



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Initial reports of States parties due in 1993

Addendum

LATVIA

[25 June 2002]

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Introduction

1. The initial report of Latvia on the implementation of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter - the Convention), binding upon Latvia since 14 July 1992, is prepared in compliance with article 19 of the Convention. This initial report presents information concerning the period of time until 1 January 2002. The report is elaborated according to the general guidelines regarding the form and contents of initial reports adopted by the Committee against Torture (hereafter - the Committee) in 1991.

2. A special working group was established to draft this report, representing the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Welfare, the Ministry of Justice and the National Centre for the Protection of the Rights of the Child, and headed by a representative duly authorized by the Cabinet of Ministers pursuant to the "Regulations on Representation of the Cabinet of Ministers at International Human Rights Institutions" of 17 March 1998. The Report was examined and accepted by the Cabinet of Ministers on 11 June 2002.

Article 1

3. Article 89 of the Constitution of Latvia provides that "the State recognizes and protects basic human rights in accordance with this Constitution, the Laws and international agreements binding to Latvia". Article 95, in its turn, stipulates that torture or other cruel or degrading treatment of human beings is prohibited and that nobody may be subjected to inhuman or degrading punishment.

4. Latvia is a State party to several international agreements prohibiting torture and other cruel or degrading treatment or punishment. On 14 July 1992 the 1966 International Covenant on Civil and Political Rights became binding upon Latvia; as of 27 June 1997, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols Nos. 1 and 4 (Protocol No. 6 became binding upon Latvia on 1 June 1999, Protocol No. 7 on 1 September 1997), as of 1 June 1998, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols No. 1 and No. 2.

5. The legal system of Latvia follows the doctrine of monism: acts of international law, if they have passed through the relevant procedure (i.e. have been accepted by the Government and the Parliament), are recognized to be elements of the national system of law. Besides, norms and principles of international law have priority over the norms of national law. This was already stipulated in the Declaration of 4 May 1990 "On Restoration of the Independence of the Republic of Latvia", whose article 1 prescribes the predominance of fundamental principles of international law over national laws. Under article 13 of the Law of 13 January 1994 "On International Agreements of the Republic of Latvia", provisions of an international agreement apply if an international agreement that has been approved by the Saeima (Parliament) contains provisions different from those prescribed by legislative acts of the Republic of Latvia. In compliance with the laws and main legal principles of Latvia, norms of international agreements that have been ratified following the prescribed procedure can be applied directly in judicial proceedings.

6. The Supreme Court gave its explanation for the term “torture” in its plenum decision “On Application of Criminal Laws in Cases of Infliction of Intentional Bodily Injuries”, adopted on 1 March 1993, in which it indicated that “torment must be understood to mean actions that, committed by the guilty person, being aware of it, cause particularly strong pain to another person, physical or moral suffering (for example, leaving a person without food, drink, warmth for extended periods of time as well as placing or leaving a person in other conditions that are hazardous for health), while torture must be understood to mean actions that, committed by the guilty person, being fully aware of it, are characterized by multiple or prolonged acts, causing particular pain or suffering to victims (for example, whipping with rods, pinching, influence by thermal factors, pricking with sharp objects, etc.)”.

7. In the light of article 89 of the Constitution, which stipulates that human rights in Latvia are protected in accordance with the international agreement binding upon Latvia, and taking into account that international agreements are directly applicable in Latvia, the definition of the term “torture” given in article 1 of the Convention is directly applicable and is binding upon the State institutions of Latvia.

8. The prohibition of torture has been prescribed by several other legal acts that are in force. Thus, the Penal Law stipulates that upon the execution of any criminal penalty, the guarantees provided by law for the convicted person against torture and inhuman or degrading treatment or punishment must be respected; that the objective of the execution of the penalty is not to cause physical suffering or to degrade human dignity, or to exclude the person from the community. Discrimination among convicts on the grounds of race, nationality, language, gender, social and material status, political views, religious affiliation or other criteria is not permissible, all convicts being equal before the law.

9. The Law “On Police” prescribes that a police officer must not commit or support any acts that involve torture or other cruel, inhuman or degrading treatment or punishment. No police officer may refer to the order of a senior officer or such emergency situations as martial law or a threat of a war, a threat to national security, national domestic political instability or extraordinary circumstances in order to justify torture or other cruel, inhuman or degrading treatment or punishment. Likewise, the Law stipulates that the police officer is liable for unlawful action under the procedure prescribed by law and service regulations. Internal instructions for officers of the police service include norms prohibiting inhuman or degrading treatment. Disciplinary regulations prescribe the disciplinary liability of officers for various violations of service discipline. Heads of structural entities bear personal liability for compliance with the service authority of the personnel.

10. The 1997 Medication Law stipulates that a patient has a right to quality, kind and respectful medical treatment and care. The Law in particular emphasizes that all civil, political, economic and social rights prescribed by law must be guaranteed also to persons with psychological disorders and mental afflictions and that such disorders must not be grounds for discrimination. The Law also stipulates that mental patients have the right to receive medical assistance and care of the quality that corresponds to the accepted general medical standards. Article 155 of the Criminal Law also prescribes liability for the illegal confinement of a person in a psychiatric hospital. The possible penalty for this is deprivation of liberty for a term of up to

two years, or custodial arrest, or a fine in the amount of up to 40 minimum monthly salaries, and deprivation of the right to a specific occupation for a term of up to five years. Since 1995 no crime provided by article 155 of the Criminal Law has been registered. In addition to the Medication Law, a new Psychiatric Assistance Law has been drafted and submitted to the Cabinet of Ministers. It should be noted that the full text of this draft law was annexed to the responses of the Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Latvia from 24 January to 3 February 1999, which were examined in Strasbourg on 22 November 2001.

11. The Criminal Law also prescribes liability for crimes involving the use of violence or torture. Article 74 of the Criminal Law prescribes that war crimes, that is, violation of the provisions and customs regarding the conduct of war prohibited by international agreements that are binding for Latvia, which has been manifested by the murder, torture, robbery, deportation or assignment to coercive labour of civilians, hostages and prisoners of war of the occupied territory, or the unjustified destruction of cities and other entities, are punished by life imprisonment or deprivation of liberty for a term of 3 to 20 years.

