



Latvijas Republikas tiesībsargs  
*Ombudsman of the Republic of Latvia*

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**Ms. Nathalie Prouvez**

Chief of the Rule of Law and Democracy Section  
Rule of Law, Equality and Non-Discrimination Branch  
Office of the High Commissioner for Human Rights  
UNITED NATIONS

**Subject: Questionnaire „Human Rights Council resolution 24/16 on „The role of prevention in the promotion and protection of human rights”**

Dear Ms. Prouvez,

The Ombudsman's Office of the Republic of Latvia has received your letter from 9 February 2015 concerning the questionnaire on „The role of prevention in the promotion and protection of human rights.” In compliance with it's competence the Office of the Ombudsman is providing the following information.

1.a Please describe legislative, judicial, administrative and other measures aimed at prevention of human rights violations and abuses in place at the domestic level, both with regard to direct prevention (aiming to prevent violations from occurring by reducing the risk factors that cause violations) and indirect prevention (aimed at ensuring non-recurrence through investigation and addressing causes of violations as well as accountability).

Chapter 8 of the Constitution of the Republic of Latvia defines that State recognises and protects fundamental human rights in accordance with Constitution, laws and international agreements mandatory to Latvia. The Constitution states that the State guarantees and protects the most essential political, economical and social rights. Human rights provisions are included in many laws as well as in Regulations of the Cabinet of Minister's.

According to Administrative Procedure Law the individual can address the institution or the court in cases his/her human rights are infringed by administrative act or actual action of the institution. The basic objectives of this Law are to ensure the observance of basic democratic, law-governed state principles, especially human rights, in specific public legal relations between the State and a private person; to subject actions of executive power relating to specific public legal relations between the State and a private person to the control of an independent, impartial and competent judicial power; and to ensure just, accurate and effective application of the norms of law in public legal relations.

The Constitutional Court of the Republic of Latvia reviews the cases regarding the compliance of laws with the Constitution as well as compliance of regulatory enactments with legal acts of higher force. The Constitutional Court is competent to declare laws or other legal acts or their parts invalid. The courts in accordance with their competence are effective instruments which investigate human rights violations. In Latvia there are three levels court system.

The individuals can address the Office of the Ombudsman of Latvia in cases of human rights violations or of violations of good governance. The conclusions of Ombudsman are permissive.

1.b Please describe any good practices in the implementation of these measures, as well as any challenges which have been faced.

Pursuant to Section 11 (4) of the Law of the Ombudsman, the Ombudsman is vested with the mandate to examine compliance with national legislation with human rights law. Section 12(8) of the Law further states that the Ombudsman shall “provide the Parliament, the Cabinet, local governments or other institutions with recommendations regarding legislation or amendment of legislation”. For example, in 2013 and 2014 the Ombudsman provided following recommendations on national legislation:

In 2014,

- recommendation on Labour Law (Section 75, parts 2;3;7)
- recommendation on the draft law regarding health care financing which was suspended after objections from the Ombudsman’s Office
- amendments to the Law on advertisement in order to ensure children’s rights in the field of advertisement

In 2013,

- recommendation regarding the concept project developed by Ministry of Welfare on the granting of retirement pension. The project has been suspended.
- new regulation regarding the purchase of teaching materials was integrated in the Education law; the teaching aids should be funded by local authorities and the State.

1.c Please describe how such measures encompass all branches of the State (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local.

The Saeima of the Republic of Latvia adopts laws. Draft laws may be submitted to the Saeima by the President of Latvia, the Government, Committees of Saeima, not fewer

than five members of Parliament or not less than one tenth of the electorate. The Cabinet of Ministers is the highest executive body of the country. The courts analyse individual cases. The court system secures the option to appeal court decisions adopted by the court of the first instance, and the repeated hearing of a case in appeal and cassation instances.

2.a What action-oriented policies, practices and strategies to prevent human rights violations and abuses have been put in place at the national level, including the establishment of independent national institutions, national human rights action plans and early warning mechanisms?

There are several national strategies, national oriented policies in the field of human rights, society integration. However the office of the Ombudsman has observed that on many occasions the strategies and policy papers remain in the theory and are not appropriately implemented in practice.

b. Please describe how national human rights institutions contribute to prevention of human rights violations.

According to the Law of Ombudsman the Ombudsman promotes the protection of the human rights of a private individual; promotes the compliance with the principles of equal treatment and prevention of any kind of discrimination; evaluates and promotes the compliance with the principles of good administration in the State administration; discovers deficiencies in the legislation and the application thereof regarding the issues related to the observance of human rights and the principle of good administration, as well as to promote the rectification of such deficiencies; and promotes the public awareness and understanding of human rights, of the mechanisms for the protection of such rights and the activities of the Ombudsman.

c. In those States that have established a national prevention mechanism under the Optional Protocol to the Convention against Torture, please provide information on any lessons learnt regarding prevention of torture that may also apply to prevention of other human rights violations.

