

LATVIA

Follow-up - State Reporting

i) Action by Treaty Bodies

CAT, A/60/44 (2005)

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CHAPTER IV. FOLLOW-UP ON RECOMMENDATIONS AND OBSERVATIONS ON STATES PARTIES REPORTS

115. At its thirtieth session, in May 2003, the Committee began a routine practice of identifying, at the end of each set of concluding observations, a limited number of recommendations that are of a serious nature and warrant a request for additional information following the dialogue with the State party concerning its periodic report. The Committee identifies conclusions and recommendations regarding the reports of States parties which are serious, can be accomplished in a one-year period, and are protective. The Committee has requested those States parties reviewed since the thirtieth session of the Committee to provide the information sought within one year.

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118. The Rapporteur has welcomed the follow-up information provided by six States parties as of 20 May 2005, when its thirty-fourth session concluded, indicating the commitment of the States parties to an ongoing process of dialogue and cooperation aimed at enhancing compliance with the requirements of the Convention. The documentation received will be given a document number and made public. The Rapporteur has assessed the responses received particularly as to whether all of the items designated by the Committee for follow-up (normally between three and five issues) have been addressed, whether the information provided is responsive, and whether further information is required.

119. With regard to the States parties that have not supplied the information requested, the Rapporteur will write to solicit the outstanding information. The chart below details, as of 20 May 2005, the conclusion of the Committee's thirty-fourth session, the status of follow-up replies to concluding observations since the practice was initiated. As of that date, the replies from seven States parties remained outstanding.

120. As the Committee's mechanism for monitoring follow-up to concluding observations was established in May 2003, this chart describes the results of this procedure from its initiation until the close of the thirty-fourth session in May 2005.

<u>State party</u>	<u>Date due</u>	<u>Date reply received</u>	<u>Further action taken/required</u>
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Latvia	November 2004	3 November 2004	Request further clarification
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CAT, CAT/C/SR.749 (2006)

COMMITTEE AGAINST TORTURE

Thirty seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 749th MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 22 November 2006, at 3 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

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11. Ms. GAER, Rapporteur on follow up to conclusions and recommendations, recalled that, in 2003, the Committee had begun a process of identifying conclusions and recommendations that related to serious matters raised by State party reports and required follow up within one year. The intention was to strengthen the purposes of the Convention set forth in the preamble by assisting States parties to bring their legislation and practice more fully into line with it. Since the process had begun, the Committee had requested 25 States parties to provide follow up information, and thus far 17 of them had acceded to that request. She examined the information submitted to assess whether all the issues raised (usually between three and five) had been addressed, and whether further clarifications were required. The information submitted was collated and issued as a public document. States parties that failed to reply were sent reminders.

At the beginning of the current session replies from eight States parties had been due; a further seven would be due by the end of the session.

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14. Latvia had responded promptly and at length to the five issues raised by the Committee, in particular its efforts to comply with EU prison standards. Worthy of note was the attention it had paid to the "shadow report" submitted in connection with the consideration of its initial report, although further clarifications had been required in relation to some of the cases it dealt with.

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CAT, A/61/44 (2006)

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CHAPTER IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

38. In Chapter IV of its annual report for 2004-2005 (A/60/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2005. This chapter updates the Committee's experience to 19 May 2006, the end of its thirty-sixth session.

39. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2006 on the results of the procedure.

40. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment," as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

41. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow-up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow-up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' report under article 19.

42. Since the procedure was established at the thirtieth session in May 2003 through the end of the thirty-sixth session in May 2006, the Committee has reviewed 39 States for which it has identified follow-up recommendations. Of the 19 States parties that were due to have submitted their follow-up reports to the Committee by 1 May 2006, 12 had completed this requirement (Argentina, Azerbaijan, Czech Republic, Colombia, Germany, Greece, Latvia, Lithuania, Morocco, New Zealand, United Kingdom, and Yemen). As of May, seven States had failed to supply follow-up information that had fallen due (Bulgaria, Cambodia, Cameroon, Chile, Croatia, Moldova, Monaco), and each was sent a reminder of the items still outstanding and requesting them to submit information to the Committee.

43. With this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

44. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all of the items designated by the Committee for follow-up (normally between three to six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she writes to solicit the outstanding information.

45. Each letter responds specifically and in detail to the information presented by the State party, which is given a formal United Nations document symbol number.

46. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues not addressed but which are deemed essential in the Committee's ongoing work in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

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48. The chart below details, as of 19 May 2006, the end of the Committee's thirty-sixth session, the state of the replies with respect to follow-up.

A. Follow-up reply due before 1 May 2006

State party	Date due	Date reply received	Document symbol number	Further action taken/required
...				
Latvia	November 2004	3 November 2004	CAT/C/CR/31/RESP/1	Request further clarification
...				