12. Articles 125 and 126 of the Criminal Law prescribe liability for the infliction of an intentional serious bodily injury or an intentional moderate bodily injury if they had the character of torment or torture. Article 125 prescribes deprivation of liberty for a term of 3 to 12 years, while article 126 prescribes punishment by deprivation of liberty for a term of up to 8 years. Under article 130 of the Criminal Law “Intentional Slight Bodily Injury” regular beating that has the nature of torture or any other kind of torture, provided these actions have not had the consequences set out in articles 125 and 126 of the Law, are punished by deprivation of liberty for a term of up to three years or custodial arrest, or community service, or a fine in the amount of up to 60 minimum monthly salaries.

13. Article 294 of the Criminal Law provides as a punishment deprivation of liberty for a term of up to 10 years for compelling to testify at an interrogation, if it involves violence, a threat of violence, humiliation of the interrogated person, or has been committed in any other way, and if it has been committed by the pre-trial investigator. Article 338 “Violence against a Subordinate” of chapter XXV of the Criminal Law “Criminal Offences Committed during Military Service” in turn prescribes liability for the infliction of intentional moderate bodily injury to a subordinate as well as of other acts which have the nature of torture. The penalty for such acts is deprivation of liberty for a term of up to eight years. In 2001 three crimes provided by article 338 of the Criminal Law have been registered. Under article 340 of the Criminal Law a person is criminally liable for the battery and torture of a military serviceman. The maximum penalty for such acts, if they involve the infliction of serious bodily injury, is deprivation of liberty for a term of 3 to 12 years.

14. The compensation available to the persons who considers himself/herself to be the victim of torture, as well as the right to complain to the competent authorities, are described in paragraphs 78-82 of the present report (comments concerning articles 13-14).

Article 2

15. Overview of legal acts in force prohibiting torture and providing for punishment for such actions is given in paragraph 3 and paragraphs 8-13 of the present report. According to the legal acts in force, the right not to be tortured may not be restricted.

16. Article 116 of the Constitution contains an exhaustive list of human rights which may be subject to restrictions in cases provided by law with the purpose of protecting the rights of other persons, the democratic system, public security, welfare and morality. These rights are the right of an individual to the inviolability of privacy, residence and correspondence, the right to free movement in the territory of Latvia and to choose one's domicile, the right to freely leave Latvia, the right to freedom of speech and opinion, the right to have free access to information and to disseminate it, the right to freedom of association and meetings, the right to freely choose one's occupation, the right to strike, as well as the right to expression of one's religious conviction. In addition to article 116, article 105 of the Constitution provides restrictions on the right to property. Thus, the right not to be tortured provided by article 95 of the Constitution may not be subject to any restrictions.

17. Also, the 1992 Law "On State of Emergency" exhaustively defines the permissible restrictions if a state of emergency has been proclaimed. The said Law allows the following restrictions:

- (a) A special procedure for entry into and departure from the country, as well as restrictions on movement;
- (b) Reinforced protection of public order and of specific objects;
- (c) Prohibition on the organization of meetings, rallies, street marches and demonstrations as well as other mass events;
- (d) Prohibition of strikes;
- (e) Restrictions on the movement of transport vehicles and the inspection of transport vehicles.

If a state of emergency has been proclaimed in view of internal riots that have broken out or are about to break out, the following restrictions may be imposed in addition to the above-mentioned:

- (f) Imposition of a curfew;

- (g) Censorship or suspension of the mass media; seizure of their printing and duplication equipment;
 - (h) Suspension of the operation of political parties and other non-governmental organizations if they create obstacles to the implementation of the state of emergency;
 - (i) Conduct of examination of the documents of individuals; inspection of individuals and the property in their possession if there is information that these individuals possess weapons;
 - (j) Restriction or prohibition of the sale of weapons, highly effective chemical and poisonous substances and alcoholic beverages, as well as temporary seizure of those articles from natural and legal persons;
 - (k) Expulsion of violators of public order who are not permanent residents of the area where the state of emergency has been proclaimed.
18. The Law particularly emphasizes that the proclamation of a state of emergency does not repeal the operation of those laws that regulate the use of physical force, special means and firearms against natural persons. Officials and other persons are liable criminally, administratively and disciplinary in complying with the procedure prescribed by the law for violations of laws and the abuse of the state of emergency. The Prosecutor General of the Republic of Latvia and prosecutors subordinated to the Prosecutor General exercise oversight over compliance with laws during a state of emergency.
19. It must be emphasized that a state of emergency has never been proclaimed since the restoration of independence.
20. According to article 34 of the Criminal Law, execution of a criminal command or a criminal order is to be considered as excluding criminal liability, provided the person executing said command or order was not aware of the criminal nature of the command or order and it was not obvious. However, the above-mentioned article emphasizes that criminal liability applies if a crime against humanity and peace, war crimes or genocide was committed.
21. A similar provision has also been included in the Law "On Police", whose article 27 stipulates that deliberate execution of an unlawful command or order does not exempt the police officer from criminal liability. It is underlined in the same article that no police officer may refer to the order of a senior officer or such emergency situations as martial law or a threat of a war, a threat to national security, national domestic political instability or extraordinary circumstances in order to justify torture or other cruel, inhuman or degrading treatment or punishment.
22. The table below presents information on the registered and detected crimes provided in the articles of the Criminal Code (CC) and the Criminal Law (CL) referred to in the present report, between 1995 and 2001.

