

LATVIA

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Contents Structure

I. EXECUTIVE SUMMARY	3
II. DEFINITIONS.....	4
III. ANTI-DISCRIMINATION.....	6
IV. SPECIFIC FUNDAMENTAL RIGHTS.....	14
V. INVOLUNTARY PLACEMENT AND INVOLUNTARY TREATMENT	25
VI. COMPETENCE, CAPACITY AND GUARDIANSHIP	35
VII. MISCELLANEOUS	
ANNEX – CASE LAW.....	45

I. Executive Summary¹

- [1]. Latvia has signed the UN Convention on the Rights of Persons with Disabilities (CRPD) and, on 6 October 2009 the government approved the draft law on the ratification of CRPD, which has to be adopted by the parliament in three readings.
- [2]. The majority of laws prohibiting discrimination include person's health status or disability among prohibited discrimination grounds without explicitly referring to persons with mental disorders and persons with intellectual disability.
- [3]. There are no known court cases concerning discrimination of persons with mental disorders and persons with intellectual disability.
- [4]. Fundamental rights of individuals in Latvia are protected by various laws, including the constitutional legal framework. Nevertheless, when it comes to the protection of rights of persons who suffer from mental disability, many gaps in laws and legal practice remain, in particular regarding those who have been deprived of legal capacity. Lack of case law regarding protection of certain rights of persons with mental disability and for the greater part unsuccessful outcome for the applicant in cases of litigation are some of the indicators raising concern.
- [5]. Legal framework regarding involuntary placement has been substantially amended in Latvia since March 2007, by providing judicial review guarantee to the persons concerned. Serious concern remains as the legal framework does not prescribe a distinction between involuntary placement and medical treatment. Such practice can result in the violation of individual's right to private life protection and does not comply with the standards set by of the *Council of Europe Recommendation (2004)10*.
- [6]. This study indicates that while the use of some medical technologies (for instance, ECT) is regulated by legal norms, other coercive measures (such as the use of restraint and seclusion) are registered, but their use is not prescribed by law or regulations. Such gaps in law should be eliminated as they could increase the risk of torture, cruel or degrading treatment of persons in psychiatric institutions.
- [7]. Latvia currently provides only for the total deprivation of capacity, there are no other alternatives (e.g. partial capacity or supported decision making mechanisms available). The law does not provide for minimum or maximum time limits for placing a person under trusteeship. The law also does not require periodic review of incapacity or the need for a trustee.
- [8]. In the context of ratification of CRPD and its Article 12, the discussion has been started between the Welfare, Justice Ministries and NGOs on the needed legal reform concerning legal capacity and trusteeship issues.
- [9]. Another major problem in this area is connected with the renewal of capacity, which is possible only if the court has found a mentally ill person as having recovered their health, which is complicated to prove in cases when intellectually disabled person has been diagnosed with 'mental retardation' or mentally disabled person has been diagnosed with 'schizophrenia' or 'dementia'.

¹ In citing the Latvian legislation the official translation into English by the Translation and Terminology Centre (www.ttc.lv), where available, has been used throughout the text.

II. Definitions

[10].

a) Most common term used in Latvia to describe persons with mental disabilities is the term defined in the *Sociālās palīdzības un sociālo pakalpojumu likums* [Law on Social Services and Social Assistance]. Section 1 (30) of the Law on Social Services and Social Assistance provides for the definition of term ‘person with disturbances of a mental nature’, defining disturbances of a mental nature as ‘mental illness and disturbances of intellectual development, which restrict person’s ability to work and to take care of him/herself, as well as encumber person’s inclusion in society.’ The definition in Latvian: ‘**garīga rakstura traucējums** — šā likuma izpratnē - psihiska saslimšana un garīgās attīstības traucējums, kas ierobežo personas spējas strādāt un aprūpēt sevi, kā arī apgrūtina tās iekļaušanos sabiedrībā.’²

Terms ‘disability’ and ‘person with disabilities’ are defined by *Likums par invalīdu medicīnisko un sociālo aizsardzību* [Law on Medical and Social Protection of Disabled Persons], where Section 4 states that a person with disabilities is ‘a person who, due to the impairment of the functions of the system of organs caused by diseases, traumas or innate defects, requires additional medical and social assistance, and who has been granted disability status according to the procedure set in this Law and other normative acts.’³ Section 5 further defines the term ‘disability’ as ‘continuous or ceaseless restriction of physical or mental abilities, which is not connected with changes in the human body because of old age and which prevents the integration of a person into the community, as well as completely depriving them of, or partially restricting, their ability to work and to take care of themselves.’⁴ Section 7 provides for reasons when a person can be granted the status of ‘disability due to mental illness.’ Among reasons are: ‘1) disability due to endogenous psychosis; 2) disability because of mental disorder caused by somatic illness, trauma or inherited damage of the central nervous system with deep mental retardation; 3) disability due to mental disorder caused by addiction to alcohol, narcotics, psychotropic or toxic substances; 4) disability caused by severe chronic neurosis (which is difficult to treat in the long term), as well as various other severe changes in personality.’⁵

Whether a person has or does not have disability due to mental illness is decided and the status of disability is granted by *Veselības un darbspēju ekspertīzes ārstu valsts komisija* [the State Medical Commission for the Assessment of Health Condition and Working Ability]. In determining disability, the Commission takes into account the individual’s limitation of physical or mental abilities, their opportunities for integration in the society, and the person’s ability to work and take care of him/herself.⁶

The 1992 Law on Medical and Social Protection of Disabled Persons, currently in force, will be replaced by the new *Invalīditātes likums* [Disability Law], which has already been adopted in the 2nd reading by the Parliament and still needs to pass the final – 3rd reading.

