



Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:

LATVIA

THE RIGHT TO ASYLUM

I. Background information and Current Conditions

In 2008-2009 Latvia faced the severe consequences of national economic recession, which resulted in the significant decrease of state-funded social programs, budget cuts and reduction of staff at all governmental agencies and institutions.

Latvia ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (henceforth referred to jointly as the 1951 Convention) in 1997 and related bylaws and regulations were passed in January 1998.

Latvia is a transit country with mixed-migratory movements. Incidents of illegal migration and human trafficking continue to increase. There have also been numerous apprehensions of irregular migrants (particularly Afghans), both at the border and inside the country, by the Latvian State Border Guards. The representatives of the Russian border agency estimate that there are about 20,000 illegal immigrants near the Estonian and Latvian borders. These people aim to get to Scandinavian countries through the Baltic States.

The Immigration Law determines the status of foreigners, who have immigrated into Latvia after 1 July 1992. Asylum issues are regulated by the Asylum Law, which entered into force in July 2009). UNHCR contributed significantly to the process of the adoption of this law by providing a detailed commentary to the draft law and taking part in the session of the Parliamentary Committee on Human Rights and Public Affairs. The new Asylum Law transposes relevant EU Directives adopted in the first phase of the harmonization of a Common European Asylum System.

The Ministry of the Interior (MoI), the Office of Citizenship and Migration Affairs (OCMA) and the State Border Guard (SBG) are the main governmental bodies with responsibility over policy/planning for asylum issues as well as matters related to “non-citizens” and stateless persons. MoI is also responsible for the administration of Latvian European Refugee Fund (ERF) projects.

The Asylum Affairs Division of the OCMA conducts refugee status determination (RSD) and manages the single accommodation centre for asylum-seekers (in Mucenieki). The OCMA is also responsible for the issuance of identity and travel documents, maintenance of the Population Register and implementation of the state migration policy, including family reunification and repatriation.

The SBG is responsible for the initial processing of asylum applications and interviews. It is also responsible for the deportation of rejected asylum-seekers. The SBG has the right to detain asylum-seekers for up to 7 days, after which permission must be sought from the Court to prolong the period of detention.

Since 1 January 2006, the regional administrative courts have started to play a very important role in Latvia, as they have become an appeal body for OCMA decisions. The main task of the administrative court in reviewing an asylum application is to verify the validity and motivation of the administrative decision or the action taken by an institution or to determine the responsibilities and/or rights of the individual.

Latvia receives a relatively low number of asylum applications. The main protection concerns relate to obstacles in the access to the territory and to the asylum procedure. 52 asylum claims were registered in 2009 and 42 asylum applications were lodged in the first 8 months of 2010, including 20 from Afghanistan, 6 from Russia and 4 from the Democratic Republic of Congo. Subsidiary protection entitles the beneficiary to a temporary residence permit for 1 year. The overall recognition rate is 44.7 %.

II. Achievements and Best Practices

Issue 1: Cooperation with UNHCR.

The Government of Latvia co-operates with UNHCR in protecting and assisting refugees and other persons in need of international protection. UNHCR Regional Office for the Baltic and Nordic Countries maintains regular contact with the Government. UNHCR has regular access to reception and detention centres. The OCMA is helpful in sharing information on asylum practice and on individual cases. In 2009, the UNHCR Regional Office became a member of the Steering Committee responsible for evaluation of the projects submitted under the European Refugee Fund and for supervision of project implementation.

Since 2008 UNHCR has been regularly invited by OCMA and SBG to participate in training sessions on asylum and refugee matters. In addition, administrative law judges have been given the opportunity to take part in a number of international conferences, including events organized by the International Association of Refugee Law Judges.