Follow-up - Reporting

ii) Action by State Party

CAT CAT/C/CR/31/RESP/1 (2004)

Comments by the Government of Latvia to the conclusions and recommendations of the Committee against Torture

[3 November 2004]

ADDITIONAL REPORT OF THE REPUBLIC OF LATVIA

1. In this document, the Government of Latvia submits its additional report pursuant to Rule 67 (2) of the Rules of Procedure in response to the request by the Committee against Torture expressed in its concluding observations (CAT/C/CR/31/3, para. 9) following the consideration of the initial report of Latvia (CAT/C/21/Add.4) at its thirty-first session, to forward information within 12 months on the implementation of the following recommendations:

“7. The Committee recommends that the State party:

(e) Introduce legally enforceable time limits for the detention of rejected asylum-seekers who are under expulsion orders. In this respect, the State party is invited to provide statistics, disaggregated by gender, ethnicity, country of origin and age, relating to persons awaiting expulsion;

(f) Continue to take measures to address overcrowding in prisons and other places of detention;

(g) Provide in the next periodic report detailed statistical data, disaggregated by age, gender and country of origin, on complaints related to torture and other ill treatment allegedly committed by members of the police forces, as well as related investigations, prosecutions, and penal and disciplinary sentences;

(h) Ensure that the draft code of conduct for police interrogation ("Police Ethics Code") is speedily adopted;

(i) Take measures to ensure that in all circumstances the crime of torture is explicitly included among the crimes for which article 34 of the Criminal Law excludes the defence of superior orders.”

Recommendation 7 (e)

“Introduce legally enforceable time limits for the detention of rejected asylum-seekers who are under expulsion orders. In this respect, the State party is invited to provide statistics, disaggregated by gender, ethnicity, country of origin and age, relating to persons awaiting expulsion.”

2. On this subject, the Government would like to submit data on 14 persons detained in the Illegal Immigrants Detention centre in Olaine of the State Border Guard of the Ministry of the Interior of the Republic of Latvia during the period from 1 January to 27 September 2004.

Name/Surname	Date of birth	Date of detention	Country of origin	Gender
Aleksandrs Gaidu_iks	1968	15.03.2004	Ukraine	M
Aleksandrs Roma_uks	1962	24.03.2004	Ukraine	M
Alv_ds Lapets	1956	07.04.2004	Lithuania	M
Mihails_ikans	1961	18.05.2004	Ukraine	M
Janine Lipskiene	1956	11.03.2001	Lithuania	F
Jurijs Matrosenkovs	1955	21.06.2004	Russia	M
Mihails_ekets	1959	15.07.2004	Ukraine	M
Vas_lijš Kabacijs	1958	20.07.2004	Ukraine	M
Sergejs Reunovs	1970	03.08.2004	Russia	M
Aleksandrs Veselovs	1958	12.08.2004	Belarus	M
Davit Khiratridze	1961	12.08.2004	Georgia	M
Aleksandrs Šukakidze	1975	17.08.2004	Georgia	M
Viktors Moge_ks	1957	12.09.2004	Ukraine	M
Gen_ijš Ime_janovs	1959	10.09.2004	Russia	M

3. The Government of Latvia cannot provide the Committee with statistics on the ethnic origin of the detained persons, as under the provisions of the Law on the Protection of the Data of Natural Persons, ethnicity is considered to be a sensitive data. Thus, the authorities cannot collect such data.

Recommendation 7 (f)

“Continue to take measures to address overcrowding in prisons and other places of detention.”

4. Certain improvements have been made in the conditions of the detention facilities. A number of them are regularly upgraded as part of long-term programmes to be carried out over the next years. In 2004, the Administration of Places of Imprisonment (API) has requested from

the State budget LVL 26,424,634,¹ of which LVL 16,198,056 (61.3 per cent) were allocated.

5. On 15 June 2004, the Cabinet of Ministers decided to allocate additional budgetary funds to API in order to ensure the compliance of prison facilities with European Union requirements. Recently, the Saeima (Parliament) has approved amendments to the 2004 State budget and allocated additional LVL 1,319,610 to cover salaries of prison personnel and provision of uniforms; medical care of imprisoned persons; financial aid to persons released from imprisonment; repayment of debts of the prison facilities and payment for services such as heating, gas, water and sewage, coal, food, etc. Concerned with the further improvement and development of the places of detention, API has requested LVL 29,055,888 from the 2005 State budget.

6. Repair works were carried out in the residential premises accommodating imprisoned women and persons serving life sentences at Daugavpils and I__uciems prisons, increasing the capacity of the latter by 42 units. Additional space for 28 units has been provided at Daugavpils prison in order to receive some of the life-sentenced prisoners to be transferred from Jelgava prison by 1 October 2004. Other repair works took place in the prisons of Brasa, Griva, Matisa, Jelgava, as well as in the Central Prison. The reconstruction of the Central Prison hospital, which started in 2003, has been temporarily suspended due to financial constraints. Nevertheless, the API has set this task among its priorities for 2005.

7. The following table shows the situation in prison on 1 October 2004:

	Number of units available	Number of persons	Density %
Persons detained on remand	3 611	2 615	72.4
Convicted persons	5 355	4 893	91.3
Persons in hospitals	200	129	64.5
Total	9 166	7 637	83.3

8. In addition, two working groups have addressed the issues of the development of the prison system and medical care for imprisoned persons. As a result, two concept papers are to be presented to the Cabinet of Ministers by 1 December 2004 - the Programme for the Development of Prisons and the Programme for Medical Care of Imprisoned Persons.

Recommendation 7 (g)

“Provide in the next periodic report detailed statistical data, disaggregated by age, gender and country of origin, on complaints related to torture and other ill-treatment allegedly committed by members of the police forces, as well as related investigations, prosecutions, and penal and disciplinary sentences.”

9. With regard to the age, sex and country of origin of persons complaining of torture or ill treatment, the Government notes that the Law on the Protection of Data of Natural Persons, which was designed, inter alia, to protect the privacy of applicants precludes the authorities from collecting certain data. Nevertheless, the comment made by the Committee on this subject was duly considered and information available at the present time is provided. The Government will, however, continue discussion on the possibilities to improve its system of gathering statistical data.

