

**IHF FOCUS: elections and voting rights; peaceful assembly; freedom of association; ill-treatment and police misconduct; conditions in places of detention; rights of persons with mental disabilities (mental health care institutions); national and ethnic minorities; citizenship; anti-discrimination; racism and incitement to hatred; migrants and asylum seekers.**

Although the central government remained stable during 2005, the municipal elections in March proved to be more dramatic than expected. For the first time in Latvia since independence, serious charges of election fraud were made almost immediately after the elections.

Human rights did make the national agenda on a couple of occasions in 2005, both through human rights activists raising issues relating to potentially scandalous themes such as violation of freedom of assembly, discrimination and racism, but also because of scandals created by or around public officials, such as the head of the Prison Services being fired for alleged engagement in an irregular prisoner employment scheme.

The National Human Rights Office (NHRO) remained without a director after the mandate of the previous director expired in June since the candidate chosen through competition by a commission and proposed by the cabinet of ministers failed to garner enough votes for the necessary confirmation by parliament. As the office was about to be transformed into an ombudsman institution, the decision was taken to wait for the new institution before calling for new candidates. The Ombudsman Law was proposed by the president and it was passed in a second reading on 15 December, awaiting final confirmation in 2006. The new institution's mandate will be broadened beyond human rights to include also issues of good governance and responsibility for identifying conflicts between various laws (while also becoming the specialized body dealing with equality issues). The right to propose candidates to head the institution became a controversial issue at the second reading.

## **Elections and Voting Rights**

Municipal elections took place on 12 March, and 52.8% of all eligible voters participated – the lowest turnout for municipal elections ever in Latvia. The composition of the elected municipal deputies was 58% men and 42% women, while 83% were Latvian, 4% Russian and less than 1% each Poles and Lithuanians, although 11% of deputies preferred not to indicate their ethnicity.

After elections three cases of alleged election fraud and purchase of votes were initiated: in Jūrmala, Rēzekne and the Umurga parish in Limbaži district.

◆ For Jūrmala, the Administrative District Court on 30 March decided to annul the election results, since it was found that there had been widespread purchasing of votes. However, the Jūrmala election committee appealed the decision and the Administrative Regional Court on 18 July decided not to annul the poll, citing insufficient evidence of the vote buying as having been massive. An appeal was made to the administrative affairs department of the Supreme Court and on 29 November the highest court upheld the regional court's decision.

◆ In addition, on 18 March a criminal case was initiated for bribery in the election of the Jūrmala mayor and on 14 December the prosecutor general's office indicted four persons (L. Lasmanis, and G. Volburg, both New Centre deputies; former Jūrmala mayor J. Hlevickis of Latvia's First Party; and businessman G. Milušs) on criminal charges for having attempted to bribe I. Ančāns of *Mūsu zeme* (Our Country party) with EUR 20,000 to vote for J. Hlevickis as mayor.

\* As reported by the Latvian Centre for Human Rights and Ethnic Studies (LCHR, IHF member) – formerly, the Latvian Centre for Human Rights and Ethnic Studies (LCHRES). The full LCHR's *Annual Report 2005* also covers the issues of domestic judicial system, right to privacy/surveillance, and extremism. The report can be accessed at [www.humanrights.org.lv](http://www.humanrights.org.lv).

◆ On 22 March the Administrative District Court reviewed the claim by New Era and For Human Rights in a Unified Latvia (FHRUL) politicians that the Rēzekne elections should be called into question, based on witness statements by voters that votes had been bought. On 24 March the court decided to annul the elections. New elections were held on 20 August and the New Centre, which had received 32% of the votes (5,082) in March, now got only 410 votes and no mandate in the council. The New Era and FHRUL were the only parties to get two mandates, the other nine parties that were elected received one mandate each.

◆ In one third of the alleged cases of vote purchasing in the Limbažu district, the prosecutor initiated a criminal case on 22 March against the local union Stars. The cases concerned five persons who had allegedly received a small bribe for casting their votes for the union. According to the prosecutor, there was no reason to question the election results as a whole.

On 5 May, proposals for amendments were made in parliament by the People's Party to amend the three elections laws to include prohibition to stand for election of persons "who have been punished with a prohibition to stand as candidate to the *Saeima* [parliament], European Parliament, City Council, District and Parish Council Elections." At the same time, corresponding amendments to the Criminal Law were proposed, defining the prohibition as a complementary punishment, which can be imposed for a period of two to four years on a person found guilty of a crime against the state (sections 80-95 of the Criminal Law). These sections deal with crimes such as terrorism and attempts to overthrow the government, but also spreading information that is known to be false about a candidate (section 91); falsification of election documents, incorrect calculation of votes and violation of closed elections (section

92); and denigrating state symbols (e.g. the flag and the hymn). This kind of punishment could be applied not only for intentionally committed crimes but also crimes that have been committed through negligence. The amendments to the Law on City Council, District and Parish Council Elections were passed in a first reading on 19 May, but did not move further in 2005, while the amendments to the other two election laws were passed in a first reading on 2 June. The amendments to the Criminal Law were passed in a second reading on 10 November.

### Peaceful Assembly

The right to freedom of assembly, arguably the main civil liberties problem in the past few years, continued to raise concern. Parliamentarians had already in the previous year shown their propensity to increase restrictions on this right as a response to the demonstrations on minority education.

In 2005, the law enforcement and Interior Ministry authorities also joined in with their own proposals for necessary amendments restricting protest actions. A sense of urgency was expressed when the first confrontational counterdemonstrations took place on 16 March - a controversial date when some Latvians commemorate the World War II Legionnaires, who, although seen by sympathizers as nationalists fighting for Latvian independence, were a unit of the Nazi German *Waffen* military.

