

A P P E N D I X

Comments by the Government of the Republic of Latvia

INTRODUCTION

The Government of Latvia (“the Government”) would like to submit the following comments regarding the Commissioner N. Muižnieks report (“Report”) on visit to Latvia from 5 to 9 September 2016 to be published together with the Report.

WOMEN’S RIGHTS AND GENDER EQUALITY

In the light of paragraph 17 of the Report, the Government would like to draw attention to the fact that the state and municipal police officers were entrusted with the rights and powers described in paragraph 17 of the Report by the amendments to the *Law on Police* and amendments to the *Civil Procedure Law* that entered into force on 31 March 2014. The Regulation of the Cabinet of Ministers No 161 is only a by-law. It should be also added that according to the *Civil Procedure Law* victims of violence can also apply directly (not only via police) to court seeking protection from violence. Such applications in high-risk situations are decided by the court within one working-day.

Further, as concerns the reference to Article 168¹ of the *Criminal Law* in paragraph 17 as well as in paragraph 19 of the Report , the Government would like to clarify that pursuant to the amendments to the *Criminal Law* dated of 29 October 2016 the word "temporary" has been excluded from the title and the disposition of Article 168¹.

In response to the concerns expressed in the second sentence of paragraph 22 of the Report, the Government wishes to emphasise that in accordance with Article 97¹, paragraph 1, subparagraphs 1), 9) and 10), of the *Criminal Procedure Law*, in the course of criminal proceedings victims have fundamental rights to receive information on compensation - including state compensation - application and eligibility conditions. Also, in accordance with the procedure laid down in the said Law, the victims have a right to receive contact details that are necessary for acquiring information on the relevant criminal proceedings; submit application, seeking compensation for inflicted damages; to receive information on available support and medical assistance.

As soon as the person has been recognised as a victim, she/he is immediately informed about one’s fundamental rights and, where necessary, these rights are explained to her/him. The victim shall confirm with one’s own signature that the information has been provided and, where necessary, the rights have been explained.

In order to provide psychological and informative assistance, the operation of a free-of-charge support telephone line for crime victims has been launched as of 1 January 2016 (*Tel. 116006.*).

In addition to information mentioned in paragraph 25 of the Report, the Government wishes to inform that on 17 November 2016 a draft law on amendments to the *Criminal Law* and a draft law on amendments to the *Law on the Procedure for the*

Coming into Force and Application of the Criminal Law have been submitted to the Cabinet of Ministers for consideration.

The above mentioned amendments to the *Criminal Law* envisage to establish criminal liability for stalking, as well as to determine that a criminal offence committed against a person who has not attained the age of eighteen and a criminal offence involving violence or threat of violence or an intentional criminal offense against a person's health, or against morality and sexual inviolability committed in the presence of a minor can be recognised as an aggravating circumstance.

The amendments to the *Law On the Procedures for the Coming into Force and Application of the Criminal Law* in their turn, if adopted, will establish common criteria for the assessment of psychological trauma, in order to ensure common understanding on how psychological traumas shall be assessed, namely, what constitutes a heavy psychological trauma, what are the consequences, how permanent they are etc. Besides, the mentioned criteria will ensure that the criminal liability for causing a psychological trauma will be also invoked not only in cases of serious injury, but also in those of moderate injury. Furthermore, list of serious injuries will be supplemented, stating that serious injuries are also those injuries that have resulted from female genital mutilation (FGM).

HUMAN RIGHTS OF CHILDREN

General comment on the usage of the term “stateless”

Latvia would like to reiterate its position that the legal status of “non-citizen” is not to be confused with the status of a “stateless person”. The status of a Latvian non-citizen cannot be equated with any other status of an individual laid down in the international law: the scope of non-citizens’ rights is broader than the scope of rights of any other existing and potentially comparable status under the international law. Latvian non-citizens cannot be recognised as stateless persons in the meaning of the 1954 Convention Relating to the Status of Stateless Persons.

The Government would like to provide the following data concerning paragraph 59 of the Report. On 31 December 2015 189 children under age of 3 years were in foster families, 420 in guardianship and 220 in child care centres (orphanages) (*source of information - the State’s Inspectorate for Protection of Children’s Rights*).

With regards to psychiatric treatment for children and the statement contained in the Report that “some children in hospitals were accommodated together with adults” the Government wishes to emphasise that only in few cases psychiatric treatment services are provided in the same premises for both adults and adolescents, and **in all such cases** separated rooms are provided for adolescents.