Article 4 of the *Asylum Law* specifically requires that MOI, OCMA and SBG cooperate with UNHCR in all matters concerning persons in need of international protection. Moreover, when examining an asylum application, the relevant institutions shall consider the opinion of UNHCR¹. Latvian legislation provides the right of asylum-seekers to contact and communicate with UNHCR.²

The UNHCR Regional Office in Stockholm has initiated a proposal to conclude a Tripartite Memorandum of Understanding (MoU) with the Government of Latvia. The MoU would provide a

¹ *Asylum Law*, Article 1, section 2.

² *Asylum Law*, Article 10, section 7.

formal framework for the cooperation on information gathering and analysis of information regarding persons in need of international protection. The proposed initiative has received a positive feedback from the Government.

Issue 2: Access to education

In March 2010, the Latvian Parliament backed major amendments to the Education Law, to expand the right to education to Latvian citizens, EU citizens, and “non-citizens” (special status granted to those former USSR citizens, who received permanent residence registration in the Population Register of Latvia before 01 July 1992), non-citizens who have residence permits in Latvia, stateless persons with valid travel documents, refugees and children of asylum-seekers. Children of persons who have no legal basis for staying in Latvia will also be entitled to education in Latvia until their deportation.

III. Challenges and Constraints

Issue 3: Access to territory and asylum procedure

Access to the territory and asylum procedures remain the major protection concerns in Latvia. Since UNHCR has no national presence in Latvia, information about the actual situation at the border-crossing points is scarce. However, there are reports of forced returns of foreigners who arrive at the International Airport in Riga and denials of access to the asylum procedure. Local media also reported on forced returns of illegally residing foreigners (originating from Afghanistan, Pakistan, Iran and Uzbekistan). In December 2009, UNHCR received information about the deportation of 10 Afghan nationals, who allegedly were denied the possibility of applying for asylum.

The current border guard practice is to conduct an initial interview and fact gathering only if a foreigner explicitly requests asylum. In reality, many foreigners are unaware of the possibility of claiming asylum or of how to go about it. In addition, persons in need of international protection do not always have the confidence to reveal personal information that would trigger the asylum procedure.

Furthermore, the law provides that the border guards have the competency to conduct the initial examination of asylum claims submitted at the border and they have the power to refuse entry. In such situations, an asylum-seeker is subject to immediate return from the border. It remains unclear, however, how a rejected asylum-seeker can avail of the legally guaranteed right to appeal. This is further compounded by the short time spent in the territory of the country, language difficulties, the institutional framework and the extremely limited availability of free legal aid.

The immediate examination of asylum claims by border guards places constraints on procedural safeguards and a fair review of asylum applications. The accelerated asylum procedure may prevent asylum-seekers from fully presenting their claims and thereby put them at heightened risk of being returned in violation of the *non-refoulement* principle to a country where they may face persecution, torture or inhuman or degrading treatment.

The planned MoU between the Government and UNHCR is expected to improve the situation and bring clarity and greater efficiency to the process of identifying persons in need of international protection.

Issue 4: Arbitrary detention of asylum-seekers

UNHCR receives regular complaints concerning the detention of asylum-seekers at the border, for illegal stay in Latvia. Over several years, UNHCR has made a number of interventions regarding the

practice of detention of asylum-seekers who are unable to present valid identification documents. UNHCR is concerned that the national legislation permits indefinite detention of asylum-seekers and reaffirms that detention should be applied only in exceptional cases for a period as short as possible with the possibility of speedy judicial review and that alternatives to detention should be sought.³

In addition, UNHCR recommends the inclusion of a maximum period of detention for asylum-seekers in legislation, in accordance with principles of reasonableness and respect for the right to liberty and security of persons as prescribed by Article 5 of the *European Convention on Human Rights and Fundamental Freedoms*. It is also necessary to develop and adopt rules dealing with alternatives to detention in Latvian national legislation.

Moreover, to be consistent and ensure a common level of protection to all asylum-seekers, UNHCR recommends adoption of a legal provision stipulating unimpeded access to the asylum procedure, legal and social assistance, interpretation facilities and access to information for detained asylum-seekers, so that the detention shall not constitute an obstacle to asylum-seekers' ability to pursue their asylum application.