◆ Radical nationalist youth groups *Klubs 415* and *Visu Latvijai!* (All for Latvia!) had applied to the municipal authorities for permission to organize a march, but Riga Executive Director Māris Tralmaks had refused it. The decision was successfully challenged in administrative court, which ruled that the refusal to grant the permission violated freedom of assembly. Thus the commemorative ceremonies at the Freedom Monument

took place, while the organization Homeland-Russian National Union, dressed in what was supposed to symbolize concentration camp prisoner uniforms, complete with stars of David, held an “anti-fascist picket” for which they had not received the required permission. They attempted to block the march of the nationalist youth by forming a human chain. The police intervened, resulting in the detention of 35 persons, including the Riga Council deputy Aleksandrs Ķilmans (FHRUL) and other FHRUL activists. They were detained for administrative violations, most for refusing to obey police officers. Although there was a crowd of between one and two thousand at the place of the event, the actual demonstrators were reported by the police to be no more than 300 for the legionnaire commemoration side and some 200 for the anti-fascist picket.

◆ The United Congress of Russian Community (OKROL) had requested permission to stage a demonstration but the Riga executive director refused the permit, allegedly because an attempt to reach a compromise on the location for the event failed. On Independence Day, 4 May, during official ceremonies at the Freedom Monument, the Headquarters for the Defense of Russian-language Schools defied the refused permit to demonstrate by heckling and attempting to place dark purple flowers (the color of the non-citizens passport) with black ribbons at the foot of the monument, having previously announced that they would protest the official policies toward minorities. Six people were arrested for administrative violations. The Administrative District Court turned down an appeal challenging the refusal of the permit.

In addition, the scandals and tensions surrounding the Riga “Pride Parade” in July also heightened the sense of urgency by some regarding better control over public events. That parade took place in the cen-

ter of Riga only after the previously issued permit was first annulled by a court and then re-issued. About fifty participants of the parade were protected from thousands of aggressive protesters by police, who had turned out in great numbers.

Subsequently, amendments were elaborated to the Law on Meetings, Marches and Pickets by the Ministry of the Interior and submitted to parliament on 12 October. They were adopted in the procedure of urgency and became law after passing a second reading on 3 November.

The amendments include several problematic points. While the previous version of the law specified that events could not be held if they disturbed car traffic, the amendments include also the disturbance of pedestrian traffic. The range of buildings which cannot be approached closer than 50 meters during a demonstration was extended to include municipal council buildings, police buildings and places of detention. The municipality can issue binding regulations regarding the meetings, marches and pickets in specific places. A municipal official can also determine restrictions so that events would not disturb each other. Events can also be restricted in order to not let them disturb events that are organized on holidays and “correspond to the character of the day.” Microphones and megaphones may only be used at demonstrations if previously agreed upon with the municipal authorities. The right to challenge a decision not to issue a permit for an event was also restricted: the authorities are obliged to issue an answer no later than 48 hours before the scheduled event but the administrative court is obliged to review the case within three days.

Riga municipal authorities at times refused to issue the required permit for an event without legitimate grounds. According to official figures, out of 254 requests recorded for permission to stage a public protest event, the city council refused 28.

◆ On 5 March, about one hundred people participated in the Headquarters-organized concert “With a Smile Against the Education Reform” in the center of Riga. This event had not been sanctioned by Riga Executive Director Māris Tralmaks, who invoked the prohibition to call for disobedience to the law during public events. The decision was struck down by the Administrative District Court on 4 March.

Other non-sanctioned events did not receive the required permit on the basis of the organizer having a record of administrative violations (E. Gončarovs for 26 September) and for disturbing traffic and pedestrians (J. Pliners on 30 September). In addition, an attempt to stage an event to call for official language status for Russian was refused with the argument that such a status would be in contradiction to the Constitution and therefore cannot, based on the Law on meetings, marches and pickets, be permitted (Homeland – Russian National Union on 26 September). It appeared that although demonstrations expressing very different views were permitted, the refusals nevertheless seemed to be disproportionately directed at the pro-Russian language demonstrators.

Another problem was the large number of various administrative violations that were recorded by the police, including fining event participants for a variety of reasons ranging from not observing the regulations for public protests to making too much noise and trampling lawns. At an event on 5 March, the Riga Council Administrative Committee fined the organizers LVL 45 (EUR 65) for playing music in a public place without permission.

### Freedom of Association

Towards the end of 2005, there was also some concern regarding freedom of association.

◆ Media closely related to one of Latvia’s wealthiest magnates, who had often been

publicly suspected of large-scale corruption, ran a series of accusatory articles on institutions related in some way to George Soros funding. These organizations include several of the most developed NGOs in Latvia, including the ones working on anti-corruption issues, such as Transparency International in Latvia. In a chilling parallel to developments in Russia, former prime minister and head of the parliamentary National Security Committee Indulis Emsis publicly warned about network-type NGO structures, which with their “evil motivations” are out to discredit the government. He called for increased security service supervision of these NGOs.

As the year was coming to a close and the election preparations for the 2006 parliamentary elections got underway, more high-level politicians came out with suggestions to outlaw the involvement of foreign funded NGOs in monitoring the election process. The prime minister, however, expressed that he saw no reason to limit foreign funding as long as it is of legal origin.

### Ill-Treatment and Police Misconduct

After years of redrafting, the new Criminal Procedure Law was finally adopted in 2005 and came into force on 1 October. The law shortens the maximum detention period by the police from 72 to 48 hours before the suspect is to be brought before a judge. The law also explicitly lays down the rights of detainees, e.g., access to defense counsel, the right to receive from the police a list of defense counsels and information about institutions coordinating the provision of legal aid, notification of custody to a third party, provision of written information about detainees’ rights and a copy of the detention protocol to the detainee. Regrettably, the right of access to a doctor was not included in the new law. The law also sets a time limit for the interrogation of detainees – for juveniles it should not exceed six hours,

while in the case of adults it should not exceed eight hours.

