

LEGAL NORMS OF DETENTION AND LEGAL RIGHTS OF DETAINEES IN LATVIA

by

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Good afternoon ladies and gentlemen.

I represent the Latvian Centre for Human Rights and Ethnic Studies, where I work as a staff lawyer. The Centre is an NGO active in the field of human rights and ethnic relations. The Centre's activities include monitoring closed institutions, training, and providing legal consultation to victims of human rights violations. The Centre is a member of the International Helsinki Federation for Human Rights.

Latvia restored its independence fifteen years ago, and since then the country has undergone many changes and faced a lot of challenges. One of them is the phenomenon of the so-called illegal migration. In the early 1990-ies the first asylum seekers - Kurds from Iraq – illegally came to Latvia and caused real panic: what is happening and what will come next?

Today we have an answer. Statistics shows that during 15 years of independence or, in fact, since 1998 when legal asylum procedures were adopted, 141 persons have claimed asylum in Latvia. Of those, 8 were granted status of refugee under Geneva Convention and 9 persons were granted alternative status. The last time when the status of a refugee was granted in Latvia was in 2001.

There are different explanations why so few persons are seeking asylum in Latvia while hundreds enter, for example, the neighbouring country of Lithuania every year. One of the explanations which is coming from the state authorities states that the potential refugees have learnt the Latvian immigration system very well and have understood that it is much stricter than in other countries. There is also an opinion that Latvia is not interesting in asylum seekers because it is still not economically well developed and has no common border with European countries which have good social security system what could be interesting for asylum seekers. The other explanation, which might be closer to the truth, states that the low number of persons seeking asylum in Latvia is the result of good cooperation between border guard and immigration authorities, whose policy is aimed at restricting the number of immigrants in the country.

Nonetheless, Latvia is well prepared to receive asylum seekers. On the Eastern border of Latvia every border point is accommodated with premises for potential asylum seekers. The "Mucenieki" Reception Centre for approximately 200 asylum seekers has been established and well accommodated with foreign financial help, however, for most time it stays empty.

At the same time Latvia has a detention centre for illegal immigrants – Olaine Detention Camp for Illegal Immigrants. Prior to 1999 immigrants were accommodated in another facility. Following a visit by the European Committee for

the Prevention of Torture and Inhuman or Degrading Treatment to Latvia in 1999, it recommended in its report that persons detained in Illegal Immigrant and other Unidentified Accommodation Centre in Gaizina iela in Riga – “should be immediately transferred to another – suitable – establishment; the conditions at that Centre were totally unacceptable and amounted, in the delegation’s opinion, to inhuman and degrading treatment.” In its follow-up response, the Latvian authorities confirmed that “since the liquidation of the Centre for Illegal Migrants and other Unidentified Persons in Riga, no person is being kept in its premises. At the time being, all persons detained for offences against the law in connection with visa regime violations, illegal entry into the country, are sent to the Illegal Immigrant Temporary Accommodation Institution in Olaine”.

It is important to explain what kinds of people are detained in the detention centre for illegal immigrants. Most of them are persons who have not entered the country recently but have resided in Latvia for several years or even decades but who, following the collapse of the former Soviet Union, were registered in countries outside Latvia or because different reasons did not change their documents to passport valid in the Republic of Latvia. Many of them have long established links with Latvia, including a permanent place of residence, family ties and employment. Even when it is difficult to establish any significant links with other countries for these persons, the law does not make it possible to grant them a legal status to reside in Latvia. The decision of authorities of Immigration board to detain these people is motivated by formal considerations that if they have not legal status in the country then by law they cannot have a legal place of residence as well as a legal job and income. Other people who are detained in the camp are persons who have asked for asylum but whose identity is not confirmed yet or whose applications have been rejected and who are awaiting expulsion from Latvia. And, of course, the detention centre also accommodates persons who have entered the country illegally or have violated the law on the residence of aliens in Latvia.

The number of the so-called illegal immigrants in Latvia is decreasing every year, mainly for the reason that there are fewer and fewer people without any legal status in the country, however, it is still very high in comparison with the number of asylum seekers. In 1997 there were 347 such persons, three years later – in 2000 – 269 persons, 214 in 2002, 174 in 2003 and 146 in 2004.

Until May 2003 when the new Immigration Law came into force in Latvia, the detention of persons in the detention centre for illegal immigrants was regulated very poorly. Persons were kept there for unlimited period of time without a court decision, and in one case a Chechen man and his family spent even five years there. During a monitoring visit in 2003, the administration authorities informed that the length of detention varied from one-two weeks to several years, and largely depended on contacts with relevant embassies and the time required for the arrangement of the necessary travel documents.

In accordance with the new Immigration Law, which came into force on May 2003, an illegal immigrant can be detained by the police for three hours before he/she is handed over to border guards. The border guards may detain an illegal immigrant for up to 10 days. If the person cannot be expelled within 10 days, the extension of detention can only be authorised by court decision. The court may initially authorise

the extension of period of detention for up to 2 months, however, State Border Guard can submit an application on the extension of detention period, and the total period of detention pending expulsion may not exceed 20 months. A decision on detention can be revoked either by judge acting on a prosecutor's protest or the chairing judge of a higher instance court.