As regards the detention of minors, UNHCR would like to refer to Article 37 of the Convention on the Rights of the Child, General Comment No. 6 of the Committee on the Rights of the Child⁴ and UNHCR's Executive Committee Conclusion No. 107 (LVIII) on Children at Risk,⁵ which require that State parties ensure that detention of minors be used only as a measure of last resort and for the shortest appropriate period of time. Moreover, as a rule, unaccompanied minors should not be detained.

Issue 5: Detention conditions

In the majority of cases, detained asylum-seekers are accommodated at the Centre for Irregular Migrants in Olaine. The material reception conditions of this centre are very poor. The building and its facilities, some old barracks, requires renovation. In particular, the high level of humidity in the rooms may have a negative impact on detainees' health.

A regulation of the Ministry of the Interior stipulates basic standards regarding the quantity and quality of food for detained asylum-seekers. The monitoring of conditions at detention centers show that, as a whole, the detainees have adequate access to food, but the range of products seems to be insufficient. These products are delivered once a week and bread two times a week and detainees cater for themselves using the available facilities. The daily amount spent by the Government on nutrition varies between 1,80 – 1,90 LVL (1 LVL = 1,42 EUR) per detainee. It is recommended that more resources be provided for the nutrition of detainees.

³ In this context, regard should be had to the *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), p. 57, available at: <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>, and *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, available at: <http://www.unhcr.org/refworld/docid/3c2b3f844.html>

⁴ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.unhcr.org/refworld/docid/42dd174b4.html>

⁵ UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), p. 191-194, available at: <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>

Furthermore, Latvian legislation does not provide for specialized treatment of vulnerable groups such as children, survivors of torture or sexual violence and traumatized persons.

IV. Recommendations

The Government should guarantee full respect of the *non-refoulement* principle by ensuring access of asylum-seekers to the territory and the national asylum procedure, especially at the entry points to the country. In addition, an independent monitoring procedure at the border should be established in cooperation with UNHCR.

The Government should abolish arbitrary detention of asylum-seekers and establish additional procedural safeguards for detained asylum-seekers, including time limits for detention.

The Government should improve detention conditions for asylum-seekers at the Centre for Irregular Migrants in Olaine and ensure that particular needs of vulnerable groups are taken into account.

THE RIGHT TO A NATIONALITY

I. Background information and Current Conditions

Latvia acceded to the *1961 Convention on the Reduction of Statelessness* in 1992 and to the *1954 Convention Relating to the Status of Stateless Persons* in 1999. Latvia has also signed, but not yet ratified, the *European Convention on Nationality* on 30 May 2001, with a number of reservations.

The Parliament of Latvia adopted the *Citizenship Law* on 22 June 1994. The statute defines the requirements for Latvian citizenship, naturalization and rules on the loss and restoration of Latvian citizenship. Dual citizenship is prohibited. In March 2010, the OCMA replaced the Naturalization Board and is now responsible for naturalization processes in Latvia.

Ratification of the *Convention relating to the Status of Stateless Persons* led to the adoption of the *Law on Stateless Persons* in 2004. The law determines the legal status of stateless persons in Latvia, as well as their rights and obligations. The status of a stateless person may be acquired by a person whose status is not determined by the *Law on the Status of Those Former USSR Citizens who are not Citizens of Latvia or Any Other State* (the Non-citizens Law), adopted in 1995. This last piece of legislation governs the legal status of “non citizens.”