² Latvia/ Sociālo pakalpojumu un sociālās palīdzības likums [The Social Services and Social Assistance Law] (31.10.2002), available in Latvian at <http://likumi.lv/doc.php?id=68488> (10.10.2009), Section 1. Unofficial translation.

³ Latvia/ Likums par invalīdu medicīnisko un sociālo aizsardzību [Law on Medical and Social Protection of Disabled Persons] (29.02.1992), available in Latvian at <http://www.likumi.lv/doc.php?id=66352>, (10.10.2009), Section 4.

⁴ Latvia/ Likums par invalīdu medicīnisko un sociālo aizsardzību [Law on Medical and Social Protection of Disabled Persons] (29.02.1992), available in Latvian at <http://www.likumi.lv/doc.php?id=66352>, (10.10.2009), Section 5.

⁵ Latvia/ Likums par invalīdu medicīnisko un sociālo aizsardzību [Law on Medical and Social Protection of Disabled Persons] (29.02.1992), available in Latvian at <http://www.likumi.lv/doc.php?id=66352>, (10.10.2009), Section 7.

⁶ Latvia/ Likums par invalīdu medicīnisko un sociālo aizsardzību [Law on Medical and Social Protection of Disabled Persons] (29.02.1992), available in Latvian at <http://www.likumi.lv/doc.php?id=66352>, (10.10.2009), Section 10.

The new law will establish a new procedure on the granting of disability status, as well as introduce a new term ‘predictable disability’. The term in the draft law is defined as: “limitations of functioning, caused by person’s illness or trauma – these limitations can be a reason for the determination of disability status, if the necessary services of treatment and rehabilitation are not provided to the person.”⁷ The draft law foresees the development of an individual rehabilitation plan, if a person has predictable disability.

- b) The term ‘person with disturbances of a mental nature’ has been widely used in national policy documents, as well as laws and regulations, particularly those drafted by the Welfare Ministry. For many years it was unclear whether this term included only persons with intellectual disabilities alone or it also included persons with mental disorders. Only on 18 September 2008 the Saeima (parliament) passed amendments to the Social Services and Social Assistance Law, finally defining the term ‘persons with disturbances of mental nature’, which includes as target groups both – people with intellectual disabilities and people with mental illnesses. The amendments were initiated by the Ministry of Welfare, and the need for an explicit definition had been strongly advocated by the NGO Resource Centre for Mental Disability “ZELDA” for a significant period of time.
- c) There is no case law which contributes to the definition of national terminology used in Latvia.

III. Anti-discrimination

A. Incorporation of United Nations standards

- [11]. Latvia began discussing the signing and ratification of the Convention at the Meeting of State Secretaries on 2 August 2007, when the draft decision “UN Convention on the Rights of Persons with Disabilities” was announced.⁸ Since then the Convention has been reviewed by the Cabinet of Ministers seven times.⁹ The decision on signing the Convention was delayed as no financial estimates had been made concerning the implementation of the Convention. Discussions in the government also referred to possible reservations to the Convention by Latvia.¹⁰ On 12 November 2007, the Committee of the Cabinet of Ministers decided to postpone the revision of the issue until the Ministry of Welfare provided estimates on the funding required for the implementation of the Convention.¹¹
- [12]. On 29 May 2008 the Saeima (parliament) adopted a decision that the Convention be signed by Latvia by 1 September 2008, and tasked the government to evaluate the compliance of Latvian legal norms with the provisions of the Convention by 31 December 2008, and prepare an action plan for preparatory ratification measures by 1 May 2009. The government was also tasked until 1 December 2009 to draft a law on the ratification of the

⁷ Latvia/ Likumprojekts – Invaliditātes likums [draft Disability Law], available in Latvian at [http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webPhase7?SearchView&Query=%28\[Title\]=*invalidit%C4%81tes+likums*%29&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webPhase7?SearchView&Query=%28[Title]=*invalidit%C4%81tes+likums*%29&SearchMax=0&SearchOrder=4) (27.11.2009)

⁸ Konvencijas par personu ar invaliditāti tiesībām projekts, available at <http://www.mk.gov.lv/lv/mk/vsssanaksmes/saraksts/protokols/?protokols=2007-08-02> (15.10.2009)

⁹ See <http://www.mk.gov.lv/lv/mk/tap/?pid=30304264&mode=vss&date=2007-10-18> (15.10.2009)

¹⁰ Resource centre „ZELDA” Newsletter 2008/1-2, available in English http://www.zelda.org.lv/_rikt_text/docs/zelda_webam_ENG.pdf (15.10.2009)

¹¹ See <http://www.mk.gov.lv/lv/mk/tap/?pid=30304264&mode=mkk&date=2007-11-12> (16.10.2009)

Convention and submit it to the Saeima.¹² On 8 July 2008, the Cabinet of Ministers adopted the decision to sign the UN Convention on the Rights of Persons with Disabilities,¹³ and Latvia signed it on 18 July.