	1995		1996		1997		1998		1999		2000		2001	
CL/CC	reg.	det.	reg.	det.	reg.	det.	reg.	det.	reg.	det.	reg.	det.	reg.	det.
Art. 74/68.3.	-	-	-	-	-	-	2	1	-	-	-	-	-	-
Art. 125/105	597	341	467	298	500	349	427	305	429	279	424	272	367	238
Art. 126/106	414	189	394	210	372	226	395	245	393	239	421	225	462	250
Art. 130/109	25	18	28	16	18	17	62	57	124	78	128	95	184	146
Art. 139/223	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Art. 155/125	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Art. 294/172	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Art. 338	-	-	-	-	-	-	-	-	-	-	-	-	3	3
Art. 340/235	5	2	31	17	36	30	26	22	16	9	16	7	18	9

Notes: Article 74 of the Criminal Law, article 68.3. of the Criminal Code - War crimes;

Article 125 of the Criminal Law, article 105 of the Criminal Code - Intentional serious bodily injury;

Article 126 of the Criminal Law, article 106 of the Criminal Code - Intentional moderate bodily injury;

Article 130 of the Criminal Law - Intentional slight bodily injury, article 109 of the Criminal Code - Deliberately inflicted (intentional) slight bodily injury;

Article 139 of the Criminal Law - Illegal removal of human tissue or organs, article 223.1. of the Criminal Code - Illegal removal of tissue or organs from living or dead humans;

Article 155 of the Criminal Law, article 125.2. of the Criminal Code - Illegal confinement of a person in a psychiatric hospital;

Article 294 of the Criminal Law, article 172 of the Criminal Code - Compulsion to testify;

Article 338 of the Criminal Law - Violence against a subordinate;

Article 340 of the Criminal Law - Battery and torture of a military serviceman;

Article 235 of the Criminal Code - Battery and torture of a soldier.

Article 3

23. According to the legal acts in force, a person who is in Latvia may be expelled to another country and may be extradited for criminal prosecution, trial or serving of sentence; the person may be readmitted if the person has entered or stayed in Latvia illegally.

24. In accordance with the legal acts in force, a person is expelled if an expulsion order has been issued with respect to that person in a procedure prescribed by law, or if the court has imposed expulsion as an additional penalty. Article 36 of the Criminal Law provides that

expulsion from Latvia is one of the possible additional penalties imposed on a person found guilty of the commission of a crime. The application of this penalty is regulated by article 43 of the Criminal Law that stipulates that a citizen of another country or a person who has a permanent residence permit of another country may be expelled from the Republic of Latvia if court finds that, taking into consideration the circumstances of the case and the personality of the offender, his/her stay in Latvia is not permissible. The same article also stipulates that this penalty - expulsion from the country - is imposed as an additional penalty and is enforced only after the primary penalty has been served.

25. The Law “On Entry and Stay of Foreigners and Stateless Persons in the Republic of Latvia” (art. 38) regulates the expulsion of foreigners and stateless persons in cases when the foreigner or the stateless person stays in the country without a valid visa or a residence permit, or if the person has otherwise violated the visa regime, or if the residence permit issued to the foreigner or the stateless person has been annulled owing to the following reasons:

- (a) The person has submitted knowingly false information to the Citizenship and Migration Board, has violated rules of the immigration regime or has lost legitimate grounds for staying in Latvia;
- (b) The person has been found guilty of the commission of a crime by a court judgement that has become effective;
- (c) Competent public institutions have reasonable grounds to suspect that the said person poses a threat to public order and safety or national security;
- (d) The person has no legal source of income;
- (e) The person is active in a totalitarian, terrorist or other organization using violent methods that does not recognize the public system of the Republic of Latvia, or is a member of any secret anti-government or criminal organization;
- (f) The person has entered the military or other public service of a foreign country, except in cases when this is provided by international agreements;
- (g) The person has repeatedly failed to comply with regulations for the registration of the residence permit;
- (h) The person has entered into fictitious marriage with a citizen or non-citizen of Latvia or a foreigner or a stateless person who has a permanent residence permit, with the purpose of forming grounds for the receipt of a permanent residence permit;
- (i) The person has terminated studies or training which had been the grounds for the issue of a fixed-term residence permit;
- (j) The person has terminated employment relations which had been the grounds for the receipt of a residence permit;

(k) The person has divorced a citizen or non-citizen of Latvia or a foreigner or a stateless person who has received a permanent residence permit;

(l) The person has been hired without an appropriate permit;

(m) The person has received compensation for leaving Latvia for permanent residence abroad, irrespective of whether the compensation has been paid by State or municipal institutions of Latvia or international (foreign) foundations or institutions.

26. The person must leave Latvia voluntarily within seven days of being acquainted with the expulsion order, if the order has not been appealed against before the Head of the Citizenship and Migration Board, whose decision can be subsequently appealed against before the court.

27. In cases when the person has failed to appeal against the expulsion order or the appeal has been declined but the person remains in the country, the Head of the Citizenship and Migration Board or the head of the territorial unit of the Board may adopt a decision on the forcible expulsion of the person. The National Border Guard has the right to detain the person in order to enforce the decision on the forcible expulsion. In cases when there are reasonable suspicions that the person will hide or the person poses a threat to public order or security, or the person has no permanent place of residence in Latvia, the State Police and the National Border Guard have the right to detain the person before the decision on his/her forcible expulsion has been adopted. The detained or apprehended person has the statutory right to receive legal assistance upon the moment of apprehension.

28. If the person has entered the country illegally, the head of the territorial board of the National Border Guard or his/her deputy may take the decision on the forcible expulsion of this person. The National Border Guard carries out the forcible expulsion.

29. In order to eliminate existing irregularities and to secure a timely and effective procedure for the expulsion of foreigners, a working group was established which drafted new instructions, "On the forcible expulsion of foreigners and stateless persons", in force as of 15 March 2002.

30. Legal norms in force that regulate the extradition of persons for criminal prosecution, trial or serving of sentence are described in paragraphs 55-58 of the present report (comments concerning article 8).

31. When deciding on the extradition of a person, the interpretation of the European Convention on Human Rights as adopted by the European Court of Human Rights is taken into account, according to which extradition of a person to a State where this person may be subjected to torture or cruel, inhuman or degrading treatment or punishment violates the human rights of this person and, therefore, is impermissible.