During 2009, a total of 3,221 persons acquired the citizenship of Latvia. Of these persons, 3,100 were “non-citizens” and two were stateless persons. There is a higher interest among residents of Latvia to obtain Russian citizenship. 2706 Latvian “non-citizens” received Russian citizenship and residency permit in Latvia in 2009. Currently, there are about 31,000 Russian citizens with residency permits in Latvia. In October 2009, a special service centre in the Moscow Cultural and Business Centre in Riga was established to assist interested candidates to prepare their applications for Russian citizenship. Around 4,000 applications for Russian citizenship were submitted to the Russian Embassy in Latvia in 2009 (twice the number registered in 2008). According to the Russian Consul General in Daugavpils (city in the Eastern part of Latvia), the majority of persons applying for Russian citizenship are “non-citizens” of retirement or pre-retirement age.

II. Achievements and Best Practices

Officially recognized stateless persons holding Latvian residence permits (temporary or permanent) are subjects to the same limitations as foreign citizens and may be expelled from the country pursuant to the provisions and safeguards established by the national immigration, administrative and criminal law. Stateless persons have free access to the labour market, education and healthcare. In addition, stateless persons who reside in an EU Member State and hold the passports of that Member State are exempt from visa requirements when traveling in the EU. Stateless persons who are in possession of a permanent residence permit are enjoying the same social protection as citizens and “non-citizens. Finally, after residing in Latvia for at least 5 years without interruption following the receipt of a permanent residence permit, stateless persons may apply for naturalization.

The scope of rights of Latvian “non-citizens” is close to those of Latvian citizens – they cannot be expelled and they enjoy consular protection. The Latvian “non-citizens” are the only group of persons, in addition to citizens, who enjoy permanent residence status in Latvia *ex lege*. Once a person has lawfully obtained the status of a Latvian “non-citizen”, s/he can freely reside on a permanent basis in a foreign country retaining also all the rights and privileges enjoyed by Latvian “non-citizen”, *inter alia*, to move freely and return back to Latvia at any time. “Non-citizens” have the same social guarantees as Latvian citizens. “Non-citizens” may apply for naturalization at any time.

According to the Latvian Human Rights Committee, there are currently 79 differences in rights of citizens and “non-citizens” of Latvia, in particular relating to the right to vote in parliamentary and local elections, and referenda, and the right to work in the civil service or occupy posts that are related to national security. “Non-citizens” cannot be founders or members of political parties.

In certain cases, the naturalization exams have been simplified. Graduates of national minority schools who have passed the centralized exams in the Latvian language and literature are not required to take the language test for naturalization. Applicants over the age of 65 need to take only the oral part of the language exam. The Government has also reduced the state fee for passing the naturalization exams and has extended the number of groups entitled to a reduced naturalization fee (less than 5 EUR).

III. Challenges and Constraints

Latvia continues to face difficulties related to the integration of its stateless population. There are approximately 336,000 “non-citizens” in Latvia as of August 2010. This figure includes 114,000 persons above the age of 60 and 17,000 persons born in Latvia after restoration of independence.

According to the media, the main patterns of reduction of the number of “non-citizens” in 2009 are death (39.1%), acquisition of Latvian citizenship (23.5%), emigration (18.9%), and acquisition of foreign citizenship (18.4%).

The number of naturalized persons has declined after the accession of the country to the EU. During the first six months of 2010, 1,172 persons have received Latvian citizenship: 908 of them were “non-citizens”.

Children of stateless persons or “non-citizens”, who were born after 21 August 1991, became eligible to apply for Latvian citizenship in February 1999. Since this time, about 8,000 children have been recognized as citizens of Latvia. The problem of the low level of registration of children born in Latvia to “non-citizen” parents needs to be addressed.

IV. Recommendations

The Government should revisit the existing requirements for naturalization with the objective of facilitating the granting of citizenship to “non-citizens.” The Government should also revise legislation to provide automatic acquisition of citizenship by stateless children born after 21 August 1991.

In addition, the Government should relax the language proficiency requirements for elderly persons. The Government should also conduct information and awareness-raising nationwide campaigns on citizenship and citizenship rights encouraging “non-citizens” and stateless persons to apply for Latvian citizenship.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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