- [13]. On 6 October 2009 the Cabinet of Ministers approved the draft law “On Convention on the Rights of Persons with Disabilities” and forwarded it to the Saeima (parliament).¹⁴ On 22 October the Saeima submitted the draft law to parliamentary commissions. Implementation of obligations under the Convention will be co-ordinated by the Ministry of Welfare, while *Tiesībsargs* [The Ombudsman] shall monitor the implementation of the Convention as required by Section 33 (2) of the Convention.¹⁵
- [14]. On 12 October the Cabinet of Ministers approved the Plan for the Implementation of the UN Convention on the Rights of Persons with Disabilities 2010-2012.¹⁶ The plan aims to start the implementation of the Convention with the resources currently available. The implementation plan includes several activities targeting persons with mental disabilities.
- [15]. The Ministry of Welfare has also drafted a law ‘On the Optional Protocol to the Convention on the Rights of Persons with Disabilities’, which was announced at the Meeting of State Secretaries on 27 August 2009¹⁷.
- [16]. The Parliament of Latvia (Saeima) has ratified the Convention on the 28th of January, 2010. On the 17th of February the President of the State has announced the Law „On the Convention on the Rights of Persons with disabilities.
- [17]. The 45th paragraph of the Convention about the rights of persons with disabilities establishes that for each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument. Therefore the rules of the Convention are not yet in force in Latvia.
- [18]. The Ambassador Extraordinary and Plenipotentiary of the Republic of Latvia to the United Nations in New York on the 22nd of January, 2010 has signed also the Optional Protocol to the Convention on the Rights of Persons with Disabilities. At present the draft Law „On the Optional Protocol to the Convention on the Rights of Persons with disabilities” is submitted to the Saeima for acceptance and ratification.
- [19]. The Ministry of Welfare has established several working groups:

¹² Saeimas komisija: Kāpēc līdz šim nav parakstīta ANO Konvencija par invalīdu tiesībām? [Saeima Commission: Why Has the UN Convention on the Rights of the Persons with Disabilities Not Been Signed?], available at <http://www.saeima.lv/pages/html-saturs.jsp?id=11140> (15.10.2009)

¹³ See <http://www.mk.gov.lv/lv/mk/tap/?pid=30304264&mode=mk&date=2008-07-08> (15.10.2009)

¹⁴ See <http://www.mk.gov.lv/lv/mk/tap/?pid=40123433&mode=mk&date=2009-10-06> (15.10.2009)

¹⁵ Latvia/ Likumprojekts par Konvenciju par personu ar invaliditāti tiesībām, available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/B497D40793BC6671C225764D00406107?OpenDocument> (15.10.2009)

¹⁶ Latvia/MK rīkojums Nr.693 "Par Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas plānu 2010.–2012.gadam" [Cabinet of Ministers Order br 693 “On the Implementation of the UN Convention on the Rights of Persons with Disabilities 2010-2012], available at <http://www.likumi.lv/doc.php?id=199220> (16.10.2009)

¹⁷ See <http://www.mk.gov.lv/lv/mk/vssanaksmes/saraksts/protokols/?protokols=2009-08-27>

1. To improve legal capacity legislation in line with its obligation under the Convention on the Rights of Persons with Disabilities.
2. To evaluate a need for elaboration of the new Discrimination Prevention Act (concerning to all of the possible grounds for discrimination).
3. To elaborate basic principles for implementation of the Convention (2013 -2019) (program of activities).

B. The Anti-Discrimination National Framework

- [20]. The *Satversme* [Constitution] provides for equality and general prohibition of discrimination: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind.”¹⁸
- [21]. The majority of laws prohibiting discrimination include a person’s health status or disability among prohibited discrimination grounds without explicitly referring to persons with mental disorders and persons with intellectual disability. An exception is *Ārstniecības likums* [Medical Treatment Law] and *Bērnu tiesību aizsardzības likums* [Law on the Protection of the Rights of the Child]. The Medical Treatment Law regulates ‘public relationships in medical treatment in order to ensure qualified prophylaxis and diagnosis of diseases or injury, as well as qualified medical treatment and rehabilitation of patients.’ The law includes a special chapter on mental illness, and several provisions explicitly state that persons with mental disorders and mental illness ‘shall be ensured all the civil, political, economic and social rights provided for by law, and that mental disorders or mental illness shall not be a basis for discrimination of an individual.’¹⁹
- [22]. According to the Law on the Protection of the Rights of the Child, the State shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the state, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members.²⁰ The Law also includes a separate chapter “Child with Special Needs”²¹ which provides that ‘a child with special needs has the same right to an active life, the right to develop and acquire a general and professional education corresponding to the physical and mental abilities and desires of the child, and the right to take part in social life, as any other child.’²²
- [23]. Concerning employment *Darba likums* [Labour Law] provides for equal right to work, to fair, safe and healthy working conditions, as well as fair work remuneration, which are to be ensured without any direct or indirect discrimination – irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin,