The Law on the Order of Holding Police Detainees was adopted on 13 October and regulates the procedure for holding criminal suspects in police short-term detention custody. The law sets standards for conditions of detention in police cells that are to be fully introduced in all police stations by 1 January 2008. Previously the holding of criminal suspects was regulated by internal regulations of the state police and were classified as restricted information.

In 2005, 1,614 disciplinary investigations against police officers were undertaken by various state police complaints bodies. Of those, 187 cases were related to police violence. In three cases the allegations were confirmed and four police officers were disciplined.

Police brutality remained a cause for concern in 2005.

◆ In the early hours of 8 February, a 23-year-old suspect of a mobile phone theft died in the office of an operative police officer at the Riga police station no. 29. An autopsy established a shock and rupture of the liver. Two separate internal investigations were started by both the Riga Central Police Board and the Internal Security Office of the State Police. The Minister of Interior E. Jēkabsons ordered the State Police Commissioner J. Zaščerinskis to supervise the investigation of the case. Only on 11 March did Riga City Kurzeme District Court remand in custody four police officers who were charged with inflicting intentional serious bodily injuries resulting in the death of the victim and exceeding official authority resulting in serious consequences connected with violence.

◆ During two and a half years since the appeal, no hearing was held at the Riga Regional Court in the case of four police officers charged with intentionally causing serious bodily injuries to a Romani man re-

sulting in his death. In June 2003, the Riga Latgale District Court had found the officers innocent on the grounds of lack of evidence.

◆ At 1 a.m. on 26 August, E.G., while sitting in his car with two acquaintances, was approached by four to five police officers who demanded car keys and documents. When E.G. refused to comply, the police officers dragged him out of the car, handcuffed him, and dragged him along the ground, beating and kicking him. E.G. sustained various injuries. His acquaintances called the police who detained three police officers. The personnel inspection body of the Riga Central Police Board began an internal investigation and concluded that the police inspectors had breached regulations, and imposed a disciplinary punishment: one was demoted, two others received a warning about incompliance with professional duties, and the local police leadership was ordered to organize refresher staff training on the police code of conduct. A criminal case was also filed with the Ziemeļi district prosecutor's office.

◆ After three and a half years of proceedings, on 26 July the Bauska District Court sentenced two police inspectors, I.L. and P.M., of the Bauska District Police Department to suspended prison terms – two years and one year six months respectively – for having beaten and humiliated a pensioner E.Z. On 11 January 2002, the police inspectors, in a drunken state, had twice arrived at the E.Z.'s farm and severely beaten him. A forensic medical certificate qualified the sustained injuries to be of medium severity. The trial was delayed for three years as the police officers had tried to blame a local whose family had provided first aid and had later hired a lawyer for the pensioner.

During a monitoring visit in January the LCHR discovered a restraining device – a restraint chair in the Liepāja municipal

police short-term detention cells. The head of the municipal police claimed that the restraint chair was used under the supervision of an auxiliary nurse. There were, however, neither detailed guidelines governing its use, nor any separate registers except daily logs, recording the use. During the 2002 visit to Latvia by the European Committee against Torture (CPT), a similar restraint chair was discovered at the Ogre police short-term detention facility. In its report published in May 2005, CPT recommended that all such restraint chairs be withdrawn from use immediately.<sup>1</sup>

On 22 December, a new building for Liepāja city and district police headquarters was inaugurated - conditions at the old station, as well as in Daugavpils and Ventspils police headquarters, had been criticized by the CPT as “so appalling that they could be considered inhuman and degrading.” Conditions significantly improved in the Ludza, Cēsis and Rēzekne police stations. However, as acknowledged by police authorities, conditions in 14 of the 28 police stations fell below international standards.

### Conditions in Places of Detention

The positive trend marking a decrease in the overall number of prisoners continued in 2005, while the incarceration rate remained among the highest in the EU, with 310 prisoners per 100,000 inhabitants.

On 1 January 2006 there were 6,965 prisoners in Latvia’s 15 prisons. Of those, 2,199 prisoners or 31.6% were in pre-trial detention, down by 5% compared to 2004, and a notable decrease in the share of pre-trial detainees since 2002, when it had reached 44% of the total prison population. The number of sentenced prisoners was 4,783.

The new Criminal Procedure Law provides for stricter rules for imposing pre-trial detention, and introduces specific time limits for pre-trial detention, depending on

the gravity of the crime. The maximum length of pre-trial detention for adults was brought down from three years for grave crimes (involving violence or threat of violence) to two years. Time limits for pre-trial detention for juveniles have been fixed at half of the time for adults. However, the law does not set a time limit in cases of appeal.

The new law introduces a new post of investigating judge, who decides on pre-trial detention, after assessing the reasons and grounds for detention, and reviews the need for this measure every two months, if the person concerned has not applied for earlier review. The task of investigating judges is to monitor the observance of human rights during criminal procedures.

In 2005, the Ministry of Justice undertook measures aimed at elaborating a comprehensive strategy for the prison system. New concepts were developed and adopted e.g. on the development of a prison estate and imprisonment of young offenders for 2006-2010 and three working groups were set up to deal with prison health services, education and sentence enforcement, respectively. Documents were of varying quality. On 19 April, without any public debate but two days prior to a CPT visit to Latvia, the government adopted a concept paper on the Development of the Prison Estate 2006-2014, which foresees a gradual improvement of the generally dilapidated prison infrastructure. Among other things, it recognizes prison overcrowding (addressed also by the CPT) but plans to resolve the problem solely by significantly expanding three existing prisons. Moreover, it plans to turn the only two open prisons at Vecumnieki (80 places) and Olaine (100 places) into closed prisons, each with a capacity of 700 places. Sixty percent of the money budgeted for the improvement of prison infrastructure is planned to be spent on the expansion of

the three prisons. While the only women's prison has not been listed among the prisons planned for expansion, the official capacity will be raised from 400 to 600 places. In Cēsis correctional facility for boys, with some of the worst conditions (in pre-trial section) in the entire prison system, reconstruction will commence only in mid 2008.