Latvia has not ratified the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Ombudsman of the Republic of Latvia in his letter to the Prime Minister of Latvia Mr. Valdis Dombrovskis on 17 February 2012 drew the attention to the necessity of ratification of OPCAT since the principles included in the OPCAT and the implementation of the control mechanism would essentially promote the observation of human rights in places of detention. The opinion of the Cabinet of Minister's was that currently in Latvia the competence of the Office of the Ombudsman for the most part corresponds to the criteria for national prevention mechanism set in the IV chapter of the optional Protocol.

During 18 years the Office of the Ombudsman (until 2007 – National Human Rights Office) has made monitorings in places of detention, issued recommendations and examined the implementation of these recommendations.

3.a Please describe what policies and processes are in place at the national level to collect, maintain and analyse statistical records on the situation of human rights in the country, in order to monitor the human rights situation and inform the formulation of prevention strategies and programmes; and please describe any good practices and the main challenges in this regard.

Every institution collects, maintains and analyses its own statistical records on the situation of human rights. The Ombudsman institution of Latvia collects and maintains the statistics according to its competence. However our institution is not informed about the statistics in national level on the situation of human rights in Latvia.

b. Please describe how statistical collection ensures the inclusion of all persons and groups.

The Ombudsman institution is not informed about exhaustive statistics in national level on the situation of human rights in Latvia.

4. What measures have been taken to promote a human rights culture among the population and increase the level of human rights awareness in your country, including among public officials?

Public awareness and knowledge of their rights is encouraged by publicity activities and cooperation with the media. Public awareness campaigns were launched on several topics which are important in the society. Articles have been published in the media on issues falling within the Ombudsman's competence, press releases have been prepared. In order to facilitate the access to the Ombudsman's Office in regions and to see the compliance with the human rights and the principle of good administration in municipalities, the monitoring of municipalities was launched that enabled the residents of the respective municipalities to receive consultations from legal advisors of the Ombudsman's Office on the issues related to the human rights and the principle of good administration.

In 2013 the Ombudsman's Office actively promoted public awareness of the rights of the child and mechanisms for their protection, by paying a particular attention to the child's safety in educational institutions, organized seminars for social teachers, class teachers, teachers of social studies, school directors and other subjects related to the child protection.

5. a. How have partnerships with civil society been strengthened to harness their experience and expertise to promote and protect human rights?

5.b What roles and actions can and do civil society and NGOs take to prevent human rights violations?

Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the *Saeima*. If the *Saeima* does not adopt it without change as to its content, it shall then be submitted to national referendum.

ManaBalss.lv is a social initiative platform where every citizen of Latvia can submit an initiative, gather supporters and present finished initiatives to the *Saeima*. An

initiative can be submitted and signed by any citizen of the Republic of Latvia at least 16 years of age, after authorizing through a state-registered online bank. ManaBalss.lv ensures privacy and the security of personal data. Authors of initiatives can freely contact volunteer experts in legal system, politics and other sectors, who will be happy to provide assistance in improving initiatives. Initiatives are checked to comply with ManaBalss.lv and Saeima's legal standards.

6. What measures and procedures have been put in place to ensure effective follow-up to recommendations regarding your country issued by international or regional human rights mechanisms, and which may contribute to preventing human rights violations?

The Government prepares the report about the follow-up of recommendations, the NGOs prepare their alternative reports as well. In 2014 the Office of the Ombudsman participated in UN Human Rights Committee's 110th Session in Geneva during which the third Latvian national report of the implementation of UN International Covenant on Civil and Political Rights in Latvia was discussed. The Ombudsman presented his opinion on the implementation of the recommendations in Latvia.

In 2012 the Ombudsman informed the Commissioner for Human Rights of the Council of Europe, the President of the European Council, Vice President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship, European Economic and Social Committee, Agency for Fundamental Rights, International Ombudsman Institute on the risk of poverty in Latvia. The Ombudsman appealed to these responsible institutions within the scope of their competences to use their rights and powers defined by the Treaty on European Union and the Treaty on the Functioning of the European Union in order as far as possible to prevent infringements of social rights in acts of the Member States.

7. a What legislative, judicial, administrative and other measures are in place to provide victims of human rights violations by State actors and abuses by non-State actors with an effective remedy?

7.b. What measures are in place to ensure that all can access such remedies in practice?