¹⁸ Latvia/Satversme (15.02.1922) available at <http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Constitution.doc> (Section 91) (17.10.2009)

¹⁹ Latvia/ Ārstniecības likums (12.06.1997) [Medical Treatment Law] Section 65 and 66, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Medical_Treatment_Law.doc (16.10.2009)

²⁰ Latvia/ Bērnu tiesību aizsardzības likums (19.06.1998) [The Law on the Protection of the Rights of the Child], Section 3, Section 54 available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Protection_of_the_Rights_of_the_Child.doc (17.10.2009)

²¹ A child with special needs is a child who in connection with an illness, trauma or functional impairment of an organ system caused by an innate defect has need of additional medical and social assistance irrespective of whether there is a determination of disability in accordance with procedures set out by law.

²² Latvia/ Bērnu tiesību aizsardzības likums (19.06.1998) [The Law on the Protection of the Rights of the Child], Section 3, Section 54 available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Protection_of_the_Rights_of_the_Child.doc (17.10.2009)

property or marital status, sexual orientation or other circumstances. In order to promote the adoption of the principle of equal rights in relation to disabled persons, an employer is obliged 'to take measures that are necessary in conformity with the circumstances in order to adapt the work environment to facilitate the possibility of disabled persons to establish employment legal relations, fulfil work duties, be promoted to higher positions or be sent for occupational training or the raising of qualifications, insofar as such measures do not place an unreasonable burden on the employer.'²³

- [24]. *Izglītības likums* [Law on Education] provides that every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by the Republic of Latvia, every person who has received a permanent residence permit, as well as citizens from European Union States who have been issued a temporary residence permit, and their children, have equal right to acquire education, regardless of their property or social status, race, nationality, gender, religious or political convictions, state of health, occupation or place of residence.²⁴
- [25]. *Likums par invalīdu medicīnisko un sociālo aizsardzību* [Law on Medical and Social Protection of Disabled Persons] regulates the procedure of establishing disability and the procedure of rendering medical and social assistance to disabled persons, assistance in employment issues, the rights of disabled persons to receive material assistance and assistance in promoting their social integration. The law establishes the following principles to be observed in providing social assistance to the disabled: the main aim of social assistance is to ensure integration of the disabled in the society, and guarantee equal rights to medical and social assistance to all disabled. The law underlines that social assistance to the disabled is individual and should be duly provided.²⁵
- [26]. *Sociālās drošības likums* [Law on Social Security] provides that in ensuring social services, differential treatment based on a person's race, skin colour, gender, age, disability, state of health, religious, political or other persuasion, national or social origin, property or marital status or other circumstances shall be prohibited.²⁶
- [27]. *Sociālo pakalpojumu un sociālās palīdzības likums* [Law on Social Services and Social Assistance] establishes principles for the 'provision and receipt of social care, social rehabilitation services and social assistance, the range of persons who have the right to receive these services and assistance, as well as the principles for payment and financing of social care and social rehabilitation services.'²⁷ The law contains no clause on the equality principle or the prohibition of discrimination.
- [28]. *Patērētāju tiesību aizsardzības likums* [Law on the Protection of Consumer Rights] prohibits differential treatment on the grounds on race, ethnic origin and gender in offering goods or services, sale of goods, and provision of services to consumers.²⁸

²³ Latvia/ Darba likums (20.06.2001) [Labour Law], available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc (Section 7) (17.10.2009)

²⁴ Latvia/Izglītības likums (29.10.1998) [Law on Education], available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Education_Law.doc (Section 4)

²⁵ Latvia/ Likums par invalīdu medicīnisko un sociālo aizsardzību (29.09.1992) [Law on Medical and Social Protection of the Disabled Persons], available in Latvian <http://www.likumi.lv/doc.php?id=66352> (Section 2)

²⁶ Latvia/Likums Par sociālo drošību (07.09.1995) [Law on Social Security], available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/On_Social_Security.doc (Section 2.¹ para 1)

²⁷ Latvia/ Sociālo pakalpojumu un sociālās palīdzības likums (31.10.2002) [Law on Social Services and Social Assistance], available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Social_Services_and_Social_Assistance_Law.doc (Section 2)