32. As of 1 January 2002 Latvia has agreements on the readmission of persons who have entered or resided in the country illegally with 23 States (Austria, Baltic States, Benelux States, Denmark, France, Greece, Croatia, Iceland, Italy, Liechtenstein, Norway, Portugal, Slovenia, Finland, Spain, Switzerland, Ukraine, Hungary, Germany and Sweden).

33. The National Border Guard has no information on possible violations of the Convention's provisions by officials of the National Border Guard that would give reason to suspect that any person has been subjected to torture. Likewise, on no occasion in the practice of the National Border Guard was a person who reported that in the country of destination he/she may be subjected to torture returned to that country or expelled from Latvia. When deciding on the expulsion of a person, the National Border Guard not only takes into account information given by the person concerned, but also evaluates all aspects of the case.

34. According to the 1997 Law "On Asylum-Seekers and Refugees in the Republic of Latvia", a person who has been granted the status of refugee cannot be extradited or expelled to the country where that person fears persecution owing to his/her race, religion, nationality, social affiliation or political conviction. If a person is not granted the status of a refugee by decision of the Centre on Refugees' Affairs of the Citizenship and Migration Board, the person still is not expelled to a country where the person is subjected to the threat of torture, referring directly to article 3 of the Convention and article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In practice these persons are issued residence permits, or they are allowed to reside in the asylum-seekers' accommodation centre. In order to establish a precise procedure for the protection of such persons, a new Asylum Law has been drafted, prescribing the granting of an alternative status to persons who are under the threat of a death penalty or corporal punishment, torture, or inhuman or degrading treatment or humiliating punishment. Currently, this draft is being debated in the Parliament. According to information submitted by the Ministry of the Interior, there was no case in 2001 of a person being extradited or transferred to another country where there was a threat that the person would be subjected to torture.

Article 4

35. Section 2 of article 15 of the Criminal Law defines preparation for a crime and an attempted crime as separate uncompleted criminal offences.

36. Section 3 of article 15 of the Criminal Law stipulates that the location or adaptation of means or tools or other intentional creation of circumstances conducive to the commission of an intentional offence which was not committed for reasons independent of the will of the guilty party is to be considered as preparation for a crime. Under section 4 of article 15 of the Criminal Law a conscious act (failure to act) directly dedicated to intentional commission of a crime which was not completed for reasons independent of the will of the guilty party, is to be considered as an attempted crime. Liability for preparation for a crime or an attempted crime is determined under the same article of the Criminal Law that prescribes liability for the specific offence. However, it should be emphasized that a person is criminally liable for attempted less-serious crime, serious crime and particularly serious crime, and for preparation for serious or particularly serious crimes. The Criminal Law distinguishes four categories of criminal offence depending on the degree of their severity - criminal offences, less-serious crimes, serious crimes and particularly serious crimes. This distinction is determined according to sanctions prescribed by the Criminal Law.¹

37. Since the sanction for the crimes mentioned in paragraphs 11-13 of the present Report is deprivation of liberty for a period exceeding two years, according to the Criminal Law a person is criminally liable for the attempt to commit these crimes. Likewise criminally punishable is the preparation for these crimes, except for the crime provided for in article 130 of the Criminal Law - intentional slight bodily injury.

38. Article 18 of the Criminal Law regulates the liability of several persons for participation in the joint commission of a criminal offence, assessing the individual behaviour of each person, the committed acts and the subjective attitude towards the criminal offence. Therefore, the participation by two or more persons knowingly in the joint commission of an intentional criminal offence is treated in the legal acts of Latvia as participation or joint participation.

39. Article 19 of the Criminal Law defines the concept "participation". A criminal act committed knowingly by two or more persons (i.e. a group) jointly, by which they thus have directly committed an intentional criminal offence, is to be considered as participation (joint commission). Each of the said persons is a participant (joint perpetrator) in a criminal offence and criminally liable. In turn, an act or failure to act committed knowingly, by which a person (joint participant - accomplice) has jointly with another person (perpetrator) participated in the commission of an intentional criminal offence, but has not herself/himself been the direct perpetrator of the criminal offence, is to be considered complicity. Under article 20 of the Criminal Law organizers, instigators and accessories are joint participants in a criminal offence.

40. A person who has organized or directed the commission of a criminal offence is to be considered an organizer. A person who has encouraged another person to commit a criminal offence is to be considered an instigator. A person who has knowingly promoted the commission of a criminal offence, by giving advice, directions, resources, or by removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instruments or means of committing the criminal offence, evidence of the criminal offence or objects acquired in a criminal manner, or has also previously promised to acquire or to sell such objects, is to be considered an accessory. A joint participant is to be held liable under the same article of the Criminal Law that prescribes the liability of the perpetrator.

41. Under legal acts of Latvia individual constituent elements of a criminal offence which refer to a perpetrator or joint participant do not affect the liability of other participants or joint participants. If a joint participant has had no knowledge of some criminal offence committed by the perpetrator or other joint participants, he/she is not to be held criminally liable for these offences.

42. If the perpetrator has not completed the offence for reasons independent of his/her will, the joint participants are held liable for joint participation in the respective attempted offence. If the perpetrator has not commenced the commission of the crime, the joint participants are liable for preparation for the respective crime.

43. Voluntary withdrawal by an organizer or instigator from the commission of the criminal offence is to be considered as such only in cases when they have done in due time everything possible to prevent the commission of the contemplated criminal offence with their joint participation, and this offence has not been committed. An accessory is not to be held criminally liable if he/she has voluntarily refused to provide promised assistance before the commencement of the criminal offence.

Article 5

44. The obligation of a State to establish its jurisdiction over the criminal offences - acts of torture - committed on its territory or by its nationals, as stipulated in article 5 of the Convention, is provided in articles of chapter I of the Criminal Law in force. Under article 2 of the Criminal Law a person who has committed a criminal offence in the territory of Latvia is liable according to the Criminal Law. In the event of a criminal offence being committed in the territory of Latvia by a foreign diplomatic representative or any other person who in compliance with effective laws or international agreements binding for Latvia is not subject to the jurisdiction of Latvia, the criminal liability of this person is to be decided by diplomatic procedures or in compliance with bilateral agreements.

