hear appeals from district courts and can also serve as courts of first instance; a separate administrative court, which adjudicates administrative violations; the Supreme Court, which is the highest appeals court; and the seven member Constitutional Court, which hears cases involving constitutional issues at the request of state institutions or individuals who believe that their constitutional rights were violated. On February 7, the Riga regional court sentenced two district court judges, Irena Polikarpova and Beatrise Talere, to eight years' imprisonment for bribery. Polikarpova and Talere appealed the sentence to the Supreme Court.

The constitution and law provide for the right to a fair trial, and most judges enforced this right; however, the fairness of individual court decisions and of judges and the court system in general remained a concern. During the year a special parliamentary commission was formed to investigate the judiciary and the judicial decisions mentioned in the controversial book *Litigation Kitchen* published by journalist Lato Lapsa in August 2007. The book included a series of transcripts of allegedly wiretapped telephone conversations, sparking allegations of unethical and illegal behavior among some judges, including discussing cases outside of court and inappropriate influence on judges from the political elite and businesses, between prominent figures in the judiciary from 1998 to 2000.

Russian language print and electronic media were also large and active. Citizenship is derived from one's parents (*jus sanguinis*). According to UNHCR data, there were 372,622 stateless persons at the end of 2007, which included 372,421 stateless persons who were considered resident noncitizens and 201 other stateless persons who did not have the rights available to resident noncitizens. The government recognized as stateless only those individuals who did not have a claim to foreign citizenship and were not eligible to apply for naturalization in Latvia. The stateless persons reflected in the UNHCR total consisted primarily of individuals of Slavic origin who moved to the country during the Soviet occupation and their descendents. They were not given automatic citizenship when the country regained its sovereignty in 1991. There are laws and procedures for granting citizenship to the noncitizen population, and more than 120,000 persons have become citizens through naturalization since the process became possible in 1995.

The UNHCR notes that the country's laws grant a transitional legal status to permanently residing persons (noncitizens) entitling them to a set of rights and obligations beyond the minimum rights prescribed by the 1954 Convention relating to the Status of Stateless Persons and identical to those attached to the possession of nationality, with the exception of certain limited civil and political rights.

As of year's end, most of the remaining 372,000 noncitizens were legally eligible for citizenship but had not applied for it. Noncitizens most frequently said their reason for not applying was the perceived "unfairness" of the requirements and resentment at having to apply for citizenship rather than having it automatically granted at the time of the restoration of independence. The citizenship exam included a Latvian language test and examination on various aspects of the constitution and history of the country. Resident noncitizens have permanent residence status, consular protection abroad, and the right to return to Latvia.

Resident noncitizens have full rights to employment, except for some government jobs and positions related to national security, and to most government social benefits; however, they cannot vote in local or national

elections and cannot organize a political party without the participation of an equal number of citizens. Authorities reported that the number of naturalizations dropped significantly in January 2007 after the European Union (EU) granted noncitizen residents visa-free travel and work rights within the EU. The government claimed that Russia's June decision to allow these individuals to visit Russia without a visa would similarly depress the rate of naturalization. In contrast to 10,581 naturalization applications in 2006, but similar to 3,308 applications in 2007, there were 2,601 applications during the year. During the year 3,004 persons were granted citizenship through naturalization.

The European Commission against Racism and Intolerance (ECRI) noted in its 2008 report that the naturalization process remained slow and there was an urgent need to solve the problems linked to the status of noncitizens which made the persons concerned feel like second class citizens. The government response, included as an appendix to the report, argued that the government already provides a path to citizenship for almost all noncitizen residents, but many noncitizens had chosen not to pursue citizenship for personal or ideological reasons; and that granting additional rights to noncitizens would only diminish the incentive to naturalize.

The Organization for Security and Cooperation in Europe (OSCE) high commissioner on national minorities visited the country in April and provided recommendations to improve the naturalization process, "by granting automatic citizenship to all children born in the country after 1991 and to the newly born children of noncitizens." He further advised authorities to "grant resident noncitizens the right to vote in local elections."

The Latvian Center for Human Rights noted in its 2008 alternative report, which mirrored the ECRI report, that although international organizations and state officials on several occasions acknowledged the need to reduce the number of noncitizens, the government has neither provided sufficient funds, nor implemented consistent activities, to promote naturalization.

Attacks against racial minorities continued to be a problem, though fewer cases were reported than in previous years. In contrast with 16 registered cases in 2007, there were six registered complaints of abusive behavior against ethnic or racial minorities during the first eight months of the year. Of these, one was an allegedly racially motivated violent attack against an ethnic minority and the remaining five were incidents that involved hate speech. NGOs representing minority groups claimed that these statistics underreported the actual number of incidents. The ombudsman's office received 17 written complaints of racial or ethnic discrimination and 14 complaints regarding discrimination on the basis of language.

In August the European Agency for Fundamental Rights' annual report criticized the "limited" capacity of the country's system to collect data on incidents of racial crime or discrimination. In a 2007 report, the UN Economic and Social Council (ECOSOC) expressed concern that the law mandating the use of the Latvian language in all dealings with public institutions, including with local authorities, may discriminate against linguistic minorities, including the Russian speaking minority, which in 2007 constituted approximately 35 percent of the population. In particular, ECOSOC expressed concern that older members of linguistic minorities may be disadvantaged in receiving public services.

On July 29, the government expanded the list of professions in which persons are required to have a minimum level of proficiency in Latvian.

115. According to Latvian Human Rights Office 2008 report *Combating Hate Crimes in Latvia: Legislation and Police Practice*http://www.humanrights.org.lv/upload_file/HCR_Leg_Police_LV.pdf

public opinion polls conducted in Latvia in 2004-2008 indicate high levels of intolerance and negative attitudes towards visible minorities, guest workers, asylum seekers, refugees, and sexual minorities. Prejudice has been high against the Kurds, Chinese, Africans, Chechens and Afghans according to polls conducted in 2004 and 2008 where over 70 % of respondents wanted either to exclude them from entry into the country or allow them in only as tourists. Sixty percent of all respondents maintained the same attitude towards asylum seekers.³ In 2005, 70% of respondents viewed negatively potential guest workers⁴, while in 2007 the figure had slightly decreased to 62%.⁵ In 2004, 38% of polled respondents objected to having homosexuals as neighbours, while 59% of Latvians and 55% of non-Latvians had negative attitude towards "non-traditional" religions in Latvia. In a poll conducted in 2007-2008, the respondents in Riga indicated they would not want to live next to Roma (53%), homosexuals (48%), guest workers (33, 7%), and Muslims (25, 5%).

The first case of racial violence was officially recorded in 2005, and 14 such cases overall until late 2008. The police have struggled in handling such cases due to lack of experience in identifying and investigating such crimes, and a low awareness of the impact of racist crimes. Initially, the cases were qualified as hooliganism or petty hooliganism without adequately examining the racial motives of the offenders, and in several cases when no substantial injuries had been caused to the victim, the case was closed. Following media and public criticism, the police attempted to qualify violent crimes under Section 78.

Nevertheless, despite some prosecutions, the provision has been deemed inadequate to prosecute racial violence, as it in essence is a hate speech provision. Several NGOs (*Latvian Centre for Human Rights, dialogi.lv, Afrolat*) have become engaged in combating hate crimes, and the LCHR has worked to establish co-operation with the Latvian police, facilitating training and exposure of the Latvian police to police practises in other countries. Dialogi.lv has addressed the issues of online hate through promoting the accountability of Internet service providers. The needs of hate crime victims are not yet addressed, but the first awareness raising steps have been taken.

Despite some progress in recent years that has resulted in the increased awareness among various professional groups in society about the specific nature of hate crimes and the reasons why they should be prioritised, there remains a strong need for concerted and sustained effort in the capacity building of the law enforcement, the prosecution and the judiciary. Key for the success of such efforts and the effective tackling of hate crimes is the establishment and strengthening of partnerships between the police, NGOs and minority groups. In addition, there is a clear and urgent need to develop and make accessible specialised support services for victims of such hate crimes.

In 2005, Latvia witnessed the first officially recorded cases of racially motivated violence (physical assault and attempted assault) and racial harassment against an Indian, an Egyptian national, the chairman of the NGO Afrolat, a staff member of the U.S. Embassy in Latvia, and a rabbi of the Riga Jewish community. Initially the police qualified the cases as hooliganism or petty hooliganism, without adequately examining the racial motives of the offenders and in several cases, when it was found that no substantial injuries had been caused to the victim, the case was closed. Both the State and Security Police were reluctant to apply the incitement to racial and national hatred provision to violent acts. However, following media and public criticism, the police made attempts to qualify violent crimes under Section 78.2

The first case of racist violence tried under Section 78.2 involved an Afro-American staff member of the American Embassy who was assaulted by several youths with skinhead leanings. Initially the offence was qualified as hooliganism, however, the Regional Court sent the case back to the police for review and the case was then re-qualified under Section 78.2

During 2005-2008 of the 14 publicly known cases involving racial assault or attempted assault, Section 78.2 has been invoked in six cases, including the two most recent cases - the first recorded attack against Roma (two juvenile girls) in autumn 2007, and an attack on two against two Armenian nationals in spring 2008. Racist insults, calls to leave Latvia, presence of skinhead (Nazi) memorabilia have served as evidence of racist motive in prosecuting the cases. At the same time, the Police continued to struggle in handling such cases due to a lack of experience in recognising and investigating such crimes, and a low awareness of the impact of racist crimes on victims and communities. It has also been highlighted that the relevant legislative provision may not be adequate to prosecute racial violence, as it is essentially a hate speech provision, but no attempt has been made to use the aggravating factor norm. In cases of verbal racial abuse criminal proceedings have not been opened, or have been discontinued on account of an absence of a criminal offence.