The report on the CPT *ad hoc* visit to Latvia, carried out from 5 to 12 May 2004, had not been made public by early 2006.

Inter-prisoner violence remained a serious concern.

◆ In early March a juvenile prisoner was killed by two fellow prisoners at the Cēsis correctional facility for boys, where sentenced juveniles are accommodated in dormitories with 20-22 inmates. On 28 July, the Vidzeme District Court sentenced both juveniles to 11 years and one month imprisonment. Following an internal investigation, the chief prison officer on duty responsible for maintaining order was dismissed, while several other officers and the prison governor were reprimanded, and the prison governor was ordered to take measures to prevent similar incidents in the future.

◆ On 24 July, a prisoner was stabbed to death in the Valmiera prison by inmates in a cell of nine prisoners. Guards had to use force against the prisoners to be able to enter the cell to carry out the body of the deceased. One prisoner was charged with murder. Following the homicide, a massive prison search was conducted in the prison on 25 July by special prison task force "Vairogs," resulting in complaints by a group of prisoners with the NHRO alleging ill-treatment, such as beating with batons, kicking, and being forced to lie on tarmac for hours without moving. During an inspection by the NHRO on 27 July, prisoners alleged that they had not received immediate medical treatment for injuries sustained, while the NHRO noted that the use

of special measures by the task force had not been entered into the register. The prison service denied the allegations and claimed that the prisoners had inflicted injuries upon themselves and conspired against the prison authorities.

In August, the Ministry of Justice, Prison Services, the Prosecutor's Office and the NHRO reached an agreement on the need to regulate in detail the conduct of special task force during searches and emergencies, including the need for the presence of supervising authorities during such operations.

◆ On 25 December, upon his return from a central prison hospital, a 16-year-old youth was killed in his cell by two fellow inmates in Matīsa prison. An investigation was launched to determine the circumstances of his death.

On 3 March, the Medical Care Inspection Body (MADEKKI) inspected the central prison hospital and mandated the Prison Services to reconstruct buildings, acquire new equipment within ten months and remedy other shortcomings within three months - otherwise the hospital would be closed as of 1 February 2006. Conditions at the hospital have been regularly criticized by domestic and international organizations for the appalling and inhuman conditions. In the end of 2005, work was resumed on the construction of the Olaine prison hospital with 450 places.

In May, the Prison Administration released first official statistics on prison suicides (45 adults, including one juvenile), suicide attempts and instances of self-harm (619, including 117 juveniles) in prisons for the period 1999-2003. Until then prison statistics had not been included in the overall national statistics. However, several prison sources estimated the real number of suicide attempts to have been even higher. On 1 January 2006 there were 410 HIV infected and 45 AIDS patients in the entire prison system.



In late 2005 a serious controversy erupted between Solvita Aboltina, minister of justice and Dainis Lūks, director of the Latvian Prison Services regarding the establishment of an unofficial detention center on the territory of the Melsils fish cannery by the latter and allegations of illegal employment of prisoners, which led to a disciplinary investigation and Lūks' dismissal in early 2006.

In 2005, 1,286 prisoners (mostly sentenced prisoners) or 17.55% were employed (and received a modest pay) - predominantly in prison maintenance work.

2005 saw a massive increase in prisoner complaints to all complaints bodies. Complaints received by the Latvian Prison Administration increased from 3,784 in 2004 to 5,044 in 2005, while complaints to the NHRO increased from around 500 in 2004 to over 800 in 2005.

While the increase was partly due to the improvement of the prisoner complaints registration system, many complaints arose due to the lack of a uniform interpretation by different prisons of various legal provisions, such as those regarding "disciplinary punishments," the confidentiality of prisoner correspondence with courts and prosecutors' offices, as well as lack of trust by prisoners in the internal complaints system.

On 1 January, the Law on Educational and Correctional Measures came into force. It provides for more non-custodial measures for juvenile offenders than the previous law. The new Criminal Procedure Law also foresees more alternatives to pre-trial detention. By the end of 2005, probation service departments had been established throughout the country.

On 15 December, the Law on the National Human Rights Office was amended, explicitly granting NHRO staff unrestricted access to closed institutions without special permission, and access to detainees without the presence of authorities of detention facilities.

## **Rights of Persons with Mental Disabilities**

### *Mental Health Care Institutions*

Latvia continued to violate article 5 of the European Convention on Human Rights due to lack of legal provisions to allow involuntary patients to challenge detention and treatment in psychiatric hospital before an independent court. Such provisions were included in the draft Law On Psychiatric Assistance in 2004, which, however, was revoked by the state secretaries on 14 July. The Ministry of Health's action plan for 2006 does not foresee any further activities regarding the adoption of the law.

◆ In 2005 LCHR continued litigation in the case of V.S. regarding the need to place under court procedure the powers of psychiatric hospitals in restricting a person's right to liberty. In May 1998 V.S. was subject to compulsory hospitalization in the Liepāja psychiatric hospital following a request from the housing management board. An application form with his request to annul his registration at the apartment had been prepared already before the council of doctors had decided on the need for further medical treatment, and V.S. was transferred to the social care home for mentally disabled "Ilgi." His apartment was rented out again and privatized in 2000. He claimed he had never signed the application, however, his signature was certified by the hospital's doctor. In April 2004 a claim was lodged against the housing management board and the hospital, demanding compensation worth about EUR 6000, but the Liepāja District Court rejected the claim. The decision was appealed to the Kurzeme Regional Court and a request was made to appoint experts to verify V.S.'s signature. In early summer 2005 experts from the forensic research department of the state police and the Independent Experts' Association concluded that the signature on the applica-



tion was not that of V.S. On 12 December the Kurzeme District Court rejected the claim, but in early 2006, the decision was appealed to Supreme Court.

