



Latvijas Republikas tiesībsargs
Ombudsman of the Republic of Latvia

Baznīcas street 25, Rīga, LV-1010, Latvia, phone +371 67686768, fax +371 67244074, e-mail: tiesibsargs@tiesibsargs.lv,
www.tiesibsargs.lv

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uprsubmissions@ohchr.org

The obligations assumed and the achievements made by Latvia in the area of human rights shall be assessed at the 24th Session of the UN Working Group on the Universal Periodic Review. Ombudsman of the Republic of Latvia as the National Human Rights Institution hereby presents our report on the human rights situation in the Republic of Latvia within the framework of the 2nd cycle of the UN Universal Periodic Review.

Provision of the right to education in case of children with special needs (including children with learning difficulties and children with mental development impairments)

The right of children with special needs to pursue education appropriate to their health condition, development level and abilities is a continuously topical issue in our country. Multiple national legal acts of Latvia¹ provide for the right of a child with special needs to proper quality basic and comprehensive secondary education appropriate to their physical and mental abilities and preferences. A State and municipal level system is established in Latvia for guaranteeing the provision of such right, so that children can access to appropriate education either at special educational establishment or at comprehensive educational establishment designed to include children with special needs.

Municipalities are not interested in licensing special curricula to comprehensive educational establishments, and the parents therefore have to select a special educational establishment appropriate to the child's needs. On most occasions, children with special needs have no special educational establishments available in the vicinity of their place of residence or even on the administrative territory of their municipality, and therefore the children are mainly attending special boarding schools where they stay till the school holidays because the municipalities are unable/unwilling to provide transportation for such school children to and from the educational establishment. On the other hand, even if transportation of a child to and from school is provided, the time required for such trips adversely affects the child's ability to focus on studies.

The special boarding schools also provide education to a high number of children accommodated at municipal orphanages. At the municipal orphanage "Līkumi" in the county of

¹ Section 11, 54 of the Law on Protection of the Rights of Children; Section 3¹ of the Education Law; the Comprehensive Education Law, etc.

Salas, for example, 44 of 54 school age children pursue education at boarding schools, and they all are also accommodated there.

The special curricula provided at special boarding schools may be licensed to municipal comprehensive educational establishments so that children can live at their respective place of residence and have access to education appropriate to their skills.

The State has to facilitate availability of the special curricula thus guaranteeing that the obligation of each municipality is met as stipulated in Section 17 part One of the Education Law to provide access to pre-school education and basic education to each child with declared residence on the administrative territory of the respective municipality at the nearest educational establishment to the child's place of residence.

Provision of the rights of children left without parental care and children accommodated in child care institutions (orphanages)

Provision of the rights of orphans and children left without parental care has been continuous urgent issue in our country. According to the legal regulations, "Out-of-family care of a child at a child care institution shall be provided if care by a guardian or foster family is not suitable to the child in question. The child shall be accommodated at the child care institution until appropriate care by a guardian or foster family can be provided."² Orphanages should therefore only provide accommodation of children if institutional care is found the best suitable to them. About 1'350 children are presently accommodated at municipal orphanages in Latvia. In practice, the children are mainly referred to orphanages if no alternative care is available because of the insufficient number of guardians and foster families in our country, rather than because institutional care is the best suitable to them.

The Ombudsman has informed the Saeima and the Government of the need to pursue appropriate policy for facilitating the availability of alternative care services and to provide sufficient funding and social guarantees to the people willing to undertake care of children. Municipalities can work in two directions to increase the number of foster families and guardians: first, by promoting the institution of foster families and guardians; and, second, by providing the required support and assistance to guardians and foster families. It is crucial to ensure that the required funding is provided to alternative care-takers in the amount sufficient to cover all actual expenditures related to the maintenance of a child. With the view to guarantee the right of children placed in out-of-family care to grow up in family-based environment, other forms of support are equally important to prevent the risk of deteriorating the quality of care: education and support groups, as well as availability of psychologist and other specialists both to the care-takers and to the children. Other forms of support available to alternative care-takers are also inadequate, and this leads to the placing of children into institutional care. Change of care-taker is traumatic in case of children who have been separated from their family, and the State should therefore put in the best efforts to support and strengthen the institution of alternative care.