10. Between 1 June and 31 December 2003, the Personnel Inspection of the Office of Internal Security of the State Police (OISSP) conducted 90 inspections on reported cases of violence against persons. An offence was confirmed in five cases and five employees received disciplinary sanctions. Between 1 January and 1 October 2004, 146 inspections were conducted. An offence was confirmed in 10 cases and nine employees received disciplinary sanctions. There is no separate account on the nature of these disciplinary sanctions.

11. The Pre-trial Investigation Unit of OISSP examined 92 cases between 1 June and 31 December 2003. In 82 cases, OISSP rejected to institute criminal proceedings while criminal proceedings were opened in 10 cases. Eight crime files were received from other law enforcement authorities. Ten crime files were sent to the Prosecutor's Office but there are no data on the current status of proceedings. In eight cases, the proceedings were dismissed.

12. Between 1 January and 1 October 2004 OISSP examined 156 cases - in 17 of which criminal proceedings were instituted. One hundred and thirty nine cases were rejected. Six crime files were received from other authorities; 12 crime files have been sent to the Prosecutor's Office and there are no data on their current status and three cases were dismissed. The most frequent ground for the refusal to institute criminal proceedings, as well as dismissal, was the lack of sufficient and objective evidence.

13. No complaints on this matter have been registered with API.

Recommendation 7 (h)

“Ensure that the draft code of conduct for police interrogation ("Police Ethics Code") is speedily adopted.”

14. The Professional Ethics and Conduct Code of the State Police Personnel was adopted on 5 December 2003 by an order of the Head of the State Police. It is reproduced in the annex to the present report.

15. Regarding the implementation of its provisions following the adoption, police personnel were acquainted with the content of the Code. The Code was published in the official gazette *Latvijas Vēstnesis* (Latvian Herald). It is also available on the Internet in both Latvian and English. In July 2004, the Code was printed and framed and made available to all structural units of the Police, where at the precincts the Code is publicly displayed and made available for both visitors and personnel.

16. Specific provisions are dedicated to the examination of complaints alleging violations of the Code. This task is entrusted to OISSP. In 2003, 149 inspections were conducted, violation of professional ethics was confirmed in 76 cases and 94 employees received disciplinary sanctions. During the first six months of 2004, 85 inspections were conducted, an offence was confirmed in 52 cases and 65 employees received disciplinary sanctions. There is no separate account on the nature of these disciplinary sanctions.

Recommendation 7 (i)

“Take measures to ensure that in all circumstances the crime of torture is explicitly included among the crimes for which article 34 of the Criminal Law excludes the defence of superior orders.”

17. Article 34, paragraph 1, of the Criminal Law provides that the execution of a maleficent order or instruction by a person can only be justified providing that the person has not been aware of the maleficent nature of such an order or instruction, and providing that the maleficent nature of such an order was not clear and obvious. Currently no amendments to the Criminal Law have been drafted to include torture in the list of crimes specifically mentioned in the first paragraph of article 34 of the Criminal Law foreseeing responsibility for these crimes in all circumstances, nor is there an intention to do so. Torture itself is an intentional act or omission in relation to a person, and its maleficent nature is obvious and clear. It must also be mentioned that, as far as torture is concerned, a reasonable person should definitely recognize and understand the maleficent nature of such an order. Therefore, execution of an order to torture will not fall under the exclusion of the criminal liability clause mentioned in the first sentence of the first paragraph of article 34 of the Criminal Code, and thus no amendments to this article are necessary.

18. Since the wording of article 34 presupposes the law enforcement or military officials as perpetrators, the Government would like to refer to article 13 of the Law on the Police, which precisely defines situations when police officers are allowed to resort to physical force. All other cases, when physical force was used against a person, shall be treated as unjustified and giving concerns for a possible abuse of power.

Individual cases

19. Taking into consideration the concerns expressed by the Committee, following the submission of a shadow report by the Latvian Human Rights Committee, the Government is providing additional information on the mentioned eight individual cases.

Sergejs Guscins

20. On 26 February 2004, Sergejs Guscins applied for the status of stateless person. On 2 March 2004, the Law on Stateless Persons came into force, which provides that a stateless person who has travelled into the Republic of Latvia and cannot prove that his/her residence is legal, may be issued with a stateless person's travelling document, in conformity to the

provisions of the Convention relating to the Status of Stateless Persons. Such a person may be declared stateless in the Republic of Latvia unless any other country has according to its laws recognized this person as its citizen.

21. In view of the foregoing, on 17 March 2004, both the expulsion order of 8 October 1998 and the decision on forced expulsion of 28 May 2003 were cancelled. Sergejs Guscins was declared a stateless person and issued with travelling documents valid for two years. Under the provisions of the Law on Stateless Persons, Sergejs Guscins has to obtain a residence permit and submit certain documents. However, Sergejs Guscins has so far not submitted them.

Jevgenijs Sudakovs

22. On 19 November 2003 the Senate of the Supreme Court rejected Jevgenijs Sudakovs' cassation. Afterwards, however, new information has been received from the Embassy of the Republic of Belarus in Latvia showing that Sudakovs' family had neither a place of residence nor any relatives in Belarus. Therefore, the expulsion order and the decision on forced expulsion were both annulled on 22 January 2004, and a temporary residence permit valid until 22 January 2005 was issued to Jevgenijs Sudakovs.