A person in Latvia, whose fundamental rights have been infringed, has the right to claim compensation for pecuniary and non-pecuniary damages in three ways. According to "The Law on Compensation for Damage caused by Public Authorities" when damages are caused by institution's actual conduct or unlawful administrative act. According to „The Law on Compensation for Damages Caused by Unlawful or Unfounded Actions of Investigators, Prosecutors or Judges" when damages or loss is caused by the investigation or adjudication of a criminal offense. According to Civil Procedure Law, including an express reference to guaranteed right to compensation in Article 92 of the Constitution of the Republic of Latvia.

The options for individuals and public authorities during the proceedings are not equal. However, the principle of objective investigation enshrined in the Administrative Procedure Law, which requires the court to give the parties instructions on the necessary information for a thorough examination of the case, significantly balances out the options for persons and institutions during the proceedings for damages caused by the authorities' unlawful factual or administrative act.

Compensation options for damages available for a person whose rights have been violated by the actions or decisions of the officials as a result of the investigation of a crime have been rather limited. In addition, the law does not reward compensation for unjustified violations of fundamental rights to such groups of persons as victims of a crime or a third persons whose rights or interests have been unduly affected by the actions or decisions of officials during the investigation of the crime. According to the Constitutional Court of the Republic of Latvia, the absence of a specific regulatory framework is not an obstacle for the person to claim damages by directly referring to Article 92 and applying to court pursuant to Civil Procedure Law.

Adversarial proceedings established in Civil Procedure Law obliges the individual bringing an action against an institution for compensation of damages, not only to show the extent of the damage suffered, but also to demonstrate the causal link with the institution's unlawful conduct. Although the aim of the State Ensured Legal Aid Law is to promote the individual's right to fair trial, it does not provide for individuals to receive state legal aid in civil disputes relating to defamation, as well as for the compensation for non-pecuniary damages.

In 2014 after analyzing the case law of Latvian courts the Ombudsman's Office concluded that:

- Although the Supreme Court has recognized that these disputes on the merits are not considered civil, because they are resulting in situations in which the state has exercised its public powers over the individual, the majority of the courts in the first instance fully apply the principles of Civil Procedure to such disputes.
- There is a no uniform understanding of the concept of "unjustified violation of the rights".
- Lack of uniform court practice does not encourage or can even undermine individuals' reliance that such a state responsibility and adequate compensation evaluation mechanism is effective.
- There is no uniform case law on obligation to compensate damages in case of violation of fundamental rights. In some cases, if a person is found in violation of fundamental rights, the Court presumes that with the violation of fundamental rights a person has suffered some damage, but the existence of non-pecuniary damage still might need to be demonstrated separately.

8. What contribution do international and regional organisations make to the prevention of human rights violations? What additional role could they play?

The main international human rights documents, including their monitoring mechanisms, are binding to Latvia. According to the European Convention on Human rights individuals can submit their applications to the European Court of Human Rights. Judgements of the European Convention on Human Rights are binding.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Latvian places of detention on many occasions and provided its recommendations. These recommendations are useful in the work of the Office of the Ombudsman by realizing its mandate.

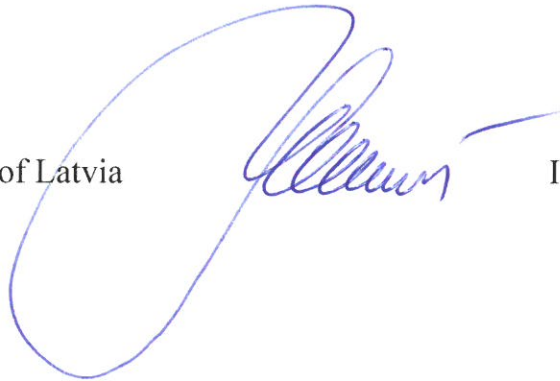
Operation of the national human rights' institutions in the international environment is basically concerned with the civil and political rights of population, while

addressing economical and culture rights and issues remains solely the task of national level. The austerity measures pursued by national governments in recent years under the burden of economical crisis have seriously affected the fundamental rights of population, and this issue reaches beyond national scale.

In the Treaty on European Union the Member States have reflected the desire to ensure the improvement of welfare in accordance with the principles enshrined in the Charter of the United Nations. The Treaty contains a commitment of the EU to set and pursue their policy and activities with due regard to the requirements related to provision of adequate social protection and combating of social exclusion. It is crucial to ensure that such commitment is not only included in policy-planning documents and declarations but also implemented in reality.

In the context of protection of the rights of individual it is important to be aware of the fact that no compensation can be available to individuals in the field of social and economic rights, in contrast to the field of civil and political rights where an individual can seek protection of their rights from the European Court of Human Rights, for example. It may be therefore reasonable to open discussion of establishment of an international, eventually a regional court available to individuals for protection of their fundamental rights also in the field of social rights.

Sincerely Yours,  
Deputy Ombudsman of the Republic of Latvia



Ineta Piļāne