116. <http://www.consumer-guide.lv/english/club.htm> Club for Protection of Consumer Interests is the first and longest-established consumer non-governmental organisation in Latvia. It was founded in 1990 when Latvia was on the verge of new political and economical system. In March 1999, ten years after our consumer organisation was founded in Riga, consumer clubs and societies from all over Latvia united to form the Latvian National Association for Consumer Protection (PIAA). The founder members are regional consumer clubs from Riga, Jurmala, Rezekne, Latgale Region and Jelgava and two tenants associations from Ogre and Liepaja. The Association is an independent non-government federation, which works nationally to extend and protect consumer rights in Latvia as well as to co-ordinate the work

of local and regional groups. Today PIAA consists of 11 independent consumer organisations with a total of about 700 individual members.

117. A paper entitled *Evaluation of Social Security in Lithuania, Latvia and Estonia: Achievements and Drawbacks* by Dainius Bernotas, Arvydas Guogis
<http://palissy.humana.univ-nantes.fr/msh/costa15/pdf/nantes/guogis.pdf>

In 1991, when the Baltic republics won their independence, their economic structure, commercial relations and welfare resembled those of the Soviet Union. The Soviet social security system was based on low prices for goods and services. Subsidies to children (in particular through pre-school educational establishments) made bringing of children quite inexpensive. Due to economic nature of the system there was no need for unemployment benefits and social benefits in cash.

Latvia social insurance system is based on the pay-as-you go principle. The coverage of the insurance systems is limited to persons participating in the labour market. They are funded by contributions by employers and employees, with the employers paying the largest part. Persons not insured by social insurance are usually entitled to means-tested benefits. However, these are very small since their size is linked to the poverty line. The State Social Insurance Agency is responsible for the payment of sickness, maternity, old age, widows, occupational accident benefits as well as state family benefits. Municipalities organise services/institutions and care for children, the elderly and the disabled. In 1991, the State Social Insurance Fund responsible for collection of social taxes and administration of the social insurance budget was established in Latvia. In 1993 the social insurance budget was included in the state budget, therefore, social insurance benefits became state-budget funded. Since 1995, the social insurance budget has been enjoying the status of a special budget, with social taxes being the main source of funding.

Latvia has a three-tier pension system: 1) state compulsory pension system based on defined contributions; 2) state compulsory cumulative pension system; and 3) private voluntary pension system. Under the first system, the size of pension depends upon the length of payment of social insurance contributions, contribution size and pension age. Apart from old-age pensions (Tiers 1 and 2), the state pension system also ensures income compensation in the cases of disability and loss of breadwinner. The law establishes a minimum pension, which guarantees the minimum amount depending on the type of social insurance pension. Persons insured by social insurance are entitled to the old-age pension, provided that the insurance length is at least 10 years. To persons not entitled to state pensions, social security is provided through benefits guaranteed by the state.

In Latvia, sickness benefits are granted and paid out of the National Social Insurance Fund starting from the 15th day of sickness (week 2) but for not longer than 52 weeks. Compensation for covering the loss of income prior to and after childbirth, depend on former pay. The size of the maternity benefit amounts to 100% of pay. In addition, there is a child birth benefit as a universal one-off benefit paid after the child is born. In Latvia, maternity benefits are granted to insured persons only. The benefit is granted for the period covering 56 days prior to childbirth and 56 days after the childbirth; there is a possibility to grant additional two weeks as maternity leave. The child care benefit is granted to persons taking care of a child under 3 years of age, provided that they do not receive maternity benefits and do not work. The size of the child care benefit is not linked to the number of children in the family, however, it depends on the child age: for a child under 18 months – LVL 30 (USD 47.62), from 18 months to 3 years - LVL 7.50 (USD 11.9). In certain cases (health problems after complicated childbirth or when more than one child is born) mothers are entitled to two additional weeks of maternity leave. Most unemployed persons are entitled to a benefit in cash. While non-insured persons are not entitled to a benefit in cash in case of unemployment, each person with low income (poverty limit/state-supported income) has the right to social assistance granted on means-testing basis. In Latvia, persons insured by social insurance have the right to receive the unemployment benefit. The unemployment benefit is proportional to social insurance contributions and insurance record; it is paid for 9 months. The maximum size of the unemployment benefit amounts to the minimum monthly pay multiplied by 5.

All citizens of Latvia, except for those who have a temporary permit to live in Latvia, are entitled to an allowance paid to a family raising children. There are two types of allowances: child care benefit and state family benefit. The child care benefit is granted to families that do not receive other benefits such as maternity benefits. The state family benefit (child's benefit) is granted to all children under 15 or children aged 15-20 if they attend secondary schools of general type. An extra amount is paid to disabled children under 16. In Latvia the state family benefit paid for the second child is 1.2 times, for the third child – 1.6

times, and for the fourth and any subsequent child – 1.8 times the benefit paid for the first child.
<http://www.sheltercentre.org/library/housing+rights+latvia+cohre+mission+report>

118. According to *Social Policy Implementation in Latvia Post Eu Accession*,
www.politika.lv/index.php?f=1442

The social benefit system consists of health care, sickness, maternity, family, unemployment, invalidity benefits and old-age pensions. Various additional less popular allowances exist. The basic structure of the benefits has been continued in the after-accession period. The general policy direction has been employment centred, i.e. the social risks are compensated taking into account earlier earnings for which social insurance payments have been made. The individual is seen as responsible for his own security rights. The means-tested benefit allocation is secondary. In Latvia, social protection expenditure accounted for 12.2% of GDP in 2006. The ratio of social protection expenditures to GDP has been decreasing over the years, and since EU accession it has been 12.9% and 12.4% of GDP for 2004 and 2005 respectively. Similarly the ratio has been declining in the other Baltic Countries, and remained quite stable between 27 and 28% of GDP in EU25. The expenditures on social protection have been steadily increasing since 2000 (see Table 3), reaching 1.4 billion LVL in 2006 (and increasing further thereafter, precise data inaccessible as on the moment of writing). Following the trends in total budget for social security, financing to all categories of social care has been increasing similarly. The two biggest categories in terms of amount of funding were the sickness and health care and old age pensions. The third biggest social budget expenditure was payments for family and childcare, followed by invalidity pensions and unemployment benefits. The basic structure of the expenditures for social security has not changed significantly between 2006 and mid 2008. Even though in nominal terms the social security budgets have been raising the high inflation in the period 2005-2008 has to be mentioned. After mid 2008 with rising unemployment, expenditures on unemployment are raising rapidly.

In Latvia the most dramatic reforms of the pension system were carried out before the EU accession, i.e., the transition to the three tier pension system. Following accession Latvia has continued the improvements and adjustments of the pension system, however without major changes. Size of all pensions have increased during the previous years (see Table 5) The average old age pension has increased by more than 40 percent in the after-accession period, the invalidity and survivors pensions have increased by almost the same percentage. Though, the living costs have also increased significantly due to inflation – the subsistence wage (*iztikas minimums*) has increased from LVL 99 in 2004 to LVL 133 in 2007 and LVL 160 in 2008. The old age pensions comprise the majority of all pension payments, and the number of them has been decreasing since 2001. Comparing the old age pensions with subsistence minimum in Latvia, we see a worrying situation that effectively the welfare of the elderly has not improved. Slightly over 80% of pensioners in Latvia received pensions which are below the subsistence minimum defined by the state, and more than 90% of the old-age pension sizes are below the poverty threshold, expressed in volume of 40% as a level of income replacement of the average labour wage (Volskis 2008)XXIII.

The major development in recent years in the domain of family policy is the increase (in essence – establishment) of child-care benefit (*bērna kopšanas pabalsts* or so called “*māmiņu alga*”). For persons not employed the benefit is a lump sum of 50LVL per month. Initially the child-care benefit was not compatible with employment, i.e., the person (usually mother) could only receive the benefit if she was not working, but this restriction was contested in the Constitutional Court, which ruled it as unlawful, and from the 1 of March 2006, the restriction was removed. Consequently, the benefit is income based and only partly is seen as a social benefit, but shares the characteristic of family planning instrument. After the age of 1 year the child-care benefit diminishes to 30 LVL and is paid until the child reaches the age of two. As a consequence of the changes in legislative regulations since 2002 average child-care benefit in LVL in nominal terms has increased, but the number of recipients of the benefit has decreased

119. Further detail of Latvian social security entitlements can be found at
<http://www.ssa.gov/policy/docs/progdesc/ssptw/2008-2009/europe/latvia.html>

120. According to Andrejs Berdnikovs reporting on ‘Amendments to the Law on Maternity and Sickness Insurance’ which were due to come into force on 1 July 2009
<http://www.eurofound.europa.eu/eiro/2009/06/articles/lv0906029i.htm> the following types of family state benefits are provided in Latvia, maternity benefit; child birth benefit; childcare

benefit; paternity benefit; parental benefit; family state benefit. All of these types of benefits are negatively affected by state budget curtailments.

121. According to the Ministry of Foreign Affairs of Ukraine,
<http://www.mfa.gov.ua/mfa/en/273.htm>

Revoking Ukrainian citizenship is allowed only under the condition that the person obtained citizenship of another country or is in possession of a document issued by the authorities of another nation proving the citizen is to receive the latter's nationality after revoking that of Ukraine.