Furthermore, with regards to paragraph 23 of the Report and the statement included therein (“*Several NGOs also considered inter-institutional coordination to be weak, and pointed to shortcomings in the documentation of physical violence by medical professionals as well as a lack of specialists to treat cases involving sexual violence*”): Latvia would like to express its concern over the ambiguous wording of

this sentence that might lead to **completely unfounded conclusions** that violence by medical professionals has been observed.

In the light of paragraphs 77 , 78 and 79 of the Report, the Government submits that the stereotype that the best place for education of children with special needs are special education schools is a heritage stemming from the Soviet period. However, the implementation of inclusive education has been started in 2012 promoting integration of children with special needs into mainstream schools and classes. The statistical data illustrates positive developments in this regard – approximately 79% of students with special needs were taught in special education schools in 2009/2010 study year; whereas in 2015/2016 the proportion of students in special education schools decreased to 49%.

In addition thereto April 2016 the Ministry of Education and Science set up a working group of various stakeholders (including representatives of the *Latvian Association of Local and Regional Governments*, the State's Inspectorate for Protection of Children's Rights, special education institutions' directors, etc.) aiming to develop proposals on criteria and conditions for special education availability and support measures. It is foreseen that the working group will operate until October 2018 gradually addressing mentioned issues.

The practice of granting the status of special education development centres is included in the European Commission's *Education and Training Monitor Good Practice Library*. There are eleven special education institutions with the status of Special education development centres in Latvia. These centres provide methodological and consultative support for special needs pupils integrated in mainstream schools.

With regard to the information contained in the last sentence of paragraph 79, the Government would like to clarify that the source of the data provided on teachers' further training needs is *OECD Teaching and Learning International Survey* (TALIS) 2013 data published in 2014, that is based on teachers self-evaluation reports. It should be noted, however, that according to relevant regulations, all teachers working with special education programmes shall have an appropriate professional qualification. Continuing professional development is compulsory for all teachers in Latvia (including school heads and their deputies); each teacher shall take part in professional competence development programme which lasts at least 36 hours every three year. The Ministry of Education and Science provides state budget resources for the development of professional competence of teachers (starting from 2014 – 1,3 million euro per year, *inter alia*, 50 250 euro have been assigned particularly for special education issues).

As concerns the first sentence of paragraph 80, the Government wishes to clarify the following. Negative demographic trends are an important prerequisite for the arrangement of education institutions' network. The concept of schools' network "for provision of the qualitative education for all" has been stated in the Education Development Guidelines 2014-2020. According to that concept pre-school education shall be provided as close to the place of residence as possible; primary education – as close to the place of residence as possible, providing availability of services near the

local roads; lower secondary education – according to the placement of local school network; secondary education – concentrated in densely populated areas and district centres. **However, inclusive education has never been viewed as an instrument for compensation of an insufficient number of students.** The aim of the inclusive education is to ensure equal opportunities for children with special needs to attend classes alongside peers, where necessarily promoting individual development goals, meanwhile receiving the same experience. Statistical data demonstrates the above-mentioned – only 21% of pupils with special needs enjoyed inclusive education rights in 2009/2010 study year; whereas in 2015/2016 the proportion of pupils with special needs integrated in mainstream schools had increased up to approximately 51%.

With regard to the second sentence of this paragraph, the Government wishes to specify that in the study year 2015/2016 there were 11 901 pupil with special needs, 6 063 (51%) of whom were integrated in mainstream schools from grade 1 to 12 (the number “11 846 pupils with special needs” excludes those in evening schools and programmes).

In the light of conclusion in paragraph 82 of the Report, the Government wishes to provide the following information. During the European Structural Funds 2007-2013 planning period support of 12,6 million euro has been provided for the development of the education institutions’ infrastructure according to the pupils’ with special needs requirements (both special education institution infrastructure and mainstream schools infrastructure for pupils with functional disorders)¹ as well as 14,1 million euro for the development of inclusive education basis². Pupils with special needs is a horizontal priority of the European Structural Funds 2014-2020 planning period with the particular focus on the improvement of teachers’ professional competence and development of teaching materials. Specific objective (SO) 8.3.2.2. „*Support to the development of students’ individual competences*” will provide teachers with methodology for work with students who have learning difficulties and learning disorders; SO 8.3.1. “*To develop competence-based general education curriculum*” will support development of learning materials and study aids, *inter alia*, for the pupils with special education needs. In addition, Special education development centres will be involved in the implementation of the SO 8.3.5. “*To improve access to career guidance for pupils in general and vocational education schools*”.

In the light of recommendation in paragraph 83 of the Report, the Government would like to inform that in order to promote the naturalisation process, the Office of Citizenship and Migration Affairs (the OCMA) holds monthly information days at its exam centres in the cities of Riga, Liepāja and Daugavpils. Information days in other Latvia’s cities are held when necessary. For example, in 2016³ seven cities in Latvia (Rīga, Daugavpils, Liepāja, Ventspils, Jūrmala, Tukums, Valmiera) hosted altogether 76 information days.