45. According to article 3 of the Criminal Law a person who has committed a criminal offence outside the territory of Latvia, on an aircraft, or a sea or river vessel or other floating means of conveyance, if this means of conveyance is registered in the Republic of Latvia and if it is not provided otherwise in international agreements binding upon the Republic of Latvia, is to be held liable in accordance with Latvian Criminal Law.

46. Article 4 of the Criminal Law stipulates that Latvian citizens and non-citizens, and aliens or stateless persons who have a permanent residence permit for Latvia, are liable in accordance with this Law for a criminal offence committed in the territory of another State. Latvian military personnel who are located outside the territory of Latvia are liable for criminal offences in accordance with Latvian Criminal Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia. Aliens and stateless persons who do not have permanent residence permits for Latvia and who have committed especially serious crimes in another State which have been directed against Latvia or against the interests of its inhabitants are criminally liable in accordance with the Latvian Criminal Law, irrespective of the laws of the State in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the State where the crime was committed. Aliens or stateless persons who do not have a permanent residence permit for Latvia and who have committed a criminal offence in another State, in the cases provided for in international agreements binding upon Latvia, irrespective of the laws of the State in which the offence has been committed, are liable in accordance with the Latvian Criminal Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another State.

47. In accordance with article 100 of the Latvian Criminal Procedure Code, any natural or legal person who has suffered moral, physical or property damage as a result of a crime is to be regarded as a victim. It follows that any person who has suffered damage as a result of a crime which is within the jurisdiction of Latvia is to be recognized as a victim according to the procedure prescribed by the Latvian Criminal Procedure Code.

48. If a person who might have committed crimes mentioned in the Convention is in Latvia, but is not extradited to the State that in accordance with article 5 of the Convention has established its jurisdiction over the committed crime, the person is called to criminal liability in compliance with legal acts effective in Latvia.

Article 6

49. The presence of the person suspected of having committed a crime provided in the Convention, or who is tried for committing such crime, is ensured in accordance with the provisions of the Latvian Criminal Procedure Code which are applicable with respect to investigation and trial of any other crime, including the provisions concerning security measures. Under article 68 of the Criminal Procedure Code, if there are sufficient grounds to assume that the convict or the defendant, while free, will evade investigation and court or will obstruct the establishment of the truth in a criminal case, or will commit a criminal offence, as well as in order to ensure the execution of the judgement, the investigator, the prosecutor and the court (judge) have the right to impose a security measure on the accused person or the defendant. The possible security measures are: signed undertaking not to change the place of residence, personal warranty, deposit, supervision by the police, house arrest, detention, supervision of military servicemen by the commander of the army division, and supervision of minors by parents, guardians or trustees.

50. As of 14 March 1992 the 1963 Vienna Convention on Consular Affairs is binding upon Latvia. The treaty provides for the right of persons detained in another country to contact the consular officer of the country of their nationality or permanent residence. Latvia has concluded several bilateral agreements concerning consular affairs that in general repeat the norms of the Vienna Convention, but simultaneously specify issues of importance for both parties. One of the most important provisions of the bilateral agreements provides for the obligation of the receiving State to inform the competent consular officer about the apprehension or detention of a person of the sending State's nationality, thereby extending the scope of the provisions of the Vienna Convention. Bilateral agreements of this kind have been concluded with Estonia and Lithuania, as well as with Russia and Poland.

51. Every foreigner who has been detained, including persons detained on the State border for more than three hours, is given the opportunity to contact the embassy of his/her country by telephone. In cases where the person expresses the wish to meet the representatives of the embassy, it is ensured that this request is complied with.

52. The National Police within 24 hours informs the Consular Department of the Latvian Ministry of Foreign Affairs on every occasion when a national of another country has been apprehended or detained as a suspect. According to section 2 of article 78 of the Criminal

Procedure Code, if a foreign national is detained as a suspect, accused person or defendant, a copy of the detention order is sent to the Ministry of Foreign Affairs. His/her right to submit a written application to the embassy of his/her country of nationality are explained to the foreigner after he/she is placed in the isolator. Persons whose country of nationality does not have diplomatic or consular representation in Latvia and refugees are informed of their right to submit written applications to the embassy of the State authorized to represent their interests, or to the Latvian State institutions, or to international institutions whose task is to protect their interests.

Article 7

53. In the investigation and trial of crimes mentioned in the Convention, the same principles of the Latvian Criminal Procedure Code are applicable as are compulsory in the investigation and trial of any other crime, both as to the procedure on how the evidence is obtained, examined and evaluated, and to the obligation of the law enforcement institutions to investigate objectively, thoroughly and completely the circumstances of the case.

54. None of the legal acts effective in Latvia repeals the prohibition of torture and inhuman or degrading treatment at any stage of the investigation or trial of the criminal offence. Article 1 of the Latvian Criminal Procedure Code stipulates that the established procedural order is universal and binding for any criminal case and for all court, prosecutorial and investigatory institutions.

Article 8

55. According to the Latvian legal acts in force, extradition is carried out in accordance with international agreements.

56. Article 23.6 of the Latvian Criminal Procedure Code stipulates that if a person who has committed a crime in another State where a criminal case has been initiated, or criminal prosecution has been commenced, or this person has been brought before the court, or a judgement convicting this person has become effective, is hiding in Latvia, in cases provided for by international agreements the Prosecutor General of the Republic of Latvia, after the receipt of the request from the respective State to extradite this person, decides, on the basis of received documents, on the extradition and forwards the adopted decision to the Ministry of the Interior for execution. In the decision on the extradition of a person the name and surname of the persons, birth year, grounds for extradition, when and who has been ordered to execute the decision have to be stated and the relevant documents annexed. Duly authorized translation in the respective foreign language has to be annexed.