Serious allegations about human rights violations were raised in the Ziedkalne social care home for people with mental disabilities.

◆ In October, the NHRO, Ministry of Welfare and Social Services Board received complaints alleging sexual abuse by A. Nīmanis, director of the Ziedkalne social care home, of residents of the facility. During its visit on 8 November the NHRO learned that the director had set up an internal investigation commission composed of four staff members, which concluded that the suspicions were groundless and recommended the Social Services Board to transfer six complainants to other care homes or discharge them from the care home for breach of internal regulations. On 11 November, NHRO filed a complaint with the prosecutor general calling for an investigation into the complaints and resulting in criminal proceedings against A. Nīmanis. On 14 December the minister of welfare suspended A. Nīmanis from duty pending the outcome of criminal investigations.

In May, the draft policy document “The Improvement of Mental Health of Inhabitants of Latvia 2006-2016” was made public. It envisages, *inter alia*, shifting the focus of support for the mentally disabled from institutional care to community-based services, including residential community services.

Because of the perceived split between medical and social assistance, government efforts in de-institutionalization have so far focused only on persons with intellectual disability, as opposed to persons with mental illness. Although there are no legal definitions or regulations of the term “persons with disorders of mental nature,” in practice, state funding has

been provided for day care centers only for people with intellectual disabilities, since psychiatric disabilities are perceived as diseases that should be addressed by the Ministry of Health. Only in 2005 did the Ministry of Welfare for the first time allocate funding for the opening of day care centers for people with mental illness in Riga. On 13 December, the cabinet of ministers adopted amendments to the Law on Social Services and Social Assistance stating that the state has the duty to co-fund for 50% the costs of establishing and equipping group homes and half-way houses for persons “with disorders of mental nature.”

## National and Ethnic Minorities

### *Framework Convention for the Protection of National Minorities*

The main event concerning minority rights in 2005 was arguably the ratification on 26 May of the Council of Europe Framework Convention for the Protection of National Minorities, signed by Latvia in 1995. The ratification was prepared by a governmental working group under the minister for foreign affairs and included high-level politicians of the governing parties, but no minority representatives. The ratification was carried out in accelerated proceedings, and at the end of one single, lengthy day the proposed bill passed unamended.

The ratification law includes a declaration, which defines national minorities as well as includes two “hidden reservations” to the convention. The formal definition of a minority,<sup>2</sup> which is quite narrow, includes the citizenship criterion and refuses the national minority status not only to non-citizens, but also to naturalized citizens. The narrowness of the formal definition has been complemented by the right to enjoy the same rights for persons who consider themselves as belonging to a national minority but do not according to the defini-

tion provided, i.e., non-citizens and naturalized citizens of the same ethnic origin. However, the distinction among citizens is troublesome both from the convention's perspective as well as considering the principle of equality of all citizens regardless of way of acquisition of citizenship (article 4 of the Citizenship Law).

Another problem is that the ratification law does not include explicit reservations to the convention norms of use of minority languages with administrative authorities and topographical and street signs in minority languages. However, the declaration states that Latvia considers articles 10.2 and 11.3 of the convention as binding insofar as they do not contradict the constitution or other existing legal norms governing the use of the state language. In practice, this formulation provides for the two desired reservations.

Nevertheless, the ratification was a positive step, for which sufficient political support could probably not have been found without the declaration. The first report on Latvia is due in October 2006.

In comparison with the large-scale protests in 2004, which mobilized thousands of protestors against the goals and methods of implementing minority education reform aimed at securing of a minimum share of 60% of Latvian as language of instruction in secondary schools from the 10<sup>th</sup> grade, the number and scale of protest actions concerning Russian-language minority education significantly decreased in 2005. Although public actions against the reform continued with some frequency, they usually gathered a maximum of a few hundred participants, often less.

Although the United Congress of Russian Communities in Latvia (OKROL by its Russian acronym), had not gathered anywhere close to the 50,000 members it had confidently predicted at the time of its establishment, its activities continued to draw attention. The unofficial Headquar-

ters for the Defense of Russian Language Schools, often in tandem with OKROL, were the most visible organizers of events, together with politicians from the opposition parliamentary party coalition FHRUL. At some of the events, such as the second Congress of the Defenders of Russian-language Schools on 17 April 2005, some calls went well beyond education language: to achieve official status for the Russian language, and to achieve the automatic granting of Latvian citizenship to all Russian-speakers living in Latvia. Throughout the year, many of the visible leaders of these organizations appeared repeatedly in news headlines over protest actions, some were arrested and fined for administrative violations and occasionally took their cases to court when permits to organize the events were not granted. Some of their public events created political confrontations with majority politicians and public opinion when coinciding with official celebrations of national independence holidays. On several occasions, members of extremist groupings, such as the National Bolsheviks and in Liepāja, the National Democratic Party, also joined in the action.

In contrast to the Headquarters and FHRUL's confrontational style, the Association for Support of Russian Language Schools in Latvia (LASHOR) retained its position that education should take place primarily in the student's native language, but the organization also reconfirmed its commitment to dialogue with state and local authorities and non-state institutions.

On two occasions, the political opposition took to the Constitutional Court issues of concern to Russian-speaking minorities. In the first case the applicants challenged the minority education amendments stipulating that a minimum of 3/5 of classes in 10<sup>th</sup> grade secondary schools should be in Latvian<sup>3</sup> claiming that they did not comply with articles 1 (democracy), 91 (equality principle) and 114 (right of ethnic minori-

ties to preserve their language and their ethnic and cultural identity) of the constitution, as well as several norms or international law. While criticizing government shortcomings in monitoring the implementation of the norms, the Constitutional Court found no breach of the constitution, conditional on a flexible application of the norm to students who would otherwise risk dropping out of school.<sup>4</sup>

In the second case, the opposition challenged the provision of the Law on Education that stipulated that public financing of private institutions can only be provided if the institutions offer state-accredited educational programs in Latvian, claiming that they violated the constitutional articles and European standards on the principle of equality.<sup>5</sup> The Constitutional Court noted that the state is not obliged to provide funding for private educational institutions. However, if it has taken a political decision to do so, then it has to be implemented on an equal basis, including to schools with another language of instruction. The court found the provision to be disproportionate to its legitimate aim - the strengthening of the state language - and found it null and void from the publication of the decision.