Progress on the national level is regrettably too slow. There is deficit of alternative care-takers because the State and municipalities have not provided the required funding in the amount sufficient to enable care of a child without investing the care-taker's own financial means.

The law also stipulates the obligation of custodian courts to ensure periodic reviewing of dossiers of the children placed into institutional care and to seek the possibility to provide care of a child by a foster family or a guardian if reunion with the biological family is impossible. Experience shows that most frequently children remain in institutional care from 2 to 6 years, and 12% children have been remained in institutional care as much as 10 years. The data about continuous stay of children in orphanages evidence failure to consider either reunion with the biologic family or provision of other type of out-of-family care, such as a foster family or a

² Section 27 part 3¹ of the Law on Protection of the Rights of Children .

guardian. The given situation also demonstrates the failure on part of social service and custodian courts to take effective steps in cooperation with the institutional staff for facilitating returning of a child into family-based care.

The State has to develop preventive support to the families with children and to ensure effective social work and social services in the situation of crisis, including educational, social and other assistance to parents of the child during the period when the child is placed into out-of-family care, in order to facilitate resuming of family-based care of a child³.

Children with behavioral impairments

Violence between children is widely common in educational establishments. The right of child to development is equally jeopardized by suffering from violence and by exerting violence, and therefore elimination of violence is an important issue in the provision of the rights of children.

Normative regulations intended to prevent and eliminate similar situations is adequate, however it is not applied to the full potential.

According to Section 58 of the Law on Protection of the Rights of Children,⁴ municipalities shall develop social behavior correction programs for each child who commits unlawful activities or takes any other actions likely to lead to unlawful activities. Work with children for the prevention of violations of law shall be carried out by municipalities in collaboration with the parents of children, educational institutions, public organizations and other institutions. Various specialists should be attracted within the framework of social behavior correction programs (social pedagogues, neurologists, psychiatrists, speech therapists, clinical psychologists, psychotherapists, etc.) to provide emotional support and professional assistance to children. The Ombudsman has established that the above-described obligation enshrined in the law is continuously neglected by most of municipalities: they fail to timely develop behavior correction programs for children with anti-social behavior. 93 of 119 municipalities of Latvia developed programs for less than 10 children in 2013, notwithstanding that, according to our investigations, there are children with behavioral impairments in each class. Instead of ensuring that the principal of orphanage or educational establishment notifies the municipality of the need to develop behavioral correction program, the child is subject to administrative punishment and/or referral to psycho-neurological hospital as a result of committed offence.

According to the municipalities, the key problems that affect the efficiency of preventive work include lack of resources (specialists (narcologist, psychologist, social pedagogue) and availability of addiction-treatment programs; interest on part of specialists and their competence; available leisure and employment activities; adverse attitude on part of society) as well as poor cooperation between the involved institutions.

The State has to ensure that the right of children to sound development is adequately provided by means of behavior correction programs developed in accordance with the normative regulations.

On ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Republic of Latvia is a State Party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 since 14 May 1992. The UN General Assembly adopted on 18 December 2002 the Optional Protocol to the Convention aimed at establishing an effective, independent national preventive mechanism in the Member States to prevent torture and other cruel treatment, and to ensure continuous control of the conditions at prison facilities.

³ Section 44 part One of the Law on Protection of the Rights of Children.

⁴ Section 58 part Two para 7 of the Law on Protection of the Rights of Children: "The municipality shall establish a prevention file and draw up a program for social correction of behavior for each child who begs, is vagrant or performs other acts which may lead to illegal actions."