57. On 31 July 1997 Latvia became a State party to the European Convention on Extradition of 13 December 1957 and both its Additional Protocols. This Convention states that extradition is to be granted in respect of offences punishable by deprivation of liberty for at least one year or by a more severe penalty. Latvia is likewise bound by several bilateral agreements both specifically on extradition (United States of America, United Kingdom) and on general legal assistance and legal relations (see paragraphs 59-61 of the present report - comments under article 9).

58. In cases when the extradition of a person from Latvia is not permissible,² the person is called to criminal liability in compliance with legal acts effective in Latvia. Article 4 of the Criminal Law stipulates that citizens of Latvia who have committed a criminal offence in another country are held criminally liable in Latvia in compliance with criminal legal norms of Latvia. Article 2 of the Criminal Procedure Code applies to such cases, prescribing that the tasks of competent agencies is to “speedily and completely detect criminal offences, identify the guilty parties and to ensure appropriate application of laws so that every person who has committed a criminal offence receives fair punishment and no innocent person is held criminally liable and convicted, on the basis of the law and basic principles contained in the criminal procedure”. In accordance with article 23.3 of the Criminal Procedure Code, a request from a foreign State to initiate a criminal case, or to begin or take over (to continue) criminal prosecution with respect to a person who committed a crime in that country and who subsequently returned to Latvia, is examined by the Prosecutor General’s Office of the Republic of Latvia, where the validity of the request is verified. The results of the verification are communicated to the institution that sent the request.

Article 9

59. Legal assistance in investigation and trial of the crimes provided in the Convention is based on the same principles as legal assistance in investigation and trial of any other crime. Article 23 of the Criminal Procedure Code of Latvia states that contacts between the court, prosecutorial and investigatory institutions with law enforcement agencies of foreign States, as well as the execution of requests from these foreign institutions is to be carried out in accordance with international agreements binding upon Latvia as well as in accordance with the norms of the Criminal Procedure Code. However, the Prosecutor General’s Office of the Republic of Latvia has not received any request to extradite a person suspected of having committed, being prosecuted or being convicted for crimes provided in the Convention.

60. As of 31 August 1997 the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Additional Protocols are binding upon Latvia. According to article 15, paragraph 6, of this Convention, Latvia has established that in Latvia requests for legal assistance in criminal matters are sent and received by the Ministry of the Interior (during the pre-trial investigation until the criminal case has been sent to the court), the Prosecutor General’s Office (during the pre-trial investigation until the criminal case has been sent to the court), and the Ministry of Justice (during the trial). Latvia has also acceded to the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972.

61. Latvia has also concluded bilateral agreements on legal assistance and legal relations. Such agreements are in force with the United States of America, the Baltic States, Byelorussia, Russia, Poland, Moldova, Ukraine, Uzbekistan and Kyrgyzstan.

Article 10

62. Since the restoration of Latvia’s independence in 1991, educational institutions are paying increasing attention to studies in the area of human rights. A basic course on human rights, including the norms of the Convention, has been included in the curriculum of the University of Latvia and the Police Academy of Latvia.

63. Information on norms prohibiting torture is presented to students of the Police Academy of Latvia in several academic courses. The course “Tactics of Interrogation” discusses in detail the inadmissibility of torture and any other physical or mental violence. The course “Tactics of Detention and Custodial Arrest” includes an explanation on the admissibility of the application of physical force and firearms only and solely with the purpose of overcoming the resistance of the person to be detained or arrested. The course “Criminal Prosecution” explains the norm of the Law “On Operational Activity” that prohibits any operational activities or the application of any means if they pose a threat to human life and health. The course “Professional Physical Training”, inter alia, discusses the practical implementation of the norms contained in the Convention. For example, prior to taking the academic course on the application of special means in the detention of an offender, the legal requirements concerning the application of these means are explained to students, emphasizing that degrading and cruel, inadequate action by a police officer is impermissible. The courses “Law on the Execution of Criminal Penalties” and “Rights of the Police” discuss the rights and duties of employees of the police, penitentiaries and border police, emphasizing their duty to respect the human rights of every individual.

64. In 1999 the Latvian Police Academy and National Police School introduced the course “Police and Human Rights”, where issues relating to the eradication from the police of torture and cruel or degrading treatment are included. Every year, following the order of the Chief of the National Police, training at the place of service is conducted (twice a month), and the above-mentioned issues are included in the training programme, and are combined with an examination of examples from practice and with discussions with staff members of the National Human Rights Office.

65. An integral component of the study programmes at educational institutions of the National Police, as well as for the personnel of structural entities, training programmes, service training programmes and upgrading programmes, is information and education of police officers on the authority of the police, interrogation procedures, detention and custodial arrest, the inadmissibility of the unjustified application of physical force, special means and weapons, and cruel, inhuman or degrading treatment.

66. The training of employees of the State Border Guard is provided by the School of Border Guards in Rēzekne where students, within the framework of the training programme, study the requirements of the effective legal acts - the Code of Administrative Violations, the Criminal Law, the Criminal Procedure Code - and the requirements concerning actions upon the detention, arrest and interrogation of persons.

67. In the training programme and training courses at the National Defence Academy, taking into account the requirements for qualification of the military personnel, the study of existing legal acts relating to military activities is included. Issues concerning the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 9 December 1975 by General Assembly resolution 3452 (XXX), and the Convention are included in the course as additional subjects for officers of command level. Within the framework of the course information on the issue of prohibition of torture, as well as liability for the violation of the respective norms of the Latvian Criminal Law, are examined. The meaning of torture is analysed with reference to the relevant

article of the Convention; also, the responsibility of the commander and the investigation procedure if an act of torture has taken place and methods to eradicate torture are examined.

Article 11

68. Both Latvian institutions and institutions of competent international organizations supervise the respect for the rights of detained and imprisoned persons.

69. There are 28 short-term detention isolators of the National Police, which in 1999 were examined by the experts from the European Committee for the Prevention of Torture. In several places the experts established non-compliance with the requirements for conditions of detention. The prosecutor's office also has inspected isolators in several districts of Latvia, and was required to close one of the isolators.