### *Roma Minority*

Although the vulnerable socio-economic situation of the Romani minority – which represents less than 0.5% of the population – was hardly improving, there was increased attention devoted to ameliorating the situation of Roma by both state and non-state actors, including Roma NGOs. A project started in 2004 by the NGO Centre for Educational Initiatives with Society Integration Fund funding, was continued in 2005. It aimed to promote the integration of Romani children into mainstream schools. Nevertheless, statistics from the Ministry of Education and Science indicated that the number of Romani chil-

dren registered at mainstream schools was not increasing, and in the school year 2004/2005 was 1,464 (compared to 1,508 the previous year).

A positive development was the elaboration of a National Program for the Integration of Roma, with emphasis put on education. On 16 September the parliament provided supplementary funds to the Secretariat of the Special Assignment Minister for Social Integration, including EUR 27,660 for the development and launching of the program. By the end of 2005, a draft program had been elaborated and a working group formed.

### **Citizenship**

Naturalization rates remained high but, on the other hand, opposition to naturalization was openly displayed by nationalistically oriented politicians from several parties, while the Naturalization Board came under increasing political pressure.

Since the beginning of naturalization in 1995 until 31 December 2005, 105,088 persons had become citizens through naturalization. Nevertheless, on 1 January 2006 there were still 418,435 non-citizens in Latvia (permanent residents with no other citizenship), i.e., 18.7% of the population. Approximately half of these lived in the capital, Riga. Residents of Russian origin represented 28.5% of the population and more than half of them were citizens (350,000 vs. 280,000 Russian non-citizens). The proportion of non-citizens remains particularly high among Ukrainians, who represent 2.5% of the population (almost 40,000 non-citizens vs. 14,500 citizens) and Belarusians, who make up 3.8% of the population (55,000 vs. 30,000 citizens).

In 2005 a record number of persons naturalized. Although naturalization application rates remained higher than before EU accession, from June on the number of applications started to significantly de-

crease compared to the previous year, and by the end of the year, 19,807 applications had been received by the Naturalization Board - some 1,500 fewer than in 2004.

One of the main concerns was the high number of non-citizen children. By the end of 2005, 4,821 applications for the registration as citizen of a non-citizen or stateless child born in Latvia had been received since such applications were made possible in 1998. The peak in children registered as citizens was reached in 2004, and in 2005 the number of applications went down to 1,382. On 1 January 2006, there were still 13,570 non-citizen children eligible for citizenship through registration, and since children born in Latvia do not automatically become citizens, it is not likely that the number of non-citizen children will decrease significantly unless the law is amended.

A worrisome tendency in recent years was reinforced in 2005: an increasing proportion of naturalization candidates did not pass the tests. Almost 10% failed the language test the first time (3,292, up from 2,004 in 2004), and while those who failed the history test were fewer, the failure rate was also increasing.

◆ The case of minority education reform activist Juris Petropavlovskis, who in 2004 had fulfilled all naturalization criteria but was struck off a list of naturalization candidates by the cabinet of ministers for being allegedly disloyal to Latvia, was reviewed in court in 2005. On 16 December, the District Administrative Court dismissed the case, agreeing with the state representative's position that the decision was political, not administrative and therefore could not be adjudicated by administrative court. The decision was appealed to a higher instance court.

In response to this case, the prime minister called for a tightening of the citizenship law. A working group consisting solely of government representatives was

tasked with elaborating amendments to the Citizenship Law and submitted its proposals to the state chancery in August. In addition to amendments aiming at streamlining regulations as well as simplifying the registration of non-citizen children as citizens, among others, the proposal also included new barriers to naturalization, such as links to terrorism or activities threatening the state or public order. Public controversy, however, erupted over the inclusion of the criterion of loyalty to the Latvian state as a prerequisite for naturalization (section 12 (1)). Although officials and politicians defending the project claimed that the loyalty requirement changed nothing but simply was included in the oath of allegiance (section 18) as a subjective factor up to a naturalization candidate to define, the annotation to the proposal indicated otherwise. It speaks of a need to stop the naturalization of persons who have engaged in activity, which is "aimed against the interests of the Republic of Latvia" (without defining the interests), and specifically establishes that the "principle of loyalty is precisely included as one of the criteria for the acquisition of Latvian citizenship, its evaluation being linked to the criteria restricting naturalization and the oath of allegiance to the Republic of Latvia." After a heated debate over the loyalty interpretation took place in the Russian-language media, some Latvian nationalist parliamentarians started to call for a moratorium on naturalization and tightening of rules. In October, the Minister of Justice Solvita Aboltina withdrew the proposal for amendments out of concern that the approaching election year would make constructive political discourse on the issue impossible.

In November, Fatherland and Freedom/Latvian National Independence Movement announced that it had elaborated amendments to the Citizenship Law, which

would for the time being exclude the possibility for persons who came to Latvia during the Soviet period to naturalize and would also reintroduce very restrictive quotas for naturalization. The amendments were defeated in parliament, but only 24 deputies voted against the draconian proposal (10 for and 52 abstentions).

Calls for halting naturalization and even "audits" of naturalized citizens were issued by radical mainstream politicians from several parties. However, political pressure on the Naturalization Board increased even more in the fall, after the Corruption Prevention and Combating Bureau (CPCB) on 11 October detained a Naturalization Board official from the Limbažu office as well as a private person as intermediary, for alleged corruption in connection with illegal acquisition of citizenship by bribery.