Article 6 of The citizenship of Ukraine is acquired by birth.

Article 7 states that a person, whose parents or one of the parents were citizens of Ukraine at the time of his/her birth is a citizen of Ukraine.

122. A 2003 Report, '*Social Housing in Latvia – Reality (or Current Situation) and Future Perspective*' by Inara Marana and Valdis Zakis, State Agency "Housing Agency", City Development Department, Riga
http://www.unece.org/hlm/prgm/hmm/social%20housing/UNECE_Report_FIN.pdf

Since regaining its independence in 1991, Latvia has been experiencing fundamental changes. These challenges, the transformation of the economic situation and its consequences have influenced many aspects in the life of the whole country, including housing sector development in Latvia. At the same time, the attitudes of society and professionals to housing and its management have changed; they are now quite different from the approaches during the period of centralised economy.

The housing reforms during the transition period were marked by an emphasis on privatisation of state and municipal housing, on restitution, restructuring and privatisation of the housing industry, on a reduction of supply and demand subsidies and on the deregulation of the real-estate market. The prices of land, material and labour were liberalised. Restitution, land reform and privatisation were among the most important reforms enacted by the Latvian government and provided the necessary foundation for the development of a real-estate market.

The transformation from a centralised planned system, where housing construction, maintenance and repair were extensively subsidised by the state, to a market based housing system, where households are expected to pay full price for housing services, has created a number of problems. This difficult process of adjustment in Latvia is marked by a shortage of affordable housing in urban areas, by the deterioration of existing housing for all tenure types and by a lack of adequate investment mechanisms to sustain the quality and vitality of the housing sector.

Latvia's national conceptual views on housing reform were expressed in two major policy documents – the National Action Plan of the National Report for the Habitat II Conference and the Housing Policy Concept, a key document developed and approved in 1996. The most fundamental among the three basic principles (next to spatial and economic) was the social principle of national housing policy, i.e. to facilitate housing choice and access to affordable housing by establishing a system of social housing provision for socially disadvantaged groups.

Since the mid-1990s, laws and regulations for the development and implementation of social policy have been developed in Latvia. The main ideas of these statutes are the implementation of the social support system for low-income and disadvantaged groups – to rent municipally owned premises and social flats to these social groups, to provide temporary housing, to exchange rented apartments for other living space. People who would like to receive assistance to solve their housing problems and are entitled to this were entered into the municipal assistance registers.

The rent reform laws of the early 1990s established rent ceilings. These ceilings control rent payments for all types of housing regardless of ownership. Local municipalities have the right to establish a lower rent. Within the rent ceilings, the actual rent charged depends on housing quality, location and other factors. At the moment, state rent control applies to restituted houses. Private owners may increase rents if they conclude a new agreement with tenants. It is now possible to increase rents in restituted houses if the

contract between flat owner and tenant is interrupted. In late 2004, it was proposed to abolish rent ceilings for all housing stock regardless of ownership form.

Socially assisted housing development in Latvia follows the law on social apartments and social houses. In the Latvian capital Riga (where almost 33% of the country's population reside), a social housing development programme was prepared for a five-year period (2005-2009). One of the most important tasks of this programme is to provide households in need of improving their housing conditions and of social assistance with rental apartments. In 2003, 10,500 persons were on the Latvian municipalities' waiting lists; in Riga, the list had 7,100 entries, 2,000 of which were low-income households (27% on the waiting list) while 1,700 (23% on the waiting list) received municipal support to obtain a social housing apartment. This programme mainly focused on the construction of rental housing stock for municipal needs. If rent ceilings are abolished, up to 10,000 households will have to join the municipal housing waiting-lists in 2005.

The Riga City housing construction programme was developed on an estimate of the housing needs of people residing in the capital. At the moment, the municipality cannot provide affordable housing for persons eligible under the current legislation. Similar programmes were moreover developed in a few other, fairly big Latvian municipalities. This is one of the topical questions developed at the local municipal level.

One housing problem in Latvia relates to the (in)ability of low-income households to pay for rent and communal services. Often these services are quite expensive compared to these persons' income level. Government has delegated responsibility for setting rent ceilings to municipalities, which are also responsible for social assistance, but utility prices are usually determined by the enterprises providing the respective services.

The most significant aspects of social transition in Latvia and Riga are associated with labour market adjustments and social differentiation. In response to structural and macro-economic changes, labour market adjustment has proceeded through growing unemployment and wage differentiation. The present sharing of responsibilities for housing at the state and municipal levels prevents the development of a comprehensive housing policy in Latvia. It also leads to unco-ordinated use of available policy tools, especially for social housing development. There is a need for developing a social housing policy that involves different stakeholder groups in the discussion on housing problems, development trends and possible solutions for creating favourable living environments for people. There is a need for concrete tool development for social housing policy implementation. In Latvia, there is a need for a comprehensive concept of housing development and its legislative basis and main implementation instruments at the national, regional and municipality levels.

123. Report produced by *COHRE – 2000 Housing Rights in Latvia*

<http://www.cohre.org/store/attachments/COHRE%20Report%20Housing%20Rights%20Latvia%202000.pdf> states:

Since the restoration of full independence in August 1991, Latvia has faced many of the well-known challenges associated with the transition to a market economy. The country continues to struggle with falling living standards, rising poverty, growing income disparities and other consequences stemming from the economic shift of the past decade.

Though Latvia has been criticised in recent years by various inter-governmental organizations and human rights advocates for human rights violations of non-citizen residents, in particular Russian-speakers who comprise 30% of Latvia's total population, some recent improvements are noteworthy. The liberalisation of the Law on Citizenship, adoption of inclusive amendments to the law on the status of non-citizens, the addition of a Bill of Rights to the Constitution, and forthcoming revisions to the Law on Language, have assisted in beginning to resolve some of these complex problems.

COHRE's attention was drawn to Latvia when it learned that in 1998, nearly 3,000 eviction cases were brought to Latvian courts — a startlingly high number in a country with a population of 2.6 million. The majority of these cases were brought under the Law on the Rent of Living Premises that allows commencement of eviction proceedings when a tenant has fallen 3 months behind in the payment of rent. There is no provision in the law preventing or finding alternatives to the eviction of vulnerable groups such as families with children, the elderly, or disabled. Nor does there exist a right to legal aid in civil cases, effectively depriving tenants — who are generally ill-informed about the judicial process and available

remedies— of a fair trial. Some evictions are carried out without the provision of alternative accommodation, as the supply of social housing is insufficient in many areas.

Other evictions have resulted in victims' relocation to social housing of uninhabitable quality.

The failure of tenants to pay rent is primarily the result of the impact of free market economics on individual capacities and the considerable reduction of governmental expenditure on housing in recent years. Many factories once employing tens of thousands of people during the Soviet era have been closed due to the collapse of the Soviet market and inefficient production methods. Together with the decline of the agricultural sector, these changes have resulted in high unemployment in both the cities and rural areas— approximately 14% and up to 33%, respectively. Reduced economic opportunities have pushed much of the population towards poverty. As a consequence, people are increasingly unable to cover housing and other living expenses and governmental intervention has not proven adequate to protect the entire population.

In spite of these economic declines, housing costs have nearly doubled in the last five years, frequently requiring tenants to spend over 50% of the average monthly wage (100 Lats) on rent (1 Lat = US\$.57). Moreover, there is insufficient regulation of the price of utilities, especially heating; an additional cost which often exceeds half of the total rent costs. As a result, many people are left with less than 1 Lat per day with which to meet expenses such as food, clothing, health care, and transportation.

The strain imposed by the economic changes since independence has also left the Latvian government with decreased resources for social welfare programs. Unemployment benefits totaling 50% of one's last wage are available for only nine months, and only for individuals whose employers regularly contributed to the social tax. In 1999, over 500 businesses could not afford to pay employees' wages; presumably a much higher number failed to contribute to the social tax, often paying wages 'off the record' to avoid this additional cost. The budget for municipal housing comes from local taxes, without contribution from the State. Occasionally, the municipality can offer subsidized housing to victims of evictions, in which case the State pays two-thirds of rent. The high number of eviction cases indicates that these funds are insufficient, however, particularly when tenants are forced to move from non-privatized (municipality-owned) housing (currently about 25% of the total housing stock) to municipality-subsidized housing. On top of that, no new social housing units have been built in Latvia since 1991, which has made the housing rights situation decline further. Under current law, formal tenure protections in Latvia appear to be generally adequate. In spite of privatisation, current occupants have, in both private and public housing, under most circumstances, retained the right to remain in their homes, paying a statutorily limited rent. Evictions cannot be undertaken without a court order, and tenants are entitled to notice and an opportunity to be heard before they can be ordered evicted. In addition, although the Latvian Constitution does not recognize the right to housing or security of tenure, article 96 ensures that 'everyone has the right to inviolability of their private life, home, and correspondence' (a formulation similar to the ECHR), and the Law on the Rights of the Child provides that children have the right to housing.

Despite such protections, however, poorly informed judges, lack of legal representation or legal aid, underfunded advocacy groups and general ignorance about rights and responsibilities have limited the utility of formal tenure rights. In addition, tenure is severely threatened by the escalating cost of housing as well as the continuing deterioration in housing quality. Moreover, proposed changes in the national housing law remove rent ceilings and if adopted will assuredly undermine proposals to clarify and strengthen security of tenure protections for families, disabled persons and elderly persons.

Seventy percent of the rental housing in Latvia is 'social housing' This housing remains under the ownership of national or municipal governments, while thirty percent has become privatised since independence. The tenure rights of tenants in privately-owned housing are protected for a period of seven years after the housing has been privatised through the national restitution programme.