70. Several steps have been taken in order to improve the conditions in the short-term detention isolators of the National Police. For example, necessary financial means were allocated for the investment project "Building of the short-term detention isolator and garages of the Dobeles district police board" and on 27 December 2001 this isolator was put into operation; in 2002 budgetary means were allocated for the building of an administrative complex for the Ventspils district police board.

71. In order to ensure that detention conditions in the short-term detention isolators of the National Police correspond to the existing requirements, it is necessary to renovate and to rebuild the isolators, as well as to arrange the exercise area and to purchase necessary equipment, but completion of these tasks is hampered by the lack of necessary financial means.

72. According to the legal acts in force and the established practice, there are various ways to monitor the observance of the prohibition of torture by officials. For example, in the evaluation of National Police officers, which takes place periodically (every two years), compliance with professional ethics is taken into account. Individuals may submit complaints against the actions of police officers before several institutions - a higher police institution, the Ministry of the Interior, the prosecutor's office, the court, as well as the National Human Rights Office, the Chancellery of the President of the State, or the Parliament. A special institution functions within the National Police - Inspection of Personnel - whose task is to examine complaints by individuals. In 1998 this institution examined 33 complaints, in 1999, 37 complaints, and in 2000, 67 complaints about the offences of the staff, including unjustified apprehension and use of force or special means. Following the examinations, in 1998 in three cases the offences complained about were confirmed and the materials were submitted to the investigation institutions for the adoption of procedural decisions; in 1999 there were six such cases and in 2000 seven cases. In 2001 there were 21 complaints examined and 7 offences confirmed.

73. Every year the National Police summarizes the statistical data on disciplinary practice. According to this data, in 1998, 36 staff members were charged with malfeasance, in 1999, 20 and in 2000, 17. In 1998, 10 staff members were convicted of such crimes, in 1999, 17 and in 2000, 5. In 2001, 21 persons were charged with malfeasance; 7 were convicted. Unfortunately, these data do not specify the number of persons charged with and convicted of the crimes provided in articles 125, 126 and 130 of the Criminal Law.

74. Since the second half of 1999, when the Investigative Service was established within the National Border Guard, officials of that service being authorized to perform pre-trial investigations for crimes within the competence of the National Border Guard, no act of torture has been disclosed by the officials, no application from an individual has been filed, and no reproach from supervisory institutions has been received concerning violation of the prohibition of torture by staff members of the National Border Guard.

Article 12

75. Article 3 of the Latvian Criminal Procedure Code stipulates that, whenever signs of a criminal offence have been disclosed, the court, the prosecutor and the investigation institution, within their competence, are under the obligation to initiate a criminal case and to use all legal means in order to detect the criminal offence, to identify the person guilty of committing the crime and to bring him/her to justice.

76. In accordance with article 19 of the Latvian Criminal Procedure Code the court, the judge and the investigator are under the obligation to investigate objectively, thoroughly and completely the circumstances of the case and to identify the guilty person, as well as to establish all other circumstances that are relevant for the proper examination of the criminal case.

77. The above-mentioned principles established by the Latvian Criminal Procedure Code are applicable with respect to the investigation and trial of any criminal offence, including criminal offences provided by the Convention.

Article 13

78. Article 92 of the Constitution stipulates that everyone has the right to defend his/her rights and lawful interests in a fair court, while article 107 of the Latvian Criminal Procedure Code states that one of the grounds for initiating a criminal case is an oral or written application by a person. The investigation institutions, the prosecutor, the judge or the court is obliged to examine such applications immediately, but not later than within 10 days from receipt. If it is necessary to obtain an opinion from experts or an auditing opinion, the time limit for the examination of the application is extended to 30 days. If there are sufficient reasons to believe that a criminal offence has been committed, a criminal case is initiated; it is investigated and tried according to the Latvian Criminal Procedure Code.

79. According to chapter nine A of the Latvian Criminal Procedure Code, special procedural protection may be granted to victims, witnesses, suspects, accused persons, defendants and convicts if they testify in criminal cases concerning grave and particularly grave crimes, as well as to persons whose endangerment may affect the protected person. Special procedural protection is to be established if owing to their testimonies there is real endangerment of their lives, health, property or lawful interests, or they have received threat of such endangerment, or there are sufficient reasons to believe that endangerment may take place. The decision to grant special procedural protection is adopted by the Prosecutor General upon the initiative of the official responsible for the criminal procedure and after all the materials of the case have been examined and the endangered person has been heard.

Article 14

80. A person who has become a victim of torture has the right to demand compensation in compliance with article 101 of the Criminal Procedure Code, which prescribes that a person who has suffered material losses through a criminal offence may submit a civil claim within the framework of the criminal case against the defendant or a person who bears material responsibility for the actions of the defendant. The same article also stipulates that a person who has not submitted a civil claim in a criminal case, as well as a person whose civil claim has not been reviewed owing to the fact that the criminal case has been dismissed or a judgement of acquittal has been passed, has a right to submit such a claim under the civil procedure.

81. The Civil Law, in its turn, prescribes the duty of the person whose action has been unlawful and who has inflicted bodily injuries on another person to compensate the victim for medical costs. The victim also has a right to demand compensation for the unearned profit. If the victim has lost his/her ability to work or has been mutilated, the guilty party must in addition compensate also for the profit that the victim would have acquired in future, as well as for the mutilation.

82. The Civil Law also prescribes that the person who is guilty of causing the death of another person has the duty to compensate the heirs of the deceased for medical treatment and funeral costs. Besides, the Civil Law prescribes the duty of the guilty party to pay an indemnity to the dependants of the deceased.

Article 15

83. Effective legal acts of Latvia establish the principle, provided in article 15 of the Convention, that it is prohibited to use as evidence testimony that has been acquired through torturing a person.