Normumins Gurabojevs

23. Under the expulsion order of 20 November 1997 and the decision on forced expulsion of on 25 April 2003 the Russian citizen Normumins Gurabojevs was expelled from the Republic of Latvia to the Russian Federation. The re-entry ban was set for a time period until 13 October 2007.

24. According to available information, there is a case pending in C_{is} city court on the application for the annulment of the marriage between Normumins Gurabojevs and Irene Gurabojeva. In order to ensure participation in the trial, the court requested a visa to be issued to Normumins Gurabojevs to travel into Latvia, to which neither the Ministry of Interior, nor the Consular Department of the Ministry of Foreign Affairs have objected. Nevertheless, there is no record of Normumins Gurabojevs having travelled into the Republic of Latvia.

25. On 5 April 2004 the court delivered the judgement in the case, in the absence of the applicant and annulled the marriage. The decision came into force on 26 April 2004. There is no information on Normumins Gurabojevs entering into a new marriage, and no requests or claims from him have been received after his expulsion.

Vladimirs Novosjolovs

26. On 3 May 2002, the competent authorities annulled Vladimirs Novosjolovs' status of stateless person. Vladimirs Novosjolovs appealed against this decision to the Riga city centre district court, thus suspending its execution. The district court rejected the appeal, which was subsequently appealed to the regional court. The hearing of the case before Riga regional court was scheduled for 24 May 2004 but was postponed to 28 September 2004, since the court had no information on whether Vladimirs Novosjolovs had received the court summons. Accordingly,

the decision on the expulsion has not been taken yet.

Ansis Igars

27. Since 24 October 2002, Ansis Igars is serving his sentence in Gravas Prison. The doctor of the imprisonment facility is examining him on a regular basis. In addition, there have been three psychiatric consultations, the most recent of which took place on 16 August 2004, and the doctors have noted that Ansis Igars is emotionally unstable. Currently, no special psychiatric treatment is required.

28. No complaints from Ansis Igars have been received by the Ministry of Justice. Nevertheless, a number of complaints have been received from his mother Laimdota S_ile, addressed to the Minister of Justice and API. All complaints were examined and subsequent replies were made.

29. The Chancery of the President has received several applications from Ansis Igars and Laimdota S_ile, in which they complain of unlawful actions by police officials, prosecutors and the court, as well as of a request for a bribe by the judges of the Supreme Court. All applications were referred to the Prosecutor-General's Office.

30. Between 8 July 2002 and 17 June 2004 the Prosecutor-General's Office received 11 complaints and applications from Ansis Igars and Laimdota S_ile pertaining to the matters of pre-trial investigation and trial of his criminal case. The complaints concerned illegal actions by the police officials (abuse of physical force); the alleged adherence of the police, the the Prosecutor's Office and judges to criminal structures; the alleged request for a bribe by the judges of the Supreme Court and renewal of proceedings due to newly established circumstances. All complaints have been reviewed, and replies have been given to the applicants.

31. The Prosecutor's Office of Kurzeme court region examined the application for the renewal of proceedings based on newly established circumstances and rejected it on 26 December 2002. The validity and substantiation of this decision were examined by the Criminal Law Department Section of the Prosecutor-General's Office and found to be satisfactory.

32. On 20 August 2002, the Office for Combating Organized Crime and Corruption of the Central Criminal Police Department of the State Police carried out an inspection of the alleged criminal activities of the police, the Prosecutor's Office and court officials and their relation to criminal structures. It was decided not to institute criminal proceedings. Ansis Igars did not appeal against this decision.

33. On 29 March 2004, OISSP received and examined applications by Ansis Igars, Laimdota S_ile and other persons involved in the case concerning the actions of the officials of the Ventspils regional police department. On 28 May 2004 OISSP, on the basis of materials of the inspection, decided not to institute criminal proceedings due to the lack of sufficient evidence. The applicants appealed against this decision and on 28 June 2004 the Pre trial Investigation Supervisory Section of the Criminal Law Department of the Prosecutor General's Office, having

examined the validity and substantiation of this decision, referred the materials back for an additional investigation, which is still pending.

Andrejs Lisivnenko

34. No complaints from Andrejs Lisivnenko have been registered by the Ministry of Justice and Ministry of Interior. Between 10 July 2000 and 16 August 2004, the Prosecutor General's Office has received 23 applications and complaints from Andrejs Lisivnenko and his mother, Svetlana Lisivnenko, concerning unlawful actions by police officials. All the complaints have been reviewed and replies were given to the applicants. The Prosecutor's Office of Riga court region examined applications concerning the course of pre trial investigation, obtaining and assessment of evidence, and refused to institute criminal action.

35. OISSP carried out an investigation of alleged actions by the police officials. No evidence was found proving that force or psychological pressure was used against Andrejs Lisivnenko and on 29 September 2003, the institution of criminal action was refused. This decision was challenged before the Prosecutor's Office of the Riga court region, which repealed it and referred the case materials back for further investigation. Further investigation did not establish any evidence of criminal offence; therefore, on 5 December 2003, it was decided to reject instituting criminal action. The decision was challenged and the Pre-trial Investigation Supervisory Section of the Criminal Law Department of the Prosecutor-General's Office examined the materials and referred the case back for additional investigation. The latter, however, did not establish any evidence of crime and no criminal action was instituted. When examining the validity and substantiation of the decision, the Prosecutor-General's Office confirmed that the investigation was complete and versatile, all the facts established were objectively assessed, and there were no grounds to repeal the decision. The decision of the Prosecutor-General's Office has not been appealed against.