◆ On 17 October, the head of the Valmiera Department was detained on suspicion of corruption, as well as a Riga municipal police officer suspected to be an intermediary. In December, the CPCB brought the case of the Limbažu official and two private persons to the prosecutor general and requested the initiation of a criminal case on corruption charges, but on 15 December the case was returned for additional information. The second official was still under investigation by the CPCB.

◆ Another corruption case regarding naturalization from 2002 was also decided around this time, in which ten persons, four of whom were former Naturalization Board officials, were charged with giving or receiving bribes, or acting as an intermediary for bribery of officials. On 17 November the Riga Regional Court handed down suspended prison sentences to all defendants, and confiscation of property and reimbursement of illegal profit to most of them.

### *Non-Citizens*

Municipal elections in March 2005 focused again attention to the fact that non-citizens do not have the right to vote or stand for election in local elections. At the same time EU citizens included in the residents' register could for the first time participate in the elections, following implementation of the EU Directive 93/109/EC.

There were no major changes in the status and rights of non-citizens in 2005, although the issue was formally addressed in the EU, without clarity on the final outcome as of the end of the year. The political decision to make the EU Council Directive 2003/109/EC on the rights of third country nationals who are long term residents applicable to Latvia's non-citizens had been made already before Latvia's EU accession. The directive entered into force on 23 January 2006, and a draft law to transpose the directive was elaborated under the auspices of the Office of Citizenship and Migration Affairs (OCMA) and submitted to parliament on 22 December 2005. The draft law applies equally to foreign nationals and Latvian non-citizens, and foresees that the status of EU permanent resident can be acquired through application to the OCMA. Prerequisites for acquiring the status include a five-year uninterrupted residency in Latvia, a minimum legal income level for the 12 months preceding application, and Latvian language knowledge at least at the second lowest official proficiency level. Those non-citizens who are not eligible or who do not go through the application procedures for the long term resident status in Latvia will continue to be treated according to national law, but their status in the EU remains undetermined.

Another concern regarding the limitation of rights of non-citizens was at least temporarily put to rest through a decision of the Constitutional Court. The amendments to the law on non-citizens<sup>6</sup> adopted

in May 2004 foresaw that non-citizens registered as residents in a CIS country or who had received a permanent resident permission in another country after 1 June 2004 lost their non-citizen status in Latvia. Upon an application by opposition parliamentarians, the Constitutional Court on 7 March 2005 announced that the amendments violated the constitutional right of return to Latvia of any person holding a Latvian passport, including the Latvian alien's passport (article 98) as well as several international legal norms. The court declared the amendments null and void from 1 September 2005. In August, the OCMA submitted to the government new proposed amendments to the law, which again attempted to provide for the withdrawal of the non-citizen status on grounds of lengthy absence or "not corresponding to the law's subject."

### Anti-Discrimination

In 2005, developments concerning anti-discrimination included the emergence of case law and the creation of state institutions mandated specifically to deal with anti-discrimination, but only limited progress in terms of transposing the Council Directive 2000/43/EC (Racial Equality Directive) and Council Directive 2000/78/EC (Employment Directive) - which should have been fully transposed at the time of accession to the EU in May 2004.

Although the employment directive was largely transposed into Latvian law, sexual orientation had at the end of the year not been included among the prohibited grounds of discrimination. The debates in parliament on sexual orientation were heated. On 15 September, when the amendments to the Labor Law - adding sexual orientation to the prohibited grounds of discrimination - were passed in a first reading, a proposal by Latvia's First party to amend the constitution to include a definition of marriage as a union be-

tween a man and a woman was also voted to be passed on to the relevant committees. The amendments were adopted on 15 December with 65 votes for and six against.

Draft amendments to eight laws aimed at the transposition of the race directive had been submitted to parliament but by the end of the year, only the amendments to the law on Social Security (1 December) and the Law on the National Human Rights Office (15 December) had been adopted. The Law on Social Security now provides a non-exhaustive list of prohibited grounds of discrimination and a prohibition of direct and indirect discrimination, harassment, instruction to discriminate, and victimization. The Law on the National Human Rights Office makes it the designated institution for implementing the principle of non-discrimination not only on the grounds of race and ethnicity, as required by the Race Directive, but on the basis of overall equal treatment overall. They also foresee a right, but not a duty of the NHRO to represent victims of discrimination under civil and administrative proceedings.

Two units within state institutions were created in 2005 to deal explicitly with anti-discrimination. The Department for the European Policy of Non-discrimination was established under the Secretariat of Special Assignments Minister for Social Integration and began operating on 1 August. The department envisages wider functions than implementing the race directive and includes drafting policy documents on non-discrimination, implementing and coordinating the National Action Plan on Promotion of Tolerance 2005-2009, and raising public awareness.

Even before the December amendments making it the designated body, the NHRO had created a unit for eliminating discrimination, tasked with investigating cases, analyzing legislation, and raising

public awareness. The NHRO had already been receiving complaints on discrimination, and in 2005, the number of complaints alleging discrimination increased to 117, compared to 85 in 2004. The majority of complaints referred to the grounds of gender (55), race and ethnicity (15) and disability or health (9). At the end of the year the unit still had a staff of only four.

In 2005, courts for the first time examined cases under non-discrimination clauses in the Labor Law (in force since 2002): one on the grounds of sexual orientation and the other on gender and financial status. In both cases the court ruled that anti-discrimination clauses were violated.

### **Racism and Incitement to Hatred**

In 2005 the issue of racial violence and hate speech became alarmingly topical. Although there had previously been alleged cases of racist violence, racially motivated harassment, attempted assaults and assaults were recorded officially for the first time. All the reported incidents took place in Riga and were reportedly committed by skinhead sympathizers: in March, an Indian man was assaulted by a group of youths; in April, a rabbi was verbally abused by a group of youngsters shouting anti-Semitic remarks; in June, an African man was chased through the old town by a group of youths, who threatened him and shouted racist slogans; in July, an African-American was accosted by several young men, one of whom commented that Latvia is a country for whites. Also in July, an Egyptian man was verbally abused and physically attacked.