The Ombudsman filed a petition on 17 February 2012 with the Prime Minister for considering the acceding to and ratification of the Optional Protocol. The Cabinet pointed out in their reply of 30 March 2012 that ratification of the Optional Protocol would be considered in future, further noting that the scope of mandate of the Ombudsman largely meets the criteria listed in Section IV of the Optional Protocol that need to be complied with by a national preventive mechanism.

The Optional Protocol still has not been ratified by the Republic of Latvia, and therefore no national preventive mechanism in the meaning of the Optional Protocol has been established in our country. It should be noted that the institution of Ombudsman may not be treated as an effective, independent preventive mechanism, since visits to closed-type prison facilities are only made within the existing capacities in reaction to the provided information about eventual infringements of human rights, instead of regular preventive visits to such facilities. Further, the available funding limits the possibility to attract independent experts from various fields: physicians, psychologists, psychiatrists, representatives of NGOs, etc.

Problem aspects of the institution of legal capacity

The new regulation on restrictions of legal capacity enacted in Latvia on 1 January 2013 has introduced significant improvements in this area. According to the new regulation, full deprivation of legal capacity and restricting of personal non-property rights of an individual is not possible any more. Legal capacity may be only restricted in certain areas, such as financial matters and the right to manage property. The Ombudsman Office also actively engaged in 2013 in the educational process regarding the new legal regulation.

The Ombudsman Office examined at the end of 2013 the court judgments on restriction of legal capacity adopted in the first half of 2013, and the result of such examination was a number of problems identified in relation to the application of the new normative regulation; the Ministry of Justice was accordingly notified thereof. The courts apply restrictions to some areas that are subject to no restrictions, such as deciding on placement into state social care institutions, or even full restriction of legal capacity. Actions are groundlessly instituted and explanations are also required from the individuals in respect of whom applications of legal capacity are filed, and court meetings are scheduled in case of applications for declaring a person legally incapable.

In 2014, the Ombudsman Office continued the provision of information regarding the aspects of application of such norms in the context of human rights, and also repeatedly drew the attention of the Ministry of Justice to the continuation of the identified shortcomings in practice. Notwithstanding that the Ministry of Justice has acknowledged and agreed with the existence of such problems and pointed out to the intention to address them through repeated information and education of those responsible for application of legal norms, in practice it has to be admitted, however, that significant shortcomings can be observed in the application of the new regulation for more than two years already, and therefore restrictions are imposed on legal capacity of individuals in contradiction with the human rights.

On strengthening the Internal house Security Office

The concept developed in January 2013 by the Ministry of Interior regarding the transforming of the Internal Security Office subordinated to the State Police into an institution supervised by the Ministry of Interior is designed to provide institutional autonomy of the investigation authority. Operation of the new structure was scheduled to begin in October 2014, yet it has been rescheduled to autumn 2015.

Changes in the existing practice in Latvia are crucial in addressing the shortcomings in the internal investigation of the actions of police officers noted by the European Court of Human Rights four years ago already in their award rendered in 2011 in *Jasinskis v. Latvia*. Officers of the existing Internal Security Office who have identified shortcomings in the inspections conducted by them shall continue their service in the new structural unit. It should be therefore

emphasized that, apart from institutional autonomy, particular focus is required on increasing the capacity of the said institution to attract human resources and on training of the existing staff.

On poverty risk in Latvia

The Ombudsman drew the attention of the Government in 2011 already to the fact that the minimum amounts of old age pension fixed in our country are insufficient to guarantee the minimum social provision, and he asked to use any of the internationally recognized methods for determining the minimum amounts of old age pensions. In 2014, the amount of pension to 66% of all recipients of old age pension (472 thousand persons) did not exceed EUR 284.58, and for nearly 6% of all recipients of old age pension it was only EUR 142.29.⁵ The average amount of old age pension in 2014 was EUR 266.26⁶.

The Ombudsman also stated in 2011 that the state failed to guarantee the right to at least minimum social security, since the amount of state social security since 2006 was only EUR 64.03, and for persons with disabilities from young age it was EUR 106.72. The amount of state social security allowance has been slightly increased, starting from 2014, for persons with disabilities, to the amount of EUR 76.84 to EUR 138.74, depending on severity of the disability. However, such amount of state social security allowance is also insufficient to guarantee decent living.