36. The Chancery of the President had received a number of complaints from Andrejs Lisivnenko and Svetlana Lisivnenko concerning biased pre-trial investigation, breaches of law committed by police officials and concerning unlawful unsubstantiated court ruling which led to his conviction. All complaints were replied to or referred to the Prosecutor General's Office.

37. The information obtained from the Supreme Court shows that the statement made by Andrejs Lisivnenko in his complaints concerning the fact that he had been sentenced for the murder of his sister and his niece solely on the grounds of his confession does not correspond to the truth. It follows from the judgement that the court found Andrejs Lisivnenko guilty of murder after assessing witness' testimonies and other evidence. A hearing of the cassation in the case is scheduled for October 2004.

Jurijs Dmitrijevs

38. The convicted Jurijs Dmitrijevs is currently serving his sentence in Brasa Prison and undergoes medical examinations on a regular basis. According to the conclusion of the prison physician, his condition is satisfactory.

Didzis Spuldzenieks

39. The Government would like to note that the information presented by the Latvian Human Rights Committee is not correct. Didzis Spuldzenieks was detained on 22 March 2002. He died in the prison hospital on 25 July 2002. The forensic examination conducted on 26 July 2002 by the prison anatomist, found that the cause of the death was *Ruptura aneurismae A.cerebri communicans anterior*. On 8 August 2002, his mother requested an additional forensic examination, which was carried out on 26 August 2002 and confirmed the initial diagnosis. On 1 October 2002 it was decided not to institute criminal proceedings. The Prosecutor's Office examined the validity of the decision and found it valid and legitimate.

1/ US\$ 1= LVL 0.5440 (exchange rate set by the Bank of Latvia, 2 November 2004).

Annex

PROFESSIONAL ETHICS AND CONDUCT CODE OF THE STATE POLICE PERSONNEL

This Code shall define the general rules of conduct and the basic principles of the professional ethics, to be observed by the State Police personnel performing their official duties, as well as beyond the place and time of service. A Police officer following the requirements of the Code shall have the rights of recognition on the part of the public and governance and moral support.

1. A Police officer performing his/her duties shall keep to the requirements of law, acting objectively and in a fair way, favouring with his/her conduct and action to call confidence to Police on the part of the public.
2. A Police officer executing orders and prescriptions received from the higher-rank officials shall be held personally liable for his/her actions. If an order or prescription is illegal, the Police officer shall inform the higher-rank official of it. If a Police officer refuses to perform an illegal order or prescription, he/she shall not be subject to the disciplinary proceedings.
3. A Police officer performing his/her duties ensures observation of human rights of every individual, irrespective of his/her nationality, race, sex, language, religion, political or any other opinion, age, education, social status.
4. A Police officer, in his/her interaction with inhabitants of respecting and defending dignity of a human being shall be decent and tolerant.
5. A Police officer shall not support, admit and encourage any acts of torture or cruel, brutal, inhuman or humiliating actions taken against any person.
6. A Police officer shall use force, special facilities or weapons only in the cases

stipulated by due course of law and to attain a legal aim. The spontaneous or ill intentioned use of force, special facilities or weapons shall not be justified.

7. A Police officer shall also render aid beyond the place and time of service on his/her own initiative to a person in danger or in a helpless condition, and shall take measures to prevent the stated violation of law.

8. Personal conduct of a Police officer shall be irreproachable in performing his/her official duties and in his/her personal life, without prejudice to the service and his/her own reputation.

9. A Police officer shall not disclose any official information known to him/her, except in cases provided for by law.

10. A Police officer, in relationship with the colleagues, a chief or subordinate persons, shall adhere to the hierarchical order and, display due probity and dignity in his/her professional relations.

11. A Police officer, in his/her attitude to a person, may not create grounds for suspicion in unfair action or affecting the situation.

12. A Police officer shall not receive material goods or services from persons who in any way might influence him/her in the performance of his/her official duties and decision-making.

13. A Police officer shall not use his/her official standing or the State property, as well as information that has become known to him/her in the course of his/her official duties, to derive a personal or property benefit for himself/herself or his/her relatives.

14. A Police officer shall combat any signs of corruption in the Police and keep informed the higher-rank official or any other authoritative body regarding any case of corruption in the Police.

15. A Police officer shall keep informed the higher-rank official if a conflict of interests has arisen.

16. A Police officer shall continuously improve his/her professional skills.

17. Top management of the Police shall support and protect a Police officer who suffered harm when performing his/her official duties.

18. Any natural or legal person may apply with a complaint to the direct chief or to the higher-rank official of a Police officer if he/she infringes the basic principles of the general rules of conduct and the professional ethics defined in the Code.

19. A Police officer shall be held liable in the order duly established by law and

legislative acts for violation of the basic principles of the general rules of conduct and the professional ethics defined in the Code.