Escalating utility costs have caused the most serious damage to housing affordability during the independence period. While rent ceilings have prevented rents from escalating, rising utility costs (particularly heating costs) have caused housing costs to rise dramatically. In some instances, the costs of utilities have risen over 400% in the last several years. This rise has had the most detrimental impact on households with fixed incomes, such as pensioners, the unemployed (a high and rising percentage of the labor force), and on households with low incomes. Some form of regulation of utility costs and/or comprehensive subsidy system is necessary. Otherwise, given Latvia's cold climate, poor people will be simply unable to afford their housing regardless of what happens to rents.

Several people informed COHRE of the practice of cutting off heat to apartments where the tenant has failed to pay utilities. This is done by physically removing radiators and capping off the central heating to a housing unit. This practice makes no sense, and has long-term implications for the health, safety and welfare of the tenants and damages the integrity of a building's infrastructure. This practice is particularly damaging in households where there are young children or elderly people.

One odd practice that has arisen in recent years where municipalities ask new occupants of social housing units to pay utility and rent arrears that had not been collected from evicted tenants in order to obtain their apartments. This is a completely arbitrary price to attach to an apartment from the perspective of the consumer and essentially amounts to a form of collective punishment because there is no relationship between this outstanding debt owed by the vacating tenant and the value of the apartment to the new tenant. Poorer people — the people who are presumably the most in need — are thus arbitrarily restricted from access to socially owned housing. Municipalities should seek to recover these debts from those who owe them by garnishing wages, attaching bank accounts, or similar methods, or they should simply forgive these debts. Latvia appears to have a reasonably well-developed legal infrastructure addressing housing quality standards, however, many people do not reside in housing which could be classified as habitable.

The heating season begins when the outdoor temperature is less than 8 degrees centigrade for three consecutive days, and generally runs from October to April. When tenants are sued for non-payment of rent, they can legally raise the fact that they have failed to receive heat or hotwater or other maintenance to which they are entitled and cannot be evicted if the court finds they have been deprived of services. Municipal governments have the power to bring private landlords to court for failure to provide services and make repairs, but this power is rarely exercised. Individuals or groups of tenants could also bring their landlord to court to obtain repairs and services, but this is rarely done, since people lack the information and advice they need to advocate on their own.

124. Housing quality - or the habitability of housing - in Latvia's housing stock is presently experiencing an 'hourglass effect.' While free market housing in Riga's Old City and elsewhere has been substantially rehabilitated and is for the most part well maintained, the vast majority of the housing stock has been steadily deteriorating. There has been virtually no investment in maintenance or improvements for social sector housing in the years since independence. The rapid deterioration of this housing poses a long-term threat to Latvia's well being. The more the housing stock is allowed to deteriorate, the more expensive it becomes to restore the housing to habitable condition, and the more likely it becomes that housing units will be lost and a crisis in housing availability will be provoked. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/06/01/000094946_01060104463162/Rendered/PDF/multi0page.pdf
125. The *British Foreign and Commonwealth Office's Current Assessment of Latvia* <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/europe/latvia/?profile=all> states:
 - Russian [government] allegations of systematic violation of the human rights of ethnic Russians have been declared unfounded by UN, OSCE and Council of Europe experts, as well as human rights organisations in Latvia.
 - People: 588% Latvian, 28.6% Russian, 3.8% Belarussian, 2.6% Ukrainian, 2.45% Polish, 3.7% Other
 - Languages: Latvian (state language), Russian
 - Religion(s): Lutheran, Catholicism, Russian Orthodox
126. Angered by an economic crisis unparalleled elsewhere in Europe, an unexpectedly large proportion of voters turned to a man who fought to deny Latvia's national identity for much of his professional life. Alfreds Rubiks, who spent six years in prison for trying to overthrow the country's first democratic government since the Second World War, will take his seat in Brussels after his Harmony party won 20 per cent of the vote. With a second pro-Russia party scoring just under 10 per cent, three of Latvia's eight Euro MPs lean closer to the Kremlin than to the West for the first time. The last head of the Latvian Communist Party, Mr Rubiks

was accused of orchestrating the seizure of government buildings in Riga by Soviet troops during the 1991 attempt to oust Mikhail Gorbachev in a coup. Although he has denied the allegations, Mr Rubiks has made no secret of his dismay over the collapse of the Soviet Union. His triumph comes as the right-of-centre Latvian government struggles to impose an austerity programme on a country whose economy is expected to shrink by as much as 18 per cent this year. Aggravating the tension, which spilled over into riots in January that forced the previous government's resignation, the conversion rate of Latvia's currency, the Lat, is pegged to the Euro. Harmony topped the poll with a third of the vote, suggesting, for the first time, that the party had extended its reach well beyond its traditional ethnic Russian base. Ethnic Russians make up less than a fifth of the Latvian population that is eligible to vote. <http://www.telegraph.co.uk/news/worldnews/europe/eu/5477788/European-elections-2009-results-for-Latvia-Bulgaria-Hungary-Slovakia-and-Czech-Republic.html>

127. A 2001 report by the *IHF (International Helsinki Federation for Human Rights)* http://www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=1718 states that

in Latvia, naturalization and language continue to be sensitive political issues. During the last ten years, the authorities of the republic have sought to create effective means to protect the majority culture within a framework of democratic norms. To this end, regulations regarding naturalization and language have been changed several times, under the close scrutiny of international observers. In a positive trend, legislative amendments to enhance naturalization of the more than 500,000 persons still lacking citizenship in the republics were approved in June 2001. The naturalization fee was reduced, and was set at a lower level for certain categories of applicants, such as pensioners, unemployed persons, and families with more than three children. The examination procedure for students applying for citizenship was also rationalized, as the need for them to take multiple language examinations was eliminated. Student applicants who have passed the centralized examination in Latvian within the last two years are now exempted from taking the Latvian examination normally required for naturalization. In addition to these measures, a major information campaign aimed at non-citizens is to be carried out this fall. However, while the recent trend in naturalization policies is encouraging, it is clouded by the developments in language policies. Also in June this year, legislative amendments envisaging fines for a number of offences related to language use were passed. Among the offences regulated were the failure to use the state language at the level necessary to perform professional duties, the failure to provide translations in meetings if the law so requires, the failure to ensure the use of the Latvian language in office records, and showing disrespect towards the state language. These amendments give rise to concern for several reasons. Firstly, some offences are only vaguely defined, and therefore open to various interpretations. Secondly, several of the regulations concern offences that fall under the limiting clause of “when there is a legitimate public interest”, which means that it is not entirely clear when they are to be implemented. And finally, the fines established for some of the offences are disproportionately great, as they may amount to up to 250 lats (~ U.S.\$400). While we welcome the efforts of the Latvian authorities to speed up the process of naturalization among the non-citizens in the republic, we also urge the Latvian government to reconsider the regulations on fines for language offences, in order to ensure lucidity, fairness and proportionality in their application.

128. Non-citizens may **naturalize** provided that they have been permanent residents of Latvia for at least 5 years, demonstrate Latvian language competency, correctly answer questions regarding Latvia's Constitution and history—including that it was occupied and Russified under the Soviet Union (a fact that is disputed by modern Russia)—and know the words to the Latvian national anthem. Former members of foreign military, people convicted of propagating fascist or communist ideas or inciting ethnic hatred, and individuals considered hostile to the Republic of Latvia cannot be granted citizenship. The government can refuse naturalisation to individuals who have fulfilled requirements if they are found to be disloyal (viz. Juris Petropavlovskis case, declared admissible by the [European Court of Human Rights](http://en.wikipedia.org/wiki/Non-citizens_(Latvia)) as of November 2008 [http://en.wikipedia.org/wiki/Non-citizens_\(Latvia\)](http://en.wikipedia.org/wiki/Non-citizens_(Latvia)) - cite_note-24#cite_note-24. As of December 31, 2008, 130,790 people have been naturalized, mostly former non-citizens. The naturalization rate reached its height over 2004–2006, peaking in 2005 (19 169 naturalized), and has fallen off substantially since then across all ethnic

categories (3004 naturalized in 2008). A survey conducted and published in 2003 by the Naturalization Board indicated that categories of non-citizen most likely to naturalize were: socially active, from 25 to 50 years, female, completed higher education, employees in local or national government, and anyone living in Riga and its environs. The factors cited as to why people have not pursued citizenship were: the opinion that people deserve citizenship automatically — 34.2%, hoping naturalization will be simplified — 26.2%, travel to the CIS is easier for non-citizens — 26.2%, concerns about passing the Latvian competency test — 23.5%, no particular need — 21.6%, concerns about passing the Latvian history test — 20.5%, cost of fees — 20.2%, not enough time — 18.1%, naturalization is demeaning — 17.9%. Less than 9% indicated a preference for citizenship other than Latvian.

<http://www.politis-europe.uni-oldenburg.de/download/Latvia.pdf> or
http://www.lsif.lv/files/pics/angliski_08.pdf

129. According to *UNHCR: RefWorld*

<http://www.unhcr.org/refworld/topic,463af2212,488edfd92,49749cf2c,0.html>

Russians constitute by far Latvia's largest ethnic minority group – some 664,000 people or 28.8 per cent of the population, living predominantly in urban areas (Latvian government statistics, 2004). Russians have a strong demographic presence in the capital Riga, where they accounted for 43 per cent of the population in 2000; they form an absolute majority in the city of Daugavpils (54 per cent).