The Ombudsman pointed out in 2012 to the high poverty risk in Latvia⁷ and emphasized that, in spite of recovering economics, economical tension is still experienced by more than a half of all population in Latvia, and even as much as 77.7% of households in regions⁸. According to recent data, economical tension in Latvia has decreased, yet it still exceeds 50%, and in regions it even affects 58.8% of population and 61.5% of households⁹. 40% of all population of Latvia was exposed to the risk of poverty and social exclusion in 2011 and in 32.6% of population was subject to such risks in 2014.¹⁰ It was expressly emphasized in the report that the particularly vulnerable groups – seniors, persons with disabilities and children – were mostly subjected to the poverty risk.

The Ombudsman has also drawn attention to the insufficient amount of the minimum wage. The minimum wage during the period from 2011 to 2013 was EUR 285. At present, the minimum wage is fixed at 360 EUR/month. The amount after taxes available for living is only EUR 265, which is only by EUR 5 higher than the estimated poverty threshold fixed in 2015 at 260 EUR/month for one person¹¹. According to statistic data, the minimum wage or amount under the minimum wage is earned by 193.4 thousand persons or 25.3% of all employed persons¹². According to the trend observed during the period from 2011 to 2015, the proportion of employees earning the minimum wage or smaller amount has decreased from 29.8 in 2011 to 22.2% in 2014¹³. In 2015, however, the proportion of such persons increased to 25.3% along with the increase of the minimum wage.

⁵ The Central Statistic Board of the Republic of Latvia. Available at: <http://www.csb.gov.lv/dati/statistikas-datubazes-28270.html>;

⁶ Ibid

⁷ The Ombudsman's report of 30 November 2012 concerning the poverty risk in Latvia (document No. 1-5/298). Available at: <http://www.tiesibsargs.lv/sakumlapa/tiesibsarga-zinojums-starptautiskajiem-partneriem-par-nabadzibas-risku-latvija>

⁸ Ibid.

⁹ The Central Statistic Board of the Republic of Latvia. Available at: <http://www.csb.gov.lv/dati/statistikas-datubazes-28270.html>

¹⁰ Eurostat. Available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps03&lang=en# [viewed on 22.05.2015]

¹¹ Eurostat. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li01 [viewed on 22.05.2015]

¹² The Central Statistic Board of the Republic of Latvia. Available at: <http://www.csb.gov.lv/dati/statistikas-datubazes-28270.html> [viewed on 22.05.2015]

¹³ Ibid.

Availability of health care services

Health care services have been unavailable (both financially and territorially) during the last six years to a large part of population in Latvia (in particular following the overall decrease of funding to all industries, including health care, in 2009)). A high proportion of patients have no access to the health care services they are entitled to, and on most occasions they have to pay for consulting by medicine professionals because the health care quota guaranteed by the State have been exhausted.

The funding deficit prevents medicine professionals from providing treatment of their patients in accordance with the applicable clinical guidelines. As a result of so-called “quota system”, medicine professionals have become hostages because the funding provided by the State to the general practitioners is insufficient for referring patients to specialists. The consequences are logical: the number of chronic patients, persons with predictable disability and persons with disabilities is rapidly increasing, and the State incurs much higher expenditures for their further treatment.

As a result of decrease of the health budget assets in 2009, the amount of patient co-funding was considerably increased and the access to medicine compensation system was reduced; therefore, the co-payment by chronic patients has notably increased and thus the medicinal preparations are not properly taken according to the prescription (for example, the patients voluntarily reduce the dosage or refuse simultaneous taking of more than one medicine)).