84. Thus, article 19 of the Criminal Procedure Code stipulates that only evidence that has been gained, reviewed and assessed under the procedure prescribed by law may be used for establishing the circumstances of a case. Under article 49 of the Criminal Procedure Code, evidence in a criminal case is any facts used as the basis by the investigating institution, the prosecutor, the judge and the court, in compliance with the procedure prescribed by the law, for determining the presence or absence of *corpus delicti* - constituent elements of a criminal offence, the guilt of the person who has committed the said offence and other circumstances that are significant in the appropriate adjudication of the case. These facts are stated with the help of testimonies of witnesses, the testimony of the victim, testimonies of the suspect, testimonies of the accused person, expert statements, substantial evidence, and records of investigation and courts and other documents. Information acquired during operational activities, as well as information recorded with the help of technical means, may be used as evidence only if it is possible to check them under the procedure prescribed by the above Code.

85. Under article 294, compelling to testify at an interrogation, if it involves violence, a threat of violence, humiliation of the interrogated person or has been committed in any other way, and if the pre-trial investigator has committed it, is punished by deprivation of liberty for a term of up to 10 years.

86. According to the information from the competent authorities, in 2001 only one criminal offence provided in article 294 of the Criminal Law was registered.

Article 16

87. As already mentioned in paragraph 3 of the present report, article 95 of the Constitution provides for not only the prohibition of torture, but also the prohibition of cruel or degrading treatment or punishment. Several legal acts in force secure this principle in specific areas.

88. The Education Law defines the rights and obligations of the pedagogue and the students. Thus, article 51 of the Law stipulates that the duty of the pedagogue, inter alia, is to respect the norms of professional ethics, to respect the rights of the child, as well as to be responsible for his/her work, methods, techniques and results. Article 55 in turn provides the right of students to express freely and to defend their thoughts and opinions during the study and educational process, the right to conditions that are safe for their life and health at the educational institution and activities organized by the institution, etc. These norms apply to all educational institutions, including special educational institutions providing general practical and vocational education to students with mental and psychological developmental disorders and special needs.

89. Under articles 66 and 67 of the Criminal Law, the 1993 Law “On the Application of Educational Corrective Measures to Minors” and article 8 of the Latvian Criminal Procedure Code, corrective measures may be applied to minors found guilty of offences. One of the possible measures is to place the minor in an educational institution of social correction, where educational programmes of social correction for delinquents are implemented. The operation of these institutions is regulated by the Education Law.

90. Latvia has signed the 1997 European Convention for the Protection of Human Rights and Human Dignity of the Human Being with regard to the Application of Biology and Medicine, as well as the 1998 Protocol on the Prohibition of Cloning Human Beings. Both these documents are currently being debated in the Saeima (Parliament) and their ratification is expected in the near future.

91. Article 139 of the Criminal Law prescribes liability for the illegal removal of tissue or organs from a living or dead human with the purpose of using them in medicine, if it has been committed by a medical practitioner. The possible penalty for such acts is deprivation of liberty for a term of up to five years, and depriving the person of the right to engage in the practice of medical treatment for a period of up to five years.

92. The Central Committee of Medical Ethics has been established and operates under the Medication Law; it is a collegiate advisory body that reviews ethical issues of biomedical progress that apply to social problems - a set of moral values and norms in biomedicine that

applies to the protection of human rights and human dignity in genetic, gender selection, transplantation and other research. The task of this Committee, inter alia, is to stimulate, in cooperation with medical educational institutions of Latvia, the inclusion of issues of medical ethics in the curricula of social medicine, psychology and communication at the said institutions; to provide consultations to public administration institutions, local governments, medical and medical educational institutions, as well as other agencies, on compliance with normative acts issued by the above institutions and agencies to norms of medical ethics; to review any complaints and applications of natural or legal persons, and to issue opinions, respecting confidentiality, in the area of the ethics of biomedical progress, at the request of medical ethics committees of medical institutions and associations of medical professionals.

93. The 1992 Scientific Activity Law stipulates that the duty of the scientist is to terminate scientific research, if, according to the scientist's opinion, it can pose a threat to humanity, the society or nature, and to inform society about it. The law prescribes the establishment of the Scientific Council of Latvia, which is entrusted with the task of formulating criteria for the ethics of scientific research.

94. At the end of 2001 the Constitutional Court announced its judgement in the case on the compliance of the Provisional Regulations "On Procedure for Keeping Suspects, Accused Persons, Defendants and Convicted Persons at Remand Prisons", approved by the Ministry of Justice, with article 95 (prohibition of torture and inhuman or degrading treatment) and article 111 (the right to health and a guaranteed minimum of medical assistance) of the Constitution. According to the opinion of the applicants who submitted the constitutional complaint, the prescribed prohibition of food parcels was contrary to the above articles of the Constitution. In its judgement the Constitutional Court stated that the Internal Rules of Remand Prisons, issued on the basis of the above Regulations, were contrary to the Constitution in the part on the prohibition of food parcels.

Notes

¹ Criminal offence is an offence where the law prescribes deprivation of liberty for a term not exceeding two years or a less severe penalty. A less-serious crime is an intentional offence penalized by deprivation of liberty for a term exceeding two years but not exceeding five years, as well as an offence committed out of negligence and punishable under the Criminal Law by deprivation of liberty for a term in excess of two years. A serious crime is an intentional offence penalized by deprivation of liberty for a term in excess of five years but not exceeding 10 years. A particularly serious crime is an intentional offence which is penalized under the Criminal Law by deprivation of liberty for a term in excess of 10 years, life imprisonment or capital punishment.

² Under effective legal acts the extradition of a person from Latvia is not permissible if:

- (a) The said person is a citizen of Latvia;
- (b) The criminal offence has been committed in the territory of Latvia;

(c) A court judgement on the criminal offence for which extradition is requested has been already made and has become effective as well as if the case on the said charges has been closed;

(d) Under the laws of Latvia a person cannot be held criminally liable owing to the limitation period or any other legitimate grounds;

(e) The offence for which the extradition of the person is requested is not criminal under the Criminal Law;

(f) The person has been granted political asylum in the territory of Latvia.