Latvia's Russians are diverse in terms of religious diversity. While the majority are Eastern Orthodox there are also smaller numbers of Old Believers and Catholics. By 2004 some 330,201 Russians in Latvia had become citizens, while 314,178 remained non-citizens. Official data for 2006 indicated that Russians accounted for 66.5 per cent of Latvia's non-citizens, although naturalization applications continued to increase. Russia has consistently attacked Latvian citizenship policy as discriminatory, although the naturalization process has been modified and reported rates of successful naturalization applications are high (in the region of 85 per cent). In 2004 changes introduced into the Russian school curriculum requiring that more subjects be taught in Latvian generated a new wave of activity among Russian NGOs and civic groups. Russian students picketed the national legislature to protest the changes, and several thousand joined the Association for the Support of Russian Language in Schools in Latvia. According to reports in the Latvian press, 68 per cent of Russophones opposed the education reform. In September 2004 the United Russian Society of Latvia held its founding convention, defining its goals as representing the interests of the Russophone part of Latvian society, ethnic Russians and the rights of other minority groups.

Latvian entry into the European Union (EU) in 2004 appears to have had a positive impact on rates of citizenship application, although ethnic Russian enthusiasm for EU was significantly less than among Latvians. Nevertheless, an ethnic Russian, Tatyana Zhdanoka, was elected to the European Parliament, as candidate for the party 'For Human Rights in a United Latvia'. She has joined the Greens – European Free Alliance Group in the Parliament, which includes Scottish and Welsh nationalist MEPs from the UK. She is seeking to enhance the representation of several million ethnic Russians now living in the European Union, including those in Latvia.

There are five national Russian-language newspapers in Latvia, and reportedly 30 regional newspapers, in addition to weekly and monthly periodicals. Russian is also widely available on the internet. Up to 20 per cent of the second national Latvian radio channel is broadcast in Russian and there are reportedly some 34 private radio channels broadcasting almost exclusively in Russian. The second national television channel broadcasts up to 40 per cent in Russian and there are up to ten private or regional television channels broadcasting between 10 and 80 per cent of their programming in Russian. In 2002 quotas restricting broadcasting in languages other than Latvian were abolished by a decision of the constitutional court. Latvian officials claim an increasing divergence in social and political values between Russians in Latvia and Russians in Russia, suggesting that a 'Baltic Russian' identity is in formation. Russians in Latvia are themselves also highly differentiated, particularly in socio-economic status. According to one observer, Russians are over-represented among the richest of the rich and the poorest of the poor. However, Russian continues to play a significant role in the Latvian employment market, especially the private sector, and the fact that Russian-speakers (bolstered by significant numbers of Belarusians, Ukrainians, Poles and others who are primarily Russophone) are a plurality or majority in several of Latvia's large cities has reduced the sense of belonging to a minority among Russians.

FINDINGS AND REASONS

130. I find that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. I find that the applicants have made a valid application for review under s.412 of the Act.
131. The applicant claims that she is a permanent resident of Latvia and she is stateless. She was born in the Ukraine and resided in Latvia since 1977. She does not have Latvian citizenship. Accordingly, for the purposes of the Convention, her claims have been assessed against Latvia as her country of former habitual residence.
132. The applicant's daughter was granted a protection visa by a differently constituted Tribunal in 2007. The applicant seeks to rely on her daughter's favorable Tribunal decision to support her claims to the visa sought. Since that decision was made there is additional evidence available to the Tribunal. This Tribunal is not bound by a decision of a previous Tribunal, differently constituted.
133. The Tribunal held 3 hearings in an endeavour to give the applicant the opportunity to present her application. During the 2nd Tribunal hearing it became clear that the applicant and the interpreter were having some difficulty in relation to the interpretation. The Russian interpreter said she had difficulty with words the applicant used about the Latvian housing system. I adjourned the hearing in order to obtain another interpreter.
134. The applicant's daughter, who remained in the hearing room during all 3 hearings as a support person, also gave evidence to the Tribunal, at the conclusion of her mother's evidence. She complained, in a letter to the Tribunal of [date deleted: s431(2)] August 2009, that on several occasions:
- "as soon as I started addressing political or discrimination issues you interrupted me and asked another question"
-
- "From that, we can draw the inference that you did not want any information which contradicted your line to be addressed or heard at the hearing".
135. On occasions, during the hearing, the daughter interrupted the questioning when her mother was giving evidence. It became necessary, at various times during the hearing, to ask the daughter not to interrupt the questioning in order for her mother to respond to the questions. I explained to the applicant's daughter that once I had heard her mother's evidence I would give to her the opportunity to also present evidence herself. The applicant's daughter was given the opportunity, at the conclusion of her mother's evidence, to provide evidence to the Tribunal and she did so. At the conclusion of her daughter's evidence the applicant was also given the opportunity to present any further evidence or make any submissions. She requested time to provide further evidence, in writing. Her request was granted.
136. I accept that Tribunal applicants can and do have difficulty on occasions remembering dates and facts. The applicant provided a medical report from [Person B] dated [in] July 2009. That report indicated that the applicant's daughter has been a patient of the doctor. The doctor noted that the applicant has a 'severe form of anxiety-depression and experiences severe difficulties expressing her thoughts and concentration'. The doctor did not provide a diagnosis of the applicant. He did not indicate when or how many times he saw the applicant or if he saw the applicant at all. Whilst he notes the applicant's anxiety and depression, he

provided no details of the testing undertaken to form his view. He has not suggested that the applicant is receiving treatment or has been referred for any further treatment. He merely requested that all possible assistance be given to allow her daughter to be present at the Tribunal hearing.

137. The applicant showed the Tribunal an unopened packet of medication. When I asked the applicant why the medication had not been dispensed by a pharmacy, [the medication was marked Starter Pack and I observed that it did not have the usual dispensing notifications on the packet], she said that her Doctor had given her the packet. As the doctor made no reference in his medical report to the applicant being prescribed any medication, I do not accept that the applicant has been taking any medication for a medical condition.
138. I place no weight on the medical report of [Person B] as evidence that the applicant suffers from, or has in the past, suffered from depression or that the applicant experiences severe difficulties expressing her thoughts and concentration or that she has memory losses. Notwithstanding my findings about [Person B]'s medical report, I gave the applicant's daughter the opportunity to be present, in the hearing room, at all the hearings held by the Tribunal.
139. Essentially the applicant claims that she is an ethnic Ukrainian who arrived in Latvia as a young woman. She married an ethnic Latvian/Russian and they had a daughter. The applicant's daughter was a Latvian citizen. The applicant later entered into a de facto relationship with a Latvian, whose mother was Polish and father Latvian. She gave birth to their son, the second named applicant, in 1997 and shortly after separated from her de facto husband. Neither the applicant nor her son applied for Latvian citizenship.
140. The applicant, her de facto husband and her daughter bought an apartment together. After the birth of her son in 1997, the applicant's de facto husband left her and she was unable to locate him. The applicant claims she was entitled to receive various social security payments when her son was born and she did not receive them. She claims that her Latvian neighbour paid less for outgoings for her apartment. When she was unable to pay the bills associated with her ownership and residence in the apartment, she was forced to sell her apartment, in 1999, to a friend in order to avoid eviction proceedings for non-payment of out-goings. Pursuant to the sale to her friend she entered into an arrangement with her friend that she and her children remain in the apartment for a few years. She lived in her formerly owned apartment until her friend asked her to leave. She complained to the authorities about her treatment in 1999 and as a consequence of these complaints she was harassed. After she and her family moved out of the apartment, in about 2005 the applicant and her daughter were attacked on the street because she had given information to a journalist who published her complaints on the internet. Her daughter was injured but the ambulance did not arrive. The applicant took her daughter to hospital [clinic] where she received attention and went home. The police did not investigate her attack. The daughter obtained a visitor visa to Australia and left Latvia. The applicant remained in Latvia until she was able to get a visitor visa to come to Australia, where her sister and daughter now reside.
141. The applicant claims that she was evicted from her apartment. When I put to the applicant that she had not been 'evicted' but had sold her apartment she said that she had been unable to meet her financial obligations in relation to payment of outgoings and in order to avoid eviction for non-payment she sold her apartment to a friend. She remained living in that apartment rent free. I accept that the applicant, who had been unable to pay outgoings on her apartment, sold her apartment to a friend in exchange for a rent free period. As her friend

owned the apartment and subsequently required her to move out of the apartment, I do not accept that the Latvian government forcibly removed her from her apartment or evicted her. The applicant does not suggest that her friend's requirement that she vacate the apartment was in breach of the agreement between them or in breach of any Latvian laws. I am satisfied that she left the apartment in accordance with the agreement entered into between herself and her friend.