²⁸ Latvia/Patērētāju tiesību aizsardzības likums (18.03.1999) [Law on the Protection of Consumer Rights], available at <http://www.likumi.lv/doc.php?id=23309> (Section 3.¹) (17.10.2009)

- [29]. None of the laws regulating housing, such as the Law on Residential Tenancy²⁹, Law on Assistance in Solving Apartment Matters³⁰, Law on Social Apartments and Social Housing³¹ refer to the equality principle or prohibit discrimination.
- [30]. The Implementation Plan of the UN Convention on the Rights of Persons with Disabilities 2010-2012 plans to evaluate the need to incorporate all issues related to discrimination in one umbrella anti-discrimination law.
- [31]. There is no information about case law developed by the courts.
- [32]. There are neither preferential treatment arrangements nor prohibition of such preferential treatment in respect of persons with mental disorders and persons with intellectual disability explicitly mentioned in the Constitution of Latvia.
- [33]. The Labour Law provides that in cases of reduction of the number of employees, preference to continue employment relations shall be given for those employees who have higher performance results and higher qualifications. If performance results and qualifications do not substantially differ, preference shall, along with various other groups, be granted to disabled persons. An employer is prohibited from giving a notice of termination of an employment contract to an employee who is declared to be a disabled person, except in cases specified by law.³²
- [34]. There is no information available about case law.
- [35]. There is no definition of 'disability' in the Labour Law. Term 'disability' is defined by *Likums par invalīdu medicīnisko un sociālo aizsardzību* [Law on Medical and Social Protection of Disabled Persons] as 'continuous or ceaseless restriction of physical or mental abilities, which is not connected with changes in the human body because of old age and which prevents the integration of a person into the community, as well completely depriving them of, or partially restricting, their ability to work and to take care of themselves.'³³
- [36]. There is no information available about case law.
- [37]. There is no definition of disability in laws governing health care, social care, education and housing.
- [38]. There is no information available about case law.
- [39]. Several legal acts regulate the implementation of the concept of reasonable accommodation to meet the needs of a person with disability, including persons with mental disorder:

²⁹ Latvia/Likums 'Par dzīvojamo telpu īri' [Law on Residential Tenancy], available at

http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/On_Residential_Tenancy.doc (17.10.2009)

³⁰ Latvia/ Likums "Par palīdzību dzīvokļa jautājumu risināšanā" (06.12.2001) [Law on Assistance in Solving Apartment Matters], available at

http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Law_On_Assistance_In_Solving_Apartment_Matters.doc (17.10.2009)

³¹ Latvia/Likums "Par sociālajiem dzīvokļiem un sociālajām dzīvojamām mājām" (12.06.1997) [Law on Social Apartments and Social Residential Housing], available in Latvian at <http://www.likumi.lv/doc.php?id=44160> (17.10.2009)

³² Latvia/ Darba likums (20.06.2001) [Labour Law], available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc (Section 108, para 6, Section 109 para 2) (17.10.2009)

³³ Latvia/ Likums par invalīdu medicīnisko un sociālo aizsardzību [Law on Medical and Social Protection of Disabled Persons] (29.02.1992), available in Latvian at <http://www.likumi.lv/doc.php?id=66352>, (10.10.2009), Section 4. (24.11.2009)

Labour Law, Support for Unemployed Persons and Persons Seeking Employment Law, and the Cabinet of Ministers' Regulations Nr.166 on employment measures.

- [40]. Labour Law envisages that the principle of equality should be implemented without discrimination on the ground of disability and determines that 'an employer has a duty to take measures that are necessary in conformity with the circumstances in order to adapt the work environment to facilitate the possibility of disabled persons to establish employment legal relations, fulfil work duties, be promoted to higher positions or be sent for occupational training or the raising of qualifications, insofar as such measures do not place an unreasonable burden on the employer.'³⁴
- [41]. Law on Support for Unemployed Persons and Persons Seeking Employment envisages that disability does not prevent a person from being considered as unemployed unless a 100% loss of ability to work has been established.³⁵ The Law also envisages 'active employment measures' targeting specific groups, including persons with disability.³⁶
- [42]. The Cabinet of Ministers' Regulations Nr.166 provide for a framework for employment measures, including specific reference to reasonable accommodation of places of training and work to the needs of disabled persons. The State Employment Agency (SEA) is authorised to organise and implement active employment measures and preventive unemployment reduction measures in co-operation with other public and private bodies and persons. Up to LVL 500 (EUR 711) of public funding may be spent on accommodating the places of training to the needs of disabled persons in conformity with the opinion of the occupational therapist (ergo therapist), and the services of target group specialists may be covered. The Regulations envisage state subsidies for those employers who officially employ disabled persons, given that the workplace was accommodated to the needs of the disabled and a qualified work manager and a target group specialist are available for assistance at the workplace. The subsidies are delivered through the State Employment Agency (SEA) and include: 1) monthly salary grant to every employed person with disability (no less than national minimum monthly salary); 2) monthly salary grant to the manager working with disabled employees (50% of national minimum monthly salary); 3) one-time compensation of workplace accommodation expenses (up to LVL 500 (EUR 711) per every workplace for disabled); 4) services of target group specialist provided for employment of disabled persons; 5) disabled employees' health checks required by legislation.³⁷
- [43]. The Law on Social Security provides for the involvement of disabled persons in public life. Disabled persons irrespective of the cause of disability and persons with long-term or permanent loss of health have the right to assistance as follows: 1) the performance of such measures that are associated with involving these persons in social life, creating suitable working conditions for them according to the ability to work and interests of the relevant