CAT, CAT/C/LVA/CO/1/Add.1 (2007)

Comments by the Government of LATVIA* ** * on the conclusions and recommendations of the Committee against Torture (CAT/C/CR/31/3)**

[14 May 2007]

1. The present report has been prepared by the Government of the Republic of Latvia in response to the request made by the Rapporteur for the Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture Ms. Felice Gaer. The present report contains additional information following the submission of the Second Periodic Report of Latvia on the implementation of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Latvia during the period from November 1, 2003, till April 20, 2005 (hereafter - Latvia's Second Periodic Report). The information concerning the adoption and implementation of several major legislative acts, among them, the Criminal Procedure Law (entered into force in October 1, 2005), the Law on Procedure Detention on Remand (entered into force in July 18, 2006), the Law on the Procedure for Holding Apprehended Persons (entered into force in October 21, 2005) has been provided as well. The most up-to-date information pertaining to the statistical data requested by the Committee will be provided to it during examination of Latvia's Second Periodic Report at its 39th session in November 2007.

The initial concerns expressed by the Committee

Recommendation 7(e)

Introduce legally enforceable time limits for the detention of rejected asylum seekers who are under expulsion orders. In this respect, the State party is invited to provide statistics, disaggregated by gender, ethnicity, country of origin and age, relating to persons awaiting expulsion.

Follow-up responses made by the Committee

2. The Committee would also welcome further data on the current status of the persons listed as asylum seekers awaiting expulsion and any new cases since that time, as there are no indications of time limits for the cases of asylum-seeking detainees to be resolved.

Measures taken to address the concerns expressed by the Committee

3. As it has been mentioned in paragraph 1 above. The most up-to-date information pertaining to the statistical data requested by the Committee will be provided to it during examination of Latvia's Second Periodic Report at its 39th session in November 2007.

4. Meanwhile, the Government would like to inform the Committee about the most recent legislative amendments and other developments in the area of asylum pertaining to the terms of

detention of persons awaiting expulsion, including applicable procedural safeguards. In accordance with the Law on Administrative Offences, a foreigner who has violated the entry residence of transit rules may be detained for the time period of up to three hours. In specific cases, where the authorities have to establish the offender's identity or investigate specific circumstances of the offence, the detention may be applied for up to three days. However, in the latter case, the authorities within 24 hours from the moment of detention shall in writings notify the public prosecutor. In accordance with Article 54 of the Immigration Law, foreigners may be detained for a time period not exceeding 10 days. However, in practice, if foreigners have relatives in Latvia, such persons are frequently released by the Border Guard or by a judge, so that the person can stay with the relatives until all necessary documentation is arranged. Detention is subject to appeal before the court. Detention for a time period exceeding 10 days shall be authorised by the district (city) court judge.

5. The order to expel a foreigner (the removal order) is issued by the Citizenship and Migration Board. The removal order is subject to appeal before the Head of the Citizenship and Migration Board, whose decision in turn may be appealed against to the court. The term for lodging each of the appeals is 7 days. The detained foreigner has the right to contact the consular service of his/her country and is entitled to receive legal aid. The detainee shall be informed about these rights immediately following the apprehension. The detained foreigner has a right to acquaint himself/herself with the materials related to his/her detention of expulsion in person, or with the assistance of his/her legal counsel. More information concerning practical implementation of the said provisions is available in a recent decision of 31 August 2006 by the European Court of Human Rights in the case *Sergejs Vikulovs and others against Latvia*, application No. 16870/03.¹

6. The accelerated asylum procedure is governed by Article 19 of the Asylum Law. Under the said provision the Refugee Affairs Department of the Citizenship and Migration Board shall examine the applications for asylum within five working days. The refusal to grant asylum within two days may be appealed against to the District Administrative Court (the appeal is lodged with the Refugee Affairs Department to facilitate proceedings for the applicant).

7. The Government would like to inform the Committee that the draft law On the Asylum in the Republic of Latvia was formally approved during the session of the Committee of the Cabinet of Ministers on March 26, 2007. Upon its approval in the session of the Cabinet of Ministers (the date of the session has not been scheduled yet) it will be submitted to the Parliament. The draft envisages an extended period of time for the authorities to decide on the application (ten working days) and for lodging and appeal with the judiciary - the District Administrative Court - against refusal to grant the status (three working days). The draft law is the national implementation instrument of two important EU directives in the area of asylum - the Council Directive 2004/83/EK of April 29, 2004, Concerning mandatory standards for qualifying citizens of third countries or stateless persons as refugees or persons requiring other way the international protection, the status of those persons and the content of the granted protection and the Council Directive 2005/85/EK of December 1, 2005, Concerning minimal standards regarding the procedures of Member states granting or withdrawing the refugee status. The Government will submit additional information regarding the status of the said law during examination of Latvia's Second periodic report at its 39th session in November 2007.

Recommendation 7(f)

Continue to take measures to address overcrowding in prisons and other places of detention.

Follow-up responses made by the Committee

8. The Committee welcomes the commitment Latvia has made to upgrade the conditions of detention, and allocate additional budgetary funds to the Administration of Places of Imprisonment to ensure the compliance with European Union standards. The Committee notes that with repairs and construction, additional units have been created, yet reconstruction of the Central Prison hospital which had begun in 2003 was later suspended. The Committee would appreciate receiving status report on the implementation of the concept papers regarding the prison development and medical care for prisoners.