In all cases, the incidents were recorded by the police and efforts were taken in most cases to identify and detain the perpetrators, but criminal cases were initiated only in a few cases. In the case of the African man who saved himself by running into a restaurant, the perpetrators allegedly told the police that they were skinheads

and disliked blacks - which qualified as an administrative violation of petty hooliganism. In general, when no physical injury was established, no grounds for a criminal case were found. In one case resulting in physical injury, the charge made by the police was hooliganism under Criminal Law section 231.2, but the case was later re-qualified by the prosecutor, alleging that no criminal damages had been inflicted.

Following pressure through heightened media attention and also because one of the victims was a US embassy staff member, law enforcement officials struggled to find more effective ways to handle the cases. Since the only Criminal Law section that refers to racism is the clause usually referred to as the incitement to hatred clause (section 78 on "Violation of Ethnic or Racial Equality and Restriction of Human Rights") police in at least two cases attempted to qualify the assaults as incitement to racial hatred. The incidents and the lack of effective law enforcement and judicial response raised a discussion among experts on the need for specific hate crime legislation, including adding racism and other hate to the list of aggravating factors in the Criminal Law.

Hate speech in the public sphere increased in 2005, especially on the internet. However, this also led to a dramatic increase in cases initiated by the security police under section 78. Since the norm came into force in 1999, security police had initiated between one and three cases per year. In 2005, 13 cases were initiated, most of which were published on the internet but several also in printed publications. The security police also reported having dismissed 16 complaints of incitement to hatred as groundless. Most of the cases submitted by the police to the prosecutors' office were processed and two were prosecuted by the end of 2005, with the court imposing suspended prison sentences on the perpetrators.



## Migrants and Asylum Seekers

In 2005, 20 persons requested asylum in Latvia. Eighteen applications were turned down, while the remaining two were still being processed at year's end. Due to the small number of asylum seekers and appeal cases, a decision was taken to close down the Refugee Affairs Appeals Board at the end of 2005 entrusting the Administrative District Court to examine appeals in 2006.

On 20 January, the parliament adopted amendments to the Asylum Law. The amendments provide for the examination of oral in addition to written asylum applications and disclosure of information about asylum seekers also to foreign institutions if this is in line with Latvia's international obligations, and grants asylum seekers the right to free primary medical care and education to child asylum seekers. The amendments also provide the right to family reunification of refugees, and extend receipt of temporary residence permits for those granted alternative status for up to four years instead of one year.

While asylum seekers should be acquainted with the decision and appeal procedures in a language they understand, in practice the right to appeal has been extremely limited as the decision is issued in Latvian, and the law does not explicitly require a written translation of the decision.

In 2005, the parliament adopted the Law on State Guaranteed Legal Aid, which came into force on 1 January 2006. The law envisages free legal aid to various categories of individuals, including refugees and persons under temporary protection. However, the provision in respect of refugees will only come into force on 1 January 2007.

On 5 August, seven Somali asylum seekers were detained by the state border guard and on 31 August they submitted their asylum applications. However, in order to ascertain their identities, a court or-

dered them to be placed in the Olaine camp for illegal immigrants. At the same time, the camp for asylum seekers remained empty from January through August and received six new asylum seekers only in September.

Amendments to several laws were adopted to bring Latvia's legislation in line with the EU Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers. On 30 August, the government adopted the Regulation on the Order of Reunion of Refugee Families, and Reunion of Families of Persons Granted Alternative Status in the Republic of Latvia.

As in previous years, there were cases when persons with permanent links with Latvia landed in the Olaine camp for illegal immigrants as they had not legalized their status in time, according to Latvian law, and only held old Soviet passports.

◆ In October, an Azeri man who had been living in Latvia since 1989, but had failed to regularize his status was expelled from Latvia and banned from entering the country for five years. He had cohabited with a Latvian citizen since 1995 with whom he had a son in 1999.

On 25 November the Immigration Law was amended with a section listing eight criteria to be evaluated by the judge in deciding on extension of detention or refusal to detain an alien. However, none of the criteria consider alien's private or family ties in Latvia. The amendments also provide that an alien can appeal a judge's decision on detention within 48 hours after its receipt.

**Endnotes**

- <sup>1</sup> *Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 4 October 2002*, CPT/Inf (2005) 8, 10 May 2005, at [www.cpt.coe.int/documents/lva/2005-08-inf-eng.htm](http://www.cpt.coe.int/documents/lva/2005-08-inf-eng.htm).
- <sup>2</sup> "National minorities means citizens of Latvia, who differ from Latvians in terms of culture, religion or language, who have for generations and traditionally lived in Latvia and consider themselves as belonging to the state and society of Latvia, who wish to preserve and develop their culture, religion or language. Persons who are not citizens of Latvia but who permanently and legally reside in the Republic of Latvia, do not belong to a national minority as defined by the Republic of Latvia declaration for the purposes of the Convention, but who identify themselves with a national minority within this definition, may enjoy the rights prescribed in the Convention, unless specific exceptions are prescribed by law."
- <sup>3</sup> Article 9.3 of the Transitional Provisions of the Law on Education adopted in 1999, as amended in February 2004.
- <sup>4</sup> For details of argumentation, see the full LCHR report.
- <sup>5</sup> Article 91 (equality principle) of the constitution and with article 2 of the 1<sup>st</sup> Protocol to the ECHR in conjunction with article 14 of the ECHR.
- <sup>6</sup> "Law on the Status of Those Former USSR Citizens Who Are not Citizens of Latvia or Any Other Country."