³⁴ Latvia/ Darba likums (20.06.2001) [Labour Law], available at

http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc (Section 7). (16.10.2009)

³⁵ Latvia/ Bezdarbnieku un darba meklētāju likums [Law on Support for Unemployed Persons and Persons Seeking Employment] (09.05.2002), available in Latvian <http://www.likumi.lv/doc.php?id=62539> , Section 10 para 2. (16.10.2009)

³⁶ Latvia/Bezdarbnieku un darba meklētāju likums [Law on Support for Unemployed Persons and Persons Seeking Employment] (09.05.2002), available in Latvian at <http://www.likumi.lv/doc.php?id=62539> , Section 3.

³⁷ Latvia/MK noteikumi Nr.166 "Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem (10.03.2008), [Regulations regarding the Procedures for Organising and Financing of Active Employment Measures and Preventative Measures for Unemployment Reduction and Principles for Selection of Implementing Bodies of Measures] available in Latvian <http://www.likumi.lv/doc.php?id=172806&from=off>

person thereof; and, 2) the improvement of the state of health, in creating such circumstances and performing measures that would avert the deterioration of health and promote the reduction of the degree of loss of health and the ability to work.³⁸

[44]. Thus far, the Ombudsman's Office (designated equality body) has received no complaints about discrimination on the ground of intellectual disability. The Office currently does not employ staff members with specific knowledge or competence (e.g. education or training, experience) on the issues of mental disorder or intellectual disability. The Office's staff includes specialists with specific knowledge on discrimination issues as well as social issues and they will consider and deal with any discrimination cases on the ground of intellectual disability.³⁹

IV. Specific Fundamental Rights

[45]. Protection of fundamental rights in Latvia is guaranteed by *Latvijas Republikas Satversme* [the Constitution of the Republic of Latvia]. The Constitution lists a catalogue of fundamental rights and also determines conditions when certain rights can be restricted. Hence, the Constitution permits restriction of the following fundamental rights, listed in the paragraphs [22]-[31]: the right to freely choose employment and workplace and the right to private life. Such rights can be restricted 'in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.'⁴⁰

[46]. Prohibition of discrimination and protection of fundamental rights of persons with mental disabilities is set out more specifically in *Ārstniecības likums* [Medical Treatment Law]. Article 65 of the Medical Treatment Law states: 'Persons with mental disorders and mental illness shall be ensured all the civil, political, economic and social rights provided for by law. Mental disorders or mental illness shall not be a basis for discrimination of an individual.'⁴¹

[47]. There is no official summary with statistical data on case law relating to the protection of considered fundamental rights.⁴²

[48]. The right to life is protected by Article 93 of the Constitution: 'The right to life of everyone shall be protected by law.' *Krimināllikums* [The Criminal Law] sets criminal liability for homicide and also envisages punishment for negligent performance of professional duties by a medical practitioner, if it has been a cause of the death of the victim.⁴³

³⁸ Latvia/Likums par sociālo drošību (07.09.1995) [Law on Social Security], available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/On_Social_Security.doc (Section 12). (16.10.2009)

³⁹ Information provided by the Ombudsman's Office on 29 October 2009.

⁴⁰ Latvia/Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Constitution&resultsPerPage=10 (15.10.2009) Article 116.

⁴¹ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=medical+treatment+law&Submit=Mekl%C4%93t&resultsPerPage=10 (18.09.2009). Section 65.

⁴² Information provided by Tiesu administrācija [Court Administration] via e-mail on 17.09.2009

⁴³ Latvia/Krimināllikums [The Criminal Law] (17.06.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=the+Criminal+Law&resultsPerPage=10 (15.10.2009). Section 138.