Measures taken to address the concerns expressed by the Committee

9. The Government would like to draw the attention of the Committee to paragraphs 27-29 of Latvia's second periodic report. According to the information provided therein, the Ministry of Justice has drafted the Concept on the Development of Penitentiaries, which focuses on the elimination of the most acute problems of the penitentiary system - the problems of the buildings, constructions and communications at penitentiaries, as well as it will allow providing appropriate conditions for serving the sentences. The Concept on the Development of Penitentiaries was examined by the Cabinet of Ministers on April 19, 2005, and adopted by the Cabinet's decision No. 280 of May 2, 2005. The concept paper, inter alia, provides the solution of the problem of Central Prison Hospital premises. The Central Prison Hospital will be transferred to the Olaine tuberculosis Hospital (retaining the tuberculosis treatment facilities) to provide all inmates with treatment that would comply with the necessary standards. In 2005, additional financial resources in the amount of LVL 1,630,000 were allocated allowing to complete the construction of the Olaine Tuberculosis Hospital. The latest information pertaining to the situation in the Olaine Tuberculosis Hospital, as well as the respective funding will be provided by the Government prior to examination of Latvia's Second periodic report at its 39th session in November 2007.

10. In the following paragraphs the Government would like to inform the Committee about the recent legislative developments in the area of detention on remand. The Government is of the opinion that this information may be useful for the Committee as it falls within the ambit of the issue of overcrowding in places of temporary detention - i.e. remand prisons and short-term detention units in police stations. The new Criminal Procedure Law (entered into force on October 1, 2005) strongly emphasises that when deciding about the applicable security measure, priority shall be given to the least restrictive and most proportionate measure in the case concerned. Performer of inquiry shall evaluate the severity of the crime the person concerned is being suspected/accused of, the personality of the suspect/accused person, his/her family status, health and other circumstances. A person may be apprehended for up to 48 hours (as compared with 72 hours in the former Criminal Procedure Code). However, within this term the person

shall be brought before the investigative judge, who shall decide if detention on remand should be applied. The time spent in apprehension is included in the term of detention on remand. The detention on remand shall only be applicable in cases, when the suspected person is identified by information obtained during the early stage of investigation; the respective crime is punishable with deprivation of liberty; serious concerns exist that the person may re-offend, impede the establishment of truth, abscond the investigation or adjudication.

11. The maximum term of detention on remand for different types of crimes is now strictly fixed in Article 277 of the Criminal Procedure Law - the shortest maximum terms of detention on remand is 3 months (2 months for the pre-trial investigation stage and 1 month for adjudication), the longest maximum term provided for especially serious crimes is 24 months (15 months for investigation, 9 months for adjudication). In cases of juvenile detainees these are halved. The mentioned maximum terms of detention on remand may be prolonged for up to 3 additional months by the investigative judge during the pre-trial stage, and a judge of a higher court during the adjudication stage, but only in cases when the institutions responsible for the proceedings have not contributed to the delay in proceedings. This new approach is totally different from the provisions of the repealed Criminal Procedure Code, where the maximum term of detention on remand during the pre-trial investigation and adjudication was three years, irrespective of the severity of the charges. The Criminal Procedure Law also envisages that criminal proceedings, where person's liberty is at stake due to the applied security measures, shall have priority over other types of criminal proceedings.

12. A number of different alternative forms to terminate criminal proceedings have been introduced - the summary procedure, the prosecutor's prescription for sanction (better known in Europe as the prosecutor's penal order). A list of alternative security measures has been introduced - such as the notification of the postal address, the restraint order, the prohibition to leave the country, the prohibition to leave the place of residence.

13. The Criminal Procedure Law has also introduced a new post of investigative judge, entrusted with ensuring the observance of human rights during criminal proceedings. Only investigative judge shall have the power to apply/extend detention on remand during pre-trial investigation.

14. In practice, these steps have contributed to the speediness of the criminal trials in court. The following numbers show a constant trend, where the length for the court proceedings is gradually decreasing. In 2001, the average length of proceedings was 5,1 months in the first instance courts; 5,1 months in the courts of the appeal. In 2004, the average length of the proceedings was 4,7 months in the first instance courts; 5,4 months in the courts of the appeal. In 2005, there numbers are accordingly 4,4 months for the first instance courts and 4,2 months for the courts of appeal.

15. The Government would like to inform the Committee that since submission of Latvia's Second periodic report on August 6, 2005, the State Police has carried out an extensive work to improve the conditions in the places of temporary detention (see annex 1). The new Law on the Procedure for Holding Apprehended Persons of October 21, 2005, contains provisions regarding conditions of detention, internal regulation and health care in the police temporary detention

units, and conditions of detention and nutrition in temporary detention units are constantly improving. Currently, all persons contained in temporary detention units are provided with clean blankets and mattresses. Nevertheless, it has still not yet been possible to implement all provisions of the said law in all police temporary detention units. Therefore, new solutions, such as construction of new temporary detention units in the cities of Liepaja and Daugavpils are employed. The temporary detention unit in the city of Ventspils has been closed on October 1, 2006 and all detainees have been transferred to the Liepaja and Talsi cities.

16. In the police short-term temporary detention units persons are being held only for the time period of up to 48 hours. As soon as the investigative judge has decided to apply detention on remand, these persons are sent to the remand prisons. A person may be sent back from remand prison to the temporary detention unit only in exceptional cases, where investigation activities have to be carried out, which cannot be accomplished in the remand prisons. In order to further elaborate this practice, the State Police in May 2005, developed a circular instruction regarding the temporary transfer of detainees from remand prisons to the temporary detention units.

17. Detention from one to fifteen days for committing an administrative offence is an exceptional sentence, which may be applied only by a judge of the district/city court. Persons serve their sentence in special premises under police supervision. These persons are kept separately from other detainees; males, females and juveniles being kept separately from each other.