¹ Operational Programme „Infrastructure and Service” Activity 3.1.3.3. “Improvement of infrastructure for students with special needs in comprehensive and special education establishments” (Subactivities 3.1.3.3.1. and 3.1.3.3.2.)

² Operational Programme „Human resources and Employment” Activity 1.2.2.4. Improvement of education accessibility for young people groups at risk of social exclusion and development of inclusive education (subactivities: 1.2.2.4.1. and 1.2.2.4.2.)

³ data on 1 November 2016.

The OCMA operates a free-of-charge telephone line, where everybody interested in the topic can obtain information on the acquisition of Latvian citizenship through naturalisation.

In order to raise awareness amongst non-citizen parents on possibilities to register their newborns and children as Latvian citizens, the OCMA carries out targeted activities, for example - the OCMA on its own initiative identifies non-citizens that might be eligible for being registered as Latvian citizens, and addresses these persons directly.

HUMAN RIGHTS OF LGBTI PERSONS

As concerns paragraph 102 of the Report, the Government wishes to provide the following comments. The drafting process of the Guidelines (*Cabinet of Ministers Regulation No 480 of 15 July 2016*⁴) was open for public discussion and participation starting from October 2015 to May 2016; discussions were held with the participation of 23 non-governmental organizations, including the *Latvian Centre for Human Rights* (covering integration, minority rights and promotion of tolerance, discrimination and hate crime prevention, asylum, migration issues), academia representatives and experts from various sectors.

In the light of conclusion and recommendation in paragraph 114 of the Report, the Government wishes to note that the Guidelines (*the Cabinet of Ministers Regulation No 480 of 15 July 2016*) and the general education (from pre-school through high school) curriculum reform launched in 2016 aim at developing a competencies-based approach emphasising the role of universal values-based attitudes' formation; capacity for and responsibility over one's actions; respect for human dignity, tolerance, empathy, non-discrimination, development of equal opportunities and participation in a democratic society. It is also maintained that the curriculum must include health education (including sexual/reproductive health issues).

Such principles as equal treatment, respect for the individual, cooperation with the pupil's family are included in the afore-mentioned Regulation, forming a basis for operation of the educational institution and the teacher in the implementation of the formative tasks, emphasising the teacher's professional independence and responsibility for training and educational work as well as selection of teaching aids and methods.

General comment

In accordance with Article 110 of the Latvian Constitution the state has obligation to protect and support the marriage – a union between a man and a woman, a family, the rights of parents and children. At the same time, any person in Latvia can freely enter into any private union with any person regardless of whether it is a marriage or any other union, including non-registered partnerships. In addition, the state has an obligation to ensure the protection of the right to respect for private and family life. Consequently, every person has a right to one's private life according to one's beliefs and views and the state has no right to disproportionately interfere in any person's private life.

⁴ "Izglītojamo audzināšanas vadlīnijas un informācijas, mācību līdzekļu, materiālu un mācību un audzināšanas metožu izvērtēšanas kārtība".

According to the current legislation there are no obstacles to persons living together to participate in civil relationships, to enter into transactions, to have rights and to undertake obligations. Similarly, any person has equal rights to defend his/her rights according to the respective legal framework regardless of whether person is in marriage or non-registered partnership. Therefore pursuant to the legal framework in force any person at any time can settle one's civil relations by entering into different transactions with different persons, including, for instance, authorisation contracts, gifts, maintenance contracts, additionally, buying real estate it is possible to register it as joint ownership in order to protect person's rights to his/her part in joint ownership. In the same way no person has obstacles to settle their property relations in case of death. Anybody can conclude inheritance contract or can draft a will concerning their real estate or movable property.

In addition, legal framework provides regulation for unforeseen life events. For instance, person may include another person in his/her life and accident insurance contract as a beneficiary in case of death (or change to anybody else during the duration of the contract). Anybody can draft the continuing power of attorney by which a person assigns an attorney to conduct his or her matters in case when the person due to health disorders or other reasons or conditions will not be able to understand the meaning of his/her action and will not be able to control his/her action (for example, will be in a coma). Concerning health care issues and treatment any person can authorize other to express informed consent or to refuse treatment. Whereas in critical cases where there is no power of attorney or continuing power of attorney but there is urgent need to protect person's rights and person has health disorders of mental nature or other and person cannot understand the meaning of his/her action or cannot control his/her action the court may establish temporary guardianship without restricting person's legal capacity. In this case the orphan court may appoint as a guardian the person who would be chosen by the particular person.