- [49]. Several cases have been brought to court regarding the right to life of persons with mental or intellectual disabilities. One of the gravest cases concerns massive fire in the social care house ‘Reģi’ during the night of 23 February 2007, which resulted in the death of 26 residents with intellectual and mental disabilities. The court concluded that the fire broke out due to illegally built wiring ordered by the former director of the social care house. The case was heard in closed proceedings and the former director was sentenced to six years of suspended imprisonment with three years of probation.⁴⁴
- [50]. The Constitution prohibits ‘torture or other cruel or degrading treatment of a human being. No one shall be subjected to inhuman or degrading punishment.’⁴⁵ Section 174 of the Criminal Law sets criminal liability for cruelty towards and violence against a minor. Recently (on 18 October 2009) *Latvijas Republikas Saeima* [the Latvian Parliament] in the second reading adopted amendments to the Criminal Law, determining torture as an aggravating circumstance in respect of four different crimes (such as, compelling the giving of false testimony, explanation, opinions and translations).⁴⁶ To come into force, amendments have to be adopted by the Parliament in the third reading.
- [51]. The analysis of the case law regarding torture, cruel or degrading treatment, indicates that most complaints lodged in courts concern ill-treatment in specialised institutions for minors or young adults with mental and intellectual disabilities. In 2000 criminal proceedings were initiated against the former staff member of *Aleksandrovas speciālā internātskola* [Aleksandrovas special boarding-school].⁴⁷ The charges covered 1997 through November 2000, during which O.Lisjonoks was alleged to have systematically beaten, humiliated and tortured 23 children aged eight through 15 in 33 separate instances about which both children and other staff testified. Despite finding Lisjonoks guilty of 32 different instances, the Kraslava District Court sentenced him to only 2.5-year suspended imprisonment with two years of probation and a three year ban to practise educational work for cruel treatment of minors.⁴⁸ The courts have also heard cases concerning discharge of teachers for cruel treatment of children in *Specializētais bērnu aprūpes centrs Veģi* [Specialised children’s care centre ‘Veģi’]⁴⁹ and forcible sexual assault by taking advantage of the state of helplessness of a person in *Sociālās aprūpes centrs personām ar garīga rakstura traucējumiem ‘Ziedkalne’* [Social care home for people with mental disability ‘Ziedkalne’]. The latter case is pending since 2008; accused is the former director of the centre. The first instance court found former director guilty and sentenced him to three years imprisonment with 1.5 years of probation. The decision has been appealed.⁵⁰

⁴⁴ Due to the closed hearing, the court judgement is not publicly available. Unofficial information of the case is available: Resource centre for people with mental disability (2009) *Newsletter, 4th issue*, available at: <http://www.zelda.org.lv/?cat=76&lang=en> (23.10.2009)

⁴⁵ Latvia/Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922), available at: http://www.tc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Constitution&resultsPerPage=10 (15.10.2009) Article 95.

⁴⁶ Latvia/Likumprojekts “Grozījumi Krimināllikumā” [Draft law of Amendments in the Criminal Law] (23.04.2009) Available at: <http://www.mk.gov.lv/lv/mk/tap/?pid=40121681&mode=mk&date=2009-08-04> (02.11.2009)

⁴⁷ Aleksandrovas special boarding-school is an education institution for minors with mental disabilities.

⁴⁸ Due to the closed hearing, the case has not been made available to the public. Unofficial information of the case is available: *Latvian Centre for Human Rights, Human Rights in Latvia in 2001*, available at: <http://www.humanrights.org.lv/html/news/publications/index.html?yr=2004> (23.10.2009)

⁴⁹ Latvia/Talsu rajona tiesa/C36-0057/04 (16.06.2004)

⁵⁰ Due to the closed hearing, the case is not available to the public. Unofficial information of the case is available: Resource centre for people with mental disability (2009) *Newsletter, 4th issue*, available at: <http://www.zelda.org.lv/?cat=76&lang=en> (23.10.2009)

- [52]. The Constitution does not explicitly prohibit ‘forced labour.’ However, it determines that ‘Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.’⁵¹
- [53]. There is no information available about the case law on forced labour regarding persons with mental disability.
- [54]. The right to liberty and security is protected by Article 94 of the Constitution. It sets a condition that the right to liberty can be only restricted in accordance with the law.⁵² For unlawful deprivation of liberty, a person can be held liable in accordance with Section 152 of the Criminal Law. The Criminal Law explicitly foresees criminal liability for unlawful confinement to a psychiatric hospital.⁵³

Several complaints were lodged in domestic courts regarding the violation of the right to liberty before amendments to the Medical Treatment Law came into force on 29 March 2007⁵⁴ (a complaint has also been lodged in the European Court of Human Rights⁵⁵). The complaints were mostly related to the lack of judicial review during the process of involuntary placement. The legal framework was changed after a case was initiated in *Latvijas Republikas Satversmes tiesa* [Constitutional Court of the Republic of Latvia]⁵⁶ on 30 January 2007 on the compliance of the Medical Treatment Law with *Latvijas Republikas Satversme* [The Constitution of the Republic of Latvia] and Part 4 of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant (*Valsts cilvēktiesību birojs* [The National Human Rights Office]) complained that in accordance with the Medical Treatment Law, a decision on involuntary placement is approved by doctors’ council only and no judicial review is ensured. It also highlighted that the legal framework in force did not provide for the right to periodical review of detention, and that such provision restricted a person’s right to access to court that must be ensured in cases of deprivation of liberty and accordingly violated person’s right to liberty. Constitutional court dismissed the proceedings after the amendments to the Medical Treatment Law were adopted by *Latvijas Republikas Saeima* [Parliament of Latvia] in an accelerated procedure on 01.03.2007.