The funding available in Latvia from medicine compensation system is notably behind not only the average data of the European Union but also the data of the Baltic States in terms of allocated funding per one person. The amount of funding allocated for compensation of medicines in Latvia is the smallest one (in 2012, for example, it was EUR 57, compared to EUR 64 in Lithuania and EUR 77 in Estonia). Moreover, such funding is not extended to oncologic and biologic preparations or medicines for treatment of multiple sclerosis either in Lithuania or in Estonia. The amount spent per one outpatient in Latvia in 2013 made about EUR 50, minus the costs for compensation of such medicine preparations. The VAT rate applicable to compensated medicines is also the highest in Latvia – 12% from 2011 (compared to 9% in Estonia and 5% in Lithuania).

According to the opinions of international experts issued to Latvia still in 2003, adequately effective health protection system would require the budget of about 7% of GDP.¹⁴ The total expenditures of Latvia incurred in health care industry expressed in % of GDP, on the turn, is among the lowest among the EU Member States.¹⁵ The health care budget in 2010 made 3.8% of GDP, in 2011 – 3.4 of GDP; in 2012 – 3.2% of GDP, and in 2013 – 3.0% of GDP. The budget proportion allocated to health care in European countries is above 6%, while in Latvia it is slightly above three percent. There are no grounds to believe that availability to health care is provided to people in Latvia until the level of other European countries is not reached there.

The right to housing

The Ombudsman has issued opinion regarding the availability and quality of housing available from the municipality, including social apartments. According to the opinion, compliance of the premises with the criteria to fit the dwelling purposes is often merely formal, because such premises are not always suitable for continuous dwelling and accommodation of household items. The Ombudsman has further noted that even the requirement to provide decorations by the tenants' own means is disproportionate, given that the residential premises offered within the scope of aid are mainly available to particularly vulnerable groups of persons,

¹⁴ Report on the situation on Fundamental Rights in Latvia in 2003. (Report on compliance of the situation in Latvia with the EU Charter of Fundamental Rights)

<http://politika.lv/article/zinojums-par-latvijas-situacijas-atbilstibu-es-pamattiesibu-hartai-2003-g>

¹⁵ Draft concept of the model for funding of the health care system

http://www.vm.gov.lv/aktualitates/koncepcijas_projekts_veselibas_aprupes_sistemas_finansesanas/

orphans, children with disabilities and low income families that cannot afford investments in redecoration of their housing due to their financial condition.

In addition, the opinion points out to insufficient funding allocated by the State and inadequate support to the maintenance or supplementing of the existing municipal housing resources. In 2014, for example, 10'258 persons entitled to housing aid had been registered in queue to municipal apartments, including continuously registered persons, while the number of available apartments was 2'412. At the same time, a number of municipalities admitted that the condition of the vacant apartments was not suitable for dwelling purposes because re-decoration or even refurbishment was first required, and the municipalities had no funding available for such purpose.

Rights of persons with disabilities

The Republic of Latvia has acceded to the UN Convention on the Rights of Persons with Disabilities (hereinafter – the Convention) on 31 March 2010. The Ombudsman has pointed out to the following infringements of the human rights guaranteed by the Convention:

- Availability of technical facilities. The Ombudsman emphasized that requirements of the Convention have not been met by the Republic of Latvia. The number of applicants for technical facilities in 2010 was 4'542, in 2011 – 4'905; in 2012 – 4'293, and in 2013 – 4'113. The Ombudsman applied to the Government and to the Parliament in 2012 pointing out to the need for reducing the continuous queues and providing the required technical facilities to persons with disabilities in a reasonable period of time.
- Environmental access. In the Ombudsman's opinion, complete environmental access must be provided, at least at medicinal, educational and social care institutions. The Government has reduced the environment access requirements to medicinal institutions in late 2013. Before, medicinal institutions had to ensure environmental access to persons with disabilities on all levels of medicinal institution including accessible toilet facilities. At present, obligation of medicinal institution is limited to provision of treatment services to persons with functional impairments. The Ombudsman informs that NGOs for persons with disabilities have reported on alarming occasions when medicinal services are provided to persons with disabilities right on the street because of the failure to ensure environmental access.