142. The applicant claims that the policy of the Latvian government, in relation to outgoings or the provision of communal services such as electricity water heating, amounted to forcible eviction. She claims that it was a common practice to evict "aliens" who had been unable to pay the government's 'strata'. The applicant claimed that a Latvian neighbour paid less than she did for the same outgoings on her apartment. The applicant produced a report *COHRE – 2000 Housing Rights in Latvia*. This report discusses in some detail the situation of housing after “the restoration of full independence in August 1991” to Latvia. This report stated that Latvia has faced many challenges associated with the transition to a market economy, a struggle with falling living standards, rising poverty, growing income disparities and other consequences stemming from the economic shift from the Soviet era. The report also stated that in 1998, nearly 3,000 eviction cases were brought to Latvian courts for eviction proceedings when a tenant has fallen 3 months behind in the payment of rent. There was no provision in the law preventing or finding alternatives to the eviction of vulnerable groups nor did there exist a right to legal aid effectively depriving tenants of a fair trial. Evictions resulted in victims’ relocation to social housing of uninhabitable quality. This failure by Latvia was attributed to the impact of free market economics on individual capacities and the considerable reduction of governmental expenditure on housing post Soviet era. The report also stated that reduced economic opportunities pushed much of the population towards poverty and there was insufficient regulation of the price of utilities, especially heating. As heating was an additional cost which often exceeded half of the total rent costs, many people were left with less than 1 Lat per day with which to meet expenses such as food, clothing, health care, and transportation. The report also stated that the costs of utilities had the most detrimental impact on households with fixed incomes, such as pensioners, the unemployed (a high and rising percentage of the labor force), and on households with low incomes. This report did not suggest that ethnic Russians/Ukrainians or non-citizen residents were treated any differently from ethnic Latvians or that ethnic Russians/Ukrainians or non-citizen residents were singled out to pay higher charges. I am satisfied that communal services in Latvia were often quite expensive compared to a persons’ income level and that the high cost of these services affected all residents. The report indicates that all tenants who were unable to pay these costs mainly due to their economic circumstances were the victims of this policy. I reject her claim that the housing policies of the Latvian government amounted to forcible eviction of ethnic Russians/Ukrainians or non-citizen residents. I reject the applicant’s claim that the Latvian government policies discriminated against the applicant because of her ethnicity in the provision of housing and other associated costs such as utility services. I am satisfied that the applicant did not pay more for her outgoings than her Latvian neighbour.
143. Even were I to accept that the applicant’s neighbour paid less than the applicant for her outgoings, information from the COHRE report, also states that there was insufficient regulation of the price of utilities and utility prices were determined by the enterprises providing the respective services. This COHRE report does not suggest that those enterprises singled out ethnic Russians/Ukrainians or non-citizen residents for discriminatory treatment.

144. The applicant claims that she took a copy of her utility bill and went to various authorities to complain. She complained to the local council that looks after flats and they told her to go to social security. She told them that she does not agree with all the payments and they said they will look into it. She went again but no-one explained anything to her. At Social Security they accepted her complaint but after a month no-one explained anything to her, they said “you have to pay what you pay” Her complaint was that she paid more in comparison with her Latvian neighbour. Even were I to accept that the applicant did not receive assistance to reduce her utility bills, I am not satisfied that this amounts to serious harm. The COHRE report indicated that welfare assistance in Latvia was inadequate to meet everyday needs of the poor residents of Latvia. This report did not suggest that ethnic Russians/Ukrainians or non-citizens are singled out for differing treatment.
145. The applicant claims that she was verbally insulted by a government employee when she complained to government authorities. I accept that after independence in 1991 there was societal hostility toward ethnic Russians by Latvians and that the applicant was humiliated, told to get out of the country and when she went to another government authority and had a discussion with a senior manager there, she was told to give up her son to a foster home. I am not satisfied that such verbal hostility is ‘serious harm’ as required by s.91R. The applicant’s life or liberty was not put in jeopardy and the chance of the applicant being seriously harmed because of those comments was remote.
146. Nor am I satisfied that ethnic Russians or Ukrainians or non-citizen residents comprise the poor of Latvia. The independent evidence, cited above, indicates that ethnic Russians in Latvia are highly differentiated, particularly in socio-economic status. According to one observer (cited above), Russians are over-represented among the richest of the rich and the poorest of the poor.
147. Despite selling her apartment the applicant claims that she wrote to a particular organisation, she does not know its name, but probably called ‘Russian Population Human Rights’. A representative from that organisation published her complaint. Whilst initially the applicant said that her case was published in a small newspaper she later explained that details of her complaint was distributed on leaflets in the streets of Riga She said that the leaflets had her name and telephone number on them. The applicant said that the leaflets were distributed in 1999, in spring or summer somewhere between April and September. The applicant did not go back to speak to this organisation after her initial meeting. She does not know when they stopped distributing pamphlets about her or if they published her situation on the internet. I do not accept as plausible that a Russian based organisation would publish and distribute pamphlets about an individual’s personal problems with their names and telephone numbers on the pamphlet. It does not ring true especially as the independent evidence before me indicates that the applicant’s problems with payment of her utility bills were not uncommon in Latvia and affected the population generally. Additionally I have no independent evidence before me to suggest that pro-Russian organisations in Latvia distributed pamphlets in Riga detailing complaints by ethnic Russians/Ukrainians or non-citizen residents with their personal details. I am of the view that were it the situation some mention would have been made in independent sources such as the Helsinki Human Rights Organisation reports, US State Department reports or Amnesty International. I am not satisfied that pamphlets were distributed in Riga with the applicant’s name and telephone number on them. I am satisfied it is an invention by the applicant to enhance her claims.

148. As I do not accept that these pamphlets were distributed, I do not accept that as a consequence of the information in the pamphlets the applicant started to receive threatening letters and telephone calls in 2000 that continued for a few weeks.
149. But even were I to accept that these pamphlets were distributed, as claimed, with the applicant's address and telephone number on them [and I do not] and as a consequence the applicant received threatening telephone calls at night, the applicant did not change her telephone number. Whilst she claimed that she went to the police, who did not assist her, she also said that the threats and telephone letters stopped about 2 weeks later. I am not satisfied that the applicant suffered serious harm as now required by s.91R. Despite these threats, she continued to live at the same address for about 5 years and she did not change her telephone number.
150. The applicant initially claimed that she wrote a letter to the President in Russian in 1999 or 2000 about losing her flat. I asked the applicant if she could speak, read and write Latvian. She said that she could. I put to her that Lettish is the language of the Latvian government and she said that only once did she write a letter in Russian. She later said that she wrote the Russian language letter to the Ombudsman, it was about 1999 or 2000 when she lost her flat. Even were I to accept that the applicant had written to the President the evidence before me does not suggest that the applicant suffered any harm for this action.
151. The applicant claims that she received telephone threats in 2005 after her girlfriend provided information about her to a journalist who published materials about her on the internet. She did not go to a lawyer to find out her legal situation or to any organisations that assist ethnic Russians. She explained that this was because in Latvia it takes a long time for a law suit to go before court. Her daughter's view was that these organisations did not function properly. She also claimed that the official language in court is Latvian and there is no interpreting assistance provided. Whilst I accept that there are delays in the Latvian court system, there is no independent evidence before me to suggest that ethnic Russian/Ukrainians or non-citizen residents suffer discrimination because of delays in the Latvian court system. The delays affect all residents. As for no interpreting assistance being available to ethnic Russians/Ukrainians or non-citizen residents, the COHRE report provided by the applicant, states that 'there are Latvian-Russian court interpreters' but documents are written in Latvian. The applicant said that she could speak street language Latvian but she did not access the court system because she would not have achieved anything as the court system is just a link. I do not accept that the applicant suffered discrimination in relation to provision of legal services in Latvia.
152. The applicant claims that as a consequence of that internet article, she received telephone threats and letters in 2005. This occurred either at the end of August or beginning of September 2005. She believed it was the nationalists groups as she expressed a political protest, complaining about the housing situation in Latvia. The telephone threats and letters stopped after she and her daughter were attacked. The applicant claims that she and her daughter were coming home from the shop, it was fairly dark and there a group of people standing there and as they walked past the group, they were set upon from behind. After they bashed them the attackers got in the car and drove away. She did not see the people as they were attacked from behind. Her daughter was unconscious. The applicant took her daughter home and called the ambulance service. In the area where they live it was populated by persons without a fixed address and drunks. The ambulance failed to attend and when her daughter came to, they walked to the local clinic. The applicant said that on the phone the ambulance had asked her stupid questions.

153. I do not accept that the applicant or her daughter were the victims of a physical attack or telephone threats or that her apartment was robbed by nationalists or any other persons for their ethnicity or their political opinion or imputed political opinion. The 2007 report of the International Helsinki Federation for Human Rights (IHF), *International Helsinki Federation Annual Report on Human Rights Violations (2007): Latvia*, 27 March 2007 <http://www.unhcr.org/refworld/country,,IHF,,LVA,4562d8b62,469399bfd,0.html> makes no mention of ethnic or racial violence against ethnic Russian/Ukrainians or non-citizen residents. A report from the LHRO also did not suggest or refer to attacks on ethnic Russians or Ukrainians or non-citizen residents in 2005. Rather the reports refer to attacks on ‘minority groups, or dark skinned people’. When I put to the applicant that independent evidence did not suggest that there were attacks on Russians she indicated that what is happening inside the country is not advertised. I am of the view that were it the situation that there were attacks on ethnic Russians, who are the majority population of Riga, some mention would have been made in the independent sources such as the US State Department, UK Home Office, Canadian IRB, the IHF or the LHRO. I am not satisfied that the NGOs who report extensively on Latvia do not know what is happening in Latvia.
154. Even were I to accept that the applicant and her daughter were attacked on the street, were threatened on the telephone and had valuables stolen when their apartment was robbed in 2005, the independent evidence before me does not suggest that ethnic Russians/Ukrainians or non-citizen residents do not receive police protection. The applicant agreed that there are ethnic Russians in the police service. Whilst the applicant claims that the police took no action on her behalf, she did not lodge any complaints about this ‘police inaction’. The applicant could have lodged a report about police inaction to the LHRO. The LHRO now called the Latvian Centre for Human Rights (LCHR) <http://www.humanrights.org.lv/html/areas/legal/index.html> has provided legal assistance to individuals with human rights issues since 1993. Anyone can submit an oral or a written complaint to the LCHR lawyers, which will be handled confidentially and free of charge. Legal assistance includes, providing information on rights guaranteed by the law, consulting individuals on the possibilities of solving a human rights case according to the legislation, recommendations as to which state or municipal organization a person could apply for assistance in the case, helping in achieving a friendly settlement between the parties involved, providing legal opinion, assistance in composing legal documents – in special cases, representing an individual in civil or administrative court – in special cases. After reviewing a complaint, the LCHR concludes whether human rights have been violated and provides its opinion and recommendations.
155. Whilst I accept that there is police misconduct and corruption in Latvia, and there have been attempts at a cover-up by senior police authorities, nevertheless the independent evidence before me indicates that police have been disciplined and in the IHF 2007 report (cited above) mention is made of a judge being dismissed for knowing about a police cover up. This does not suggest that the police service is ineffective or that ethnic Russians/Ukrainians or non-citizen residents are treated differently or refused protection.
156. I accept that there is substandard housing in Latvia and that the applicant, when she moved out of her formerly owned apartment had to move to substandard housing. But the independent evidence does not suggest that only ethnic Russian/Ukrainians or non-citizen residents were the only people to live in this substandard housing.
157. The applicant claims that after her daughter left Latvia, she had difficulty accessing housing. I accept that a person in the applicant’s circumstances may experience difficulty in Latvia

obtaining housing. But the applicant was able to find somewhere to live, she resided with a friend until she came to Australia.