The new Immigration Law, which came into force on 1 May 2003, did not provide for any transitional period, and on the day when it came into force, which was a Sunday a large number of detainees from the Olaine Camp were brought to the court, which without a single exception, authorised the extension of detention for another 6 months. Unfortunately, the time that the detainees had spent in custody prior to the coming into force of the new law was not included in maximum period of detention.

However, even after the determination of time limit problems remain. A person who is released from detention (for instance, because there is no state that is willing to assume responsibility for the person and, therefore, the person cannot be expelled) is not by law assigned any defined legal status. As a result, the person can be detained repeatedly, theoretically, even for another 20-month period.

For example, in 2003, a Roma woman in last month of pregnancy was repeatedly placed in the Olaine camp for illegal immigrants together with her 2-year old child. She was born in Soviet Lithuania, moved to Latvia at an early age, has a regular place of residence, and the child's father, also Roma, is a citizen of Latvia. As her only identity document is birth certificate issued by Lithuania, she has no legal status. Her mother and other family members are living legally in Latvia. After the birth of her child, the father of the child turned to the Registry Office asking to register the child as a citizen of Latvia because of his citizenship. The Registry Office refused to register the child at all on account of the absence of identity documents and legal status of the mother, regardless of the fact that the child's father is a citizen of Latvia. While the Roma woman was placed in Olaine camp, Immigration department tried to expel her to Lithuania as to her place of birth. Lithuania did not recognize the Roma women as citizen of that country. Prior to the birth of the second child, the court released the woman from camp on condition that she settles her identity documents, but it remains unclear how this is achievable in practice. Presumably, the second child also is not registered.

Serious problem in respect to the procedure of detention of migrants is lack of relevant court proceeding. It is neither criminal proceeding, nor administrative proceeding under the Latvian legislation, and thus the order of court hearing and the rights of detainees during trial remain undefined.

Under the Immigration Law a detainee has the following rights:

- to submit a complaint to a prosecutor, contact the consular institution of his/her country and receive legal assistance. A detainee shall be acquainted with these rights at the moment of detention;
- personally or assisted by his/her representative to become acquainted with the materials related to his/her detention;
- to communicate in the language he/she understands, using interpreter's services, if necessary;
- to appeal the decisions of authorities as stated by the law

- to be convoyed and accommodated separately from the persons suspected of criminal offences.

However, none of these rights is regulated in detail. For example, it is not stated who can represent a detainee and how the representation should be affirmed: by written warrant or orally; who can be a representative: any person having a legal capacity or only a sworn advocate; whether there are cases when the government shall provide legal help free of charge and how a detainee can receive legal assistance.

Access to legal aid is limited at the detention camp, as many detainees lack means to afford a lawyer. There is no legal aid provided by the state for such detainees. In several cases detainees have been denied the right to examine documents related to their detention. Visits of State Border Guard inspectors are irregular and, on occasions, the inspectors have failed to provide complete information to the detainees about their case. The detainees have the right to lodge a complaint directly with the prosecutor, but they claim that the prosecutor has never visited the camp.

The other important shortcoming of immigration legislation in Latvia is lack of provisions for regulation of detention order: in fact, it is not provided by law where and how the detained persons should be guarded; do they have a right to meet their relatives or friends during detention, if yes – whom and how long; do they have a right to keep their belongings with them; do they have a right to leave the territory of the camp, if yes – for what reasons; do the children have a right to continue to attend the school etc. While the fundamental rights of individuals may only be restricted by law, currently holding of detainees in the Olaine camp is only governed by an order issued by the State Border Guard. Restrictions placed on detainees, including contacts of family members, approximate those for prison detainees.

At the end of my presentation I want to point out that there has been significant development of legislative framework regarding asylum seekers and illegal immigrants in Latvia from the beginning of 1990-ies. However many issues remain unresolved, and it is clear that new problems will arise now, after joining the European Union, and after joining the Shengen area. That is why it is very important to share experiences of best ways how to improve legislation and practice in respect to immigration.

Thank you.

Development of Latvian legislation regards asylum seekers and illegal immigrants.

- June 1992: the Law on Immigration and Residence of Aliens and Stateless persons was adopted (in force since July 1992).
- April 1995: first regulation on order of temporary residence for persons who are detained for illegal residence in Latvia was adopted.
- June 1997: Latvia joined 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees, and adopted the Law on Asylum seekers and Refugees in Republic of Latvia (in force since July 1997). The Convention and its Protocol

were adopted with reservation that it is in force only in respect to refugees from European countries.

- October 1997: amendments to the Law about 1951 Refugees Convention and its Protocols, stipulating that the Convention and its Protocol are in force in respect to refugees from all countries.
- February 1998: Centre of Refugee Affairs is starting to receive applications for status of refugee.
- March 2002: the Asylum Law was adopted (in force since September 2002).
- October 2002: the Immigration Law was adopted (in force since May 2003).