Recommendation 7(g)

Provide in the next periodic report detailed statistical data, disaggregated by age, gender and country of origin, on complaints related to torture and other ill treatment allegedly committed by members of the police forces, as well as related investigations, prosecutions, and penal and disciplinary sentences.

Follow-up responses made by the Committee

18. The Committee notes that while some statistics have been provided, there has been no breakdown, although the Committee notes that Latvia will continue discussion on ways to improve its system of gathering statistical data. The Committee would welcome initiating a dialogue with Latvia on the issue of gathering, and then disaggregating, statistical data by age, gender, and country of origin, in relation to the Law on the Protection of Data of Natural Persons. While the Committee recognises the sensitive implications of gathering personal data, in the practice of other state parties with which the Committee has cooperated, the collection of such statistics has in fact led to better protections against discrimination by making authorities aware of the scope of the issue as long as measures are taken to ensure such data collection is not abused, to ensure equal treatment of everyone before the law.

Measures taken to address the concerns expressed by the Committee

19. The Government kindly accepts this Committee proposal and stands open for further

discussions on this issue. The Government would like to inform the Committee that certain discussions in respect of the issue of the gathering of statistical data have already taken place. Nevertheless, the Government would welcome any other contribution by the Committee.

Other follow-up responses made by the Committee

20. In the responses of the Government to 7(g) on page 4, paragraph 10, the Government notes that in 2003 and 2004, the Personnel Inspection of the Office of Internal Security of the State Police conducted 90 investigations of allegation of torture and a total of 14 employees received "disciplinary sanctions" although no separate account of these sanctions was available. Without such further information, however, the Committee cannot assess the seriousness of the cases or whether such employees were returned to their duties.

21. On page 4, paragraphs 10 and 11, the report also cites in total 22 cases sent to the Prosecutor office in 2003 and 2004, apparently involving criminal charges against personnel, although the nature of the offences is not indicated. The report also notes that no data was available on the cases under prosecution, so it is difficult to assess the effort in ensuring the implementation of the Convention.

22. The Government would like to draw the attention of the Committee to paragraph 16 of Latvia's second periodic report, informing that currently no record is being kept of the types of disciplinary penalties imposed. As it has been mentioned in paragraph 1 above, the most up-to-date information pertaining to the statistical data requested by the Committee will be provided to it during examination of Latvia's Second periodic report at its 39th session in November 2007.

Other follow-up responses made by the Committee

23. The Committee takes note of Latvia's response to 7(i), that currently no amendments have been made or are planned to be incorporated to the Criminal Law to include torture, execution of an order to torture will not fall under the exclusion of criminal liability envisioned in Article 34, paragraph 1 of the Criminal Law, concerning the following of unlawful orders or instructions. The Committee also acknowledges the relevance to the Convention of Article 13 of Latvia's Law on the Police, which precisely defines situations permitting police officers to resort to physical force, indicating that all cases of use of force not indicated will be treated as unjustified and "giving concerns for possible abuse of power". The Committee looks forward to further dialogue with Latvia regarding the importance of incorporating precise definitions and remedies to prevent and prosecute torture as a means to improve practices in this field.

24. The Government fully understands concerns expressed by the Committee and is looking forward discussion on this issue during examination of Latvia's Second periodic report at its 39th session in November 2007.

Other follow-up responses made by the Committee

25. The Committee also welcomes the through attention given by Latvia to the shadow report

prepared by the Latvian Human Rights Committee, and in some instances, upon review of the cases, cancellation of decision to make forced expulsions. As the burden of proof for the effective review and remedy of these cases was placed on the individuals themselves (i.e. they must present relevant claims and documentation), the Committee would appreciate follow-up by Latvia to assess the status of these cases. In particular, on page 7, paragraphs 27-30, regarding the case of Ansis Igars, where allegations of the use of force were made, the nature of replies and remedies have not been indicated.

26. The Government recalls that in paragraph 33 of the Additional Report of the Government of Latvia, the Government informed the Committee that on June 28, 2004, the Criminal Law Department of the Prosecutor General Office examined the validity and substantiation of the decision by the Internal Security Bureau of the State Police (the ISBSP) not to initiate criminal proceedings against Ventspils State Police due to the lack of sufficient evidences. Upon the examination of the said decision the Prosecutor General Officer referred the case materials back for additional investigation.

27. On October 5, 2004, following the results of additional examination, the ISBSP decided to refuse to initiate criminal proceedings due to the lack of sufficient evidences. On October 20, 2004, the applicant's mother Laimdota Sele addressed the Prosecutor's General Office and requested re-opening of the criminal proceedings due to newly discovered circumstances. On December 9, 2004, the Prosecutor General Office examined the ISBSP decision of October 5, 2004, and refused to re-open the criminal proceedings. On January 2, 2006, in response to Ansis Igars' and his mother's petitions the Durzemes Regional Prosecutor Office repetitively examined the materials of the criminal proceedings. Nevertheless, the Kurzemes Regional Prosecutor Office did not establish any newly discovered circumstances and both petitions were rejected. The decision of the Kurzemes Regional Prosecutor Office was appealed against to the Prosecutor General Office. On February 21, 2006, the Prosecutor General Office rejected the appeal. The Government finds it important to inform the Committee that currently the application "Igars v. Latvia" is pending before the European Court of Human Rights.

* Previous replies to the conclusions and recommendations of the Committee are available in document CAT/C/CR/31/3/RESP/1

** Annexes to the present report are available with the Secretariat of the Committee

*** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

1/ Available at <http://www.echr.coe.int/echr>.