158. The applicant has stated that in about 2007 or 2008 she wrote to the Ombudsman about her problems. The Ombudsman responded that her complaint was out of time as it referred to incidents that had happened some time previously. I am not satisfied that this response by the Ombudsman suggests that the applicant was refused assistance.
159. In relation to employment, the applicant was employed in a pharmaceutical company and lost her job in 1990, whilst Latvia was still part of the Soviet Union. Thereafter the applicant worked casually to make ends meet and she continued to work until the birth of her second child, the second named applicant. Her de facto husband then left her and she had to manage from her own resources. She worked casually until her daughter left in March 2006. After March 2006 the applicant does not suggest that she was refused employment, rather her evidence is that she was in a pretty bad shape as she took medication for depression. The independent evidence (US State Department Report on Human Rights Latvia 2009) indicates that resident noncitizens have full rights to employment, except for some government jobs and positions related to national security. I accept that Latvia does not allow some jobs, such as attorneys or civil servants to be held by non-citizen. But the applicant does not suggest that she sought employment in a position that required her to be a Latvian citizen. I am satisfied that the applicant did not suffer discrimination in employment.
160. The applicant claims that she did not receive social security entitlements because she was an ethnic Russian/Ukrainian. The *US State Department Report on Human Rights Latvia 2008* indicates that resident noncitizens have full rights to most government social benefits. The independent evidence, cited above, indicates that the Latvian social insurance system is based on the pay-as-you go principle and is limited to persons participating in the labour market. Persons not insured by social insurance are usually entitled to means-tested benefits. When I put to the applicant that had she worked, she would have had an entitlement to unemployment assistance, she said maybe she could and maybe she could not. She said that as she lost her job she was entitled to obtain payment for a year. She also said that she had a job during the Soviet era and she did not have full time employment under the Latvian state. I accept that the applicant, who lost her job in 1990, did not receive unemployment benefits but I am not satisfied that she suffered discrimination. The independent evidence, cited above, indicates that unemployment benefits are dependant on employment contributions and do not suggest that ethnic Russian/Ukrainians or non-citizen residents are treated differently in the provision of these services.
161. As for an entitlement to a pension, Latvia has a three-tier pension system: 1) state compulsory pension system based on defined contributions; 2) state compulsory cumulative pension system; and 3) private voluntary pension system. In Latvia, sickness benefits are granted and paid out of the National Social Insurance Fund starting from the 15th day of sickness (week 2) but for not longer than 52 weeks. Compensation for covering the loss of income prior to and after childbirth, depend on former pay. Maternity benefits are granted to insured persons only. A child care benefit is granted to persons taking care of a child under 3 years of age, provided that they do not receive maternity benefits and do not work. All citizens of Latvia, except for those who have a temporary permit to live in Latvia, are entitled to an allowance paid to a family raising children. There are two types of allowances: child care benefit and state family benefit.

162. The applicant states that she did not receive assistance after her son was born and the applicant's daughter states that her mother
-did not receive a child birth payment bonus. she did not receive family payment during the next 12 months. I must underline - were we entitled to the mentioned above bonus and payments but we did not receive them.
163. I accept that the applicant did not receive a child birth payment bonus or a family payment. But I do not accept that such non-payment amounts to serious harm as the applicant told the Tribunal that one year after her son was born she received a social benefit of about 5 lats. I accept that the independent evidence (cited above) indicates that these payments were inadequate but the report does not suggest that ethnic Russians/Ukrainians or non-citizen residents receive differing payments from ethnic Latvians or citizens.
164. The applicant also claims that after she gave birth to her son in 1997 and her de facto left her, she complained to the police but the police did not assist her to locate her de facto husband. I accept that the Latvian police may have told the applicant that they were unable to locate her husband. I am not satisfied that the failure of the police to locate a husband, who left his wife, suggests that the police refused protection to the applicant. The applicant does not suggest that she feared domestic violence and needed the protection of the police from her husband.
165. When I asked the applicant why she did not apply for Latvian citizenship she said that she did not apply for citizenship as back then, when she could apply, she was discriminated against and she could not prove her rights in that country. She said that she has read that if she had to sit an exam she had to admit that Latvia had been occupied by Russia Lots of people do not agree with that and she does not agree too. Whilst I accept that applicants for Latvian citizenship might be required to acknowledge that Latvia had been occupied by Russia and I accept that many ethnic Russians in Latvia, including the applicant, do not agree with this historical fact (see independent information cited above) nonetheless the Latvian state grants citizenship to ethnic Russians who comprise [on some figures] about 30% of the population of Latvia and are still the majority ethnicity in Latvia's capital city, Riga. I also accept that Latvia requires that a language test be passed, a fee must be paid and applicants must sit for an exam. Nevertheless by about 2005, 100 000 ethnic Russians had applied for and were granted Latvian citizenship. I am satisfied that the Latvian state has not prevented the applicant from obtaining citizenship.
166. As for the second named applicant, because he is a child born to non-citizen parents after 21 August 1991 in Latvia, those children since 1998 have the right to be registered as citizens. When I put to the applicant that her son was able to obtain Latvian citizenship she responded that she did not know about that, her understanding was that if she was not non-citizen it would extend to her child. I am satisfied that the second named applicant is able to obtain the citizenship of Latvia.
167. The applicant daughter claims that:
- Research Directorate of the Canadian Immigration and Refugee Board, relied upon by the Refugee Review Tribunal (File no. 060619793).....the extreme right seems to have a somewhat stronger position in Latvia than in the other two Baltic republics. This has resulted in more serious instances of discrimination against Russians and in a law on citizenship and naturalization that sets limits on the number of non-citizens who can be naturalised. This law was passed against vociferous opposition from Russian minority groups, international human rights groups and even the Latvian president. Other laws passed by the Saeima, such as a series of laws requiring small business owners, teachers, public servants, and police officers to be fluent in Latvian or face forced unemployment, have been seen as a threat to Russians in Latvia. On the whole,

Latvian legislation does not bode well for the future status of Russians in the country. It has been speculated that the object of the legislation is to force most of the Russians to emigrate from Latvia. Latvian politicians recently voted down even the Framework Convention on the Protection of National Minority Rights, which was signed back in 1995. The atmosphere of social intolerance toward the ethnic Russians has been expressed in mass demonstrations coloured in nationalistic and sometimes even explicit Nazi tones

168. This report from the Canadian IRB (Canadian Immigration and Refugee Board) is dated July 2001. A subsequent report in January 2006 by the Canadian IRB said that ‘information on the treatment of ethnic Russians was scarce among the sources consulted by the Research Directorate. Sources reported contradictory information on whether ethnic Russians face discrimination. On the other hand, another article from the BBC indicated that Russians and Latvians were able to cohabit peacefully and that “[t]here is no ethnic strife in the streets of Latvia” I do not accept that the views expressed in the Canadian IRB report of July 2001 accurately reflect the position of ethnic Russians in Latvia in 2009. I prefer to rely on more recent reports (cited above). Furthermore, whilst ethnic Russians make up less than a fifth of the Latvian population eligible to vote, the pro-Russia political party ‘Harmony’ topped the Latvian poll in the 2009 European Parliament Election, obtaining a third of the vote. The independent evidence (cited above) suggested that Harmony had ‘extended its reach well beyond its traditional ethnic Russian base’ This does not suggest that ethnic Russians suffer discrimination in Latvia.

169. The applicant also claims that the Latvian state intends to institute forcible expulsion of ethnic Russians. The applicant’s daughter stated that a report prepared by Nils Muiznieks, Angelita Karnenska, Ieva Leimane and Sandra Garsvane of the Latvian Centre for Human Rights and Ethnic Studies (LCHRES):

.....the Latvian Human Rights Office and a number of NGO's had been inundated with complaints and requests for help from people who had been threatened with eviction or who were already homeless. The report said that the response of the government and the municipalities had been woefully inadequate. Why? Because the objective of the Latvian legislation is to force members of the Russian community out of Latvia.

170. I accept that in Latvia there have been a large number of Latvian citizens and residents who have been threatened with eviction or who were homeless. But this report by the LCHRES does not suggest that only the ethnic Russians/Ukrainians or non-citizen residents are threatened with eviction or are homeless. Nor does the report state or suggest that the objective of Latvian legislation is to force members of the Russian community out of Latvia.

171. The applicant claims that Latvians do not forcibly expel ethnic Russians but create conditions to make them pack their bags to go. I accept that a previously constituted Tribunal (060619793) accepted that a 2001 study ‘Minorities at Risk Project’, stated that:

.....the extreme right seems to have a somewhat stronger position in Latvia than in the other two Baltic republics. This has resulted in more serious instances of discrimination against Russians and in a law on citizenship and naturalization that sets limits on the number of non-citizens who can be naturalised. This law was passed against vociferous opposition from Russian minority groups, international human rights groups and even the Latvian president. Other laws passed by the Saeima, such as a series of laws requiring small business owners, teachers, public servants, and police officers to be fluent in Latvian or face forced unemployment, have been seen as a threat to Russians in Latvia. On the whole, Latvian legislation does not bode well for the future status of Russians in the country. It has been speculated that the object of the legislation is to force most of the Russians to emigrate from Latvia. Latvian politicians recently voted down even the Framework Convention on the Protection of National Minority Rights, which was signed back in 1995. The atmosphere of social intolerance toward the ethnic Russians has been expressed in mass demonstrations coloured in nationalistic and sometimes even explicit Nazi tones.

172. Since that report was written the independent evidence does not support the speculation made in that report that ‘the object of the legislation is to force most of the Russians to emigrate from Latvia’. Rather, independent evidence, cited above, indicates that in mid-2008 ethnic minorities formed 40% of the country’s population with ethnic Russians comprising 27.92% and Ukrainians 2.51% of the country’s population. The independent evidence, cited above, indicates that as of December 31, 2008, 130790 people have been naturalized, mostly former non-citizens. The naturalization rate reached its height over 2004–2006, peaking in 2005 (19 169 naturalized), and has fallen off substantially since then across all ethnic categories (3004 naturalized in 2008). I also note that the number of naturalizations dropped significantly in January 2007 after the European Union (EU) granted noncitizen residents visa-free travel and work rights within the EU. In Riga, the capital of Latvia, there is a greater percentage of ethnic Russians than ethnic Latvians. Whilst I accept that in 2000 some independent reports did suggest that the prevalent view of the ethnic Russian minority was that the object of Latvia legislation was to expel them, I prefer the view of the most recent reports rather than the Minorities at Risk Project quoted above. I am satisfied on the information before me that the Latvian state does not intend to institute forcible expulsion of ethnic Russians or Ukrainians who are non-citizen residents. The applicant can remain living in Latvia as a non-citizen resident.

173. The applicant claims that

‘Latvia had been criticised for violating the human rights of non-citizens and Russians, in particular you forgot that a poll conducted by the Latvian Human Rights Office had found that 22.6 per cent were of the opinion that their human rights had been violated only following the independence of Latvia.

174. I accept that since independence from Soviet occupation in 1991, Latvia has, on occasion, faced tensions between representatives of the largest Latvian and Russian-speaking communities over issues of citizenship, language rights and education. I accept that after independence a poll was conducted by the LHRO that found that 22.6% of ethnic Russians and non-citizens believed their human rights were violated. However, other indicators show a high level of interethnic tolerance in society, among the traditional ethnic groups. The Latvian Centre for Human Rights [LCHR] 2008 report http://www.humanrights.org.lv/upload_file/HCR_Leg_Police_LV.pdf suggests that in recent years the visibly different minorities, still few in numbers, are most exposed to racism. It states that ‘persons of darker skin colour, those originating from outside Europe, and Muslims are particularly vulnerable. Surveys indicate that racist and xenophobic attitudes are equally widespread among Latvians and established minority groups. Those established minority groups, include ethnic Russians and Ukrainians’.

175. This LCHR report does not suggest that ethnic Russians or Ukrainians or non-citizen residents are exposed to racism or that their human rights are violated. Rather it suggests that these groups are established minority groups who hold the same attitudes toward visibly different minorities as ethnic Latvians. I am not satisfied on the evidence before me that ethnic Russians/Ukrainians or non-citizen residents, such as the applicant, suffer discrimination for their ethnicity in Latvia.

176. The independent evidence before me indicates that the rising utility costs (particularly heating costs) caused housing costs to rise dramatically. In some instances, the costs of utilities have risen over 400% in the last several years. This rise has had the most detrimental impact on households with fixed incomes, such as pensioners, the unemployed (a high and rising percentage of the labour force), and on households with low incomes.

The independent evidence did not suggest that utility costs are charged differently to non-citizen residents or ethnic Russians/Ukrainians or that there is any intention in the future to charge such costs differently.

177. In Latvia many people, both Latvian and ethnic Russians, criticise the government. The applicant produced newspaper reports which her daughter said showed persons protesting government action and that these people were Russians because of the signs carried. The applicant claims that a fear of persecution on the basis of her political opinion or imputed political opinion because of the actions taken by her in relation to lodging complaints publicly. Even were I to accept that persons who openly protest against Latvian government actions are perceived to have an adverse political opinion or anti-government political opinion, I am not satisfied that Latvians or ethnic Russians/Ukrainians or non-citizen residents with an anti-government or adverse political opinion or imputed political opinion would not obtain the protection of the Latvian police. I have no independent evidence before me to support that claim. Rather the independent evidence (*US State Department report 2008*) indicates that the Latvian constitution and law provide for freedom of speech, and the government generally respected these rights in practice. Furthermore, Latvian residents, both citizens and non-citizens, are able to complain to the European Court of Human Rights and decisions have been made requiring Latvia to meet those standards. Whilst the European Court can take a long time for a hearing to take place there are mechanisms in place for aggrieved people to make a complaint.
178. The Language Law, revised by the Latvian parliament in December 1999 and with effect from September 2000, regulates the use of language that affects public safety, health care, protection of the consumer, and labour rights. The Latvian government financially supports education in both Lettish and Russian (in addition to eight other minority languages), and there is a bilingual program at primary school level intended to facilitate the eventual transition to Lettish secondary schools by 2004. There are several private institutions offering higher education in Russian. According to Latvia's independent Human Rights Office, only employees of State institutions, administration, local governments, agencies, enterprises and organisations must use and have a command of Lettish, to the extent necessary to perform their professional duties. The Constitution provides for freedom of religion, and the Government generally respects this right in practice.
179. Positive developments have included abolition of language restrictions in the election law, further facilitation of naturalisation with a view to increasing the rate of naturalisation, the inception of the Society Integration Foundation and an increase in its funding, and extended language training.
180. The State Human Rights Bureau has indicated most of the written appeals it receives concern housing issues. The reports do not suggest that ethnic Russian/Ukrainians or non-citizen residents suffer discrimination in relation to those appeals.
181. The applicant's daughter claims that the Tribunal has not taken into consideration comments made in the COHRE report. She states that:

“poorly informed judges, lack of legal representation or legal aid, under funded advocacy groups and general ignorance about rights and responsibilities have limited the utility of normal tenure rights. The report notes that, while some judges have found that the children's rights law is applicable in cases involving the non-payment of rent, many judges are not informed about the applicability of the law and therefore ignore it you do not believe that it is applicable in the context of evictions”.

182. I accept the comments made in this COHRE report. But this report did not suggest that ethnic Russians/Ukrainians or non-citizens are singled out for differing treatment. The applicant claims and I accept that there is inefficiency and corruption in Latvia, poorly informed judges, lack of legal representation or legal aid and under funded advocacy groups. This report does not suggest that ethnic Russian/Ukrainians or non-citizen residents are singled out or treated differently. The report suggests that this inefficiency and corruption affects all residents of Latvia.
183. Ethnic Russians/Ukrainians are able to participate in government in Latvia. The independent evidence, cited above, does not suggest ethnic Russians/Ukrainians suffer harm in Latvia. There are pro-Russian political parties in government in Latvia eg. Coalition for Human Rights in a United Latvia or Harmony.
184. The applicant was born in the Ukraine When I put to her that according to the law of the Ukraine she was able to return to the Ukraine she stated that she would end up on the streets and she had no contact with her Ukrainian family. Whilst I accept that the applicant may be able to apply for and obtain a Ukrainian passport, I am not satisfied that she would be able to relocate to the Ukraine in view of her long absence from the Ukraine, her lack of employment and her lack of contact with her family.
185. Latvia is now a member of the European Union (EU). The EU has granted non-citizen residents of Latvia visa-free travel and work rights within the EU. As the applicant does not suggest she has any profession or skills that would give her an ability to obtain employment and to support herself in another EU country I am satisfied that she would not be able to relocate to other EU country.
186. I am satisfied that the applicant and her son have not suffered systematic and discriminatory conduct directed against them either as individuals or as member of the Russian or Ukrainian ethnic minority in Latvia.
187. I have considered if all the Convention related harms feared by the applicants cumulatively amount to persecution. On the basis of the evidence before me I am not satisfied that all the harms complained of by the applicants give rise to a real chance of persecution now or in the reasonably foreseeable future in Latvia. I am satisfied that the applicant is able to return to Latvia.

CONCLUSION

188. The Tribunal is not satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.
189. The second named applicant applied as a member of the same family unit as the first named applicant. The fate of his application depends on the outcome of the first named applicant's application. As the first named applicant does not satisfy the criterion set out in s.36(2)(a), it follows that the second named applicant cannot satisfy the relevant criterion set out in s.36(2)(b) and cannot be granted the visa.

DECISION

190. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.
Sealing Officers ID: RCHADW