Amendments to the Medical Treatment Law now ensure judicial review of involuntary placement in psychiatric institutions and prescribe periodical review of detention.

- [55]. The right to fair trial is prescribed by Article 92 of the Constitution. It reads as follows: ‘Everyone has the right to defend their rights and lawful interests in a fair court. Everyone shall be presumed innocent until their guilt has been established in accordance with law. Everyone, where their rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.’ *Kriminālprocesa likums* [Criminal Procedure Law] ensures protection of human rights and foresees guarantees of

⁵¹ Latvia/Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922), available at: http://www.tc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Constitution&resultsPerPage=10 (15.10.2009) Article 106.

⁵² ‘Everyone has the right to liberty and security of person. No one may be deprived of or have their liberty restricted, otherwise than in accordance with law.’ Article 94 of the Constitution.

⁵³ Latvia/Krimināllikums [The Criminal Law] (17.06.1998), available at: http://www.tc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=the+Criminal+Law&resultsPerPage=10 (15.10.2009) Section 155.

⁵⁴ See on this issue paragraph 35.

⁵⁵ ECtHR/30954/05 (lodged on 28.07.2005)

⁵⁶ Latvia/Latvijas Republikas Satversmes tiesa/2007-05-0106 (03.04.2007)

the fair trial specifically during criminal proceedings.⁵⁷ Likewise *Civilprocesa likums* [Civil Procedure Law] prescribes certain guarantees which must be observed during the civil proceedings.⁵⁸

- [56]. In respect of persons with mental disabilities, the legal framework does not provide any special guarantees to enable their proper access to justice. Quite the reverse, for instance, Section 266 (2) of the Civil Procedure Law⁵⁹ allows holding court hearings without the presence of the person concerned if his/her medical condition does not allow it. The case law analysis reflects that even the general fair trial guarantees (e.g. the right to be heard in person or to be informed about such proceedings) are often neglected in the case of persons with mental disabilities (in particular during the proceedings of deprivation or renewal of legal capacity). In Jaņickis case proceedings were initiated on the basis of application submitted by his wife. Ms. Jaņicka requested the court to declare her husband incapable to act and to establish trusteeship over him. During the hearing the court evaluated the materials of the case, explanations provided by Ms Janicka and conclusion by the psychiatrist that the applicant's husband has a mental illness. It declared the husband of the applicant legally incapable and established trusteeship over him. The applicant was neither informed nor participated in the court hearing.⁶⁰ Proceedings regarding renewal of legal capacity are particularly complicated, as a person cannot access the court by himself/herself due to full deprivation of legal capacity. Accordingly, a person has to convince his/her guardian to apply to Orphan's court or a prosecutor to initiate proceedings in the court on the renewal of capacity, as only the Orphan's court or a prosecutor has the right to initiate the case. Thus a person him/herself does not have any access to court. Even when such support by Orphan's court or prosecutor is received, the outcome of court proceedings is rarely successful. For instance, in one of the cases regarding the renewal of legal capacity an application was submitted by the Allazi Orphan's court with the request to renew legal capacity and to terminate the trusteeship of person K., currently residing in long term social care institution (social care home 'Allazi'). The applicant motivated the request with the fact that the health condition of K. had improved, that K. was able to communicate with people, take care of himself, manage his money and perform simple jobs. K. had received psycho-social rehabilitation in a half-way house programme and has been recognised as able to live in a community-based group home (supported residential service, with regular supervision of social workers). The psychiatrist of the social care home also supported the need for the renewal of K.'s legal capacity. The incapacity status prevents K. from leaving the social care institution and moving into a community-based group home. The court decided not to renew K.'s legal capacity, because the improvement of his health condition was not sufficient to legally represent himself and to administer his property, because he still lacks large part of his intellectual capacity. The court also concluded that after the renewal of capacity K. would be socially vulnerable, because he is not able to solve his daily social problems without the support of other people.⁶¹

⁵⁷ Latvia/Kriminālprocesa likums [Criminal Procedure Law] (21.04.2005), available at: http://www.tt.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Criminal+Procedure+Law&Submit=Mekl%C4%93t&resultsPerPage=10 (20.10.2009) Sections 12-20.

⁵⁸ Latvia/Civilprocesa likums [Civil Procedure Law] (14.10.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Civil+Procedure+Law&resultsPerPage=10 (14.10.2009). Section 1 'Rights of a Person to Court Protection,' Section 9 "Equality of Parties in the Civil Procedure," Section 11 "Open Adjudication of Civil Matters."

⁵⁹ Latvia/ Civilprocesa likums [Civil Procedure Code] (14.10.1998), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=1> (08.10.2009). Section 266 (2).

⁶⁰ Latvia/Rīgas pilsētas Ziemeļu rajona tiesa/2-417/5 (20.01.1997)

⁶¹ Latvia/Rīgas apgabaltiesas Civillietu kolēģija/C35 0702 07 (14.10.2009)

- [57]. Article 96 of the Constitution provides that ‘Everyone has the right to inviolability of their private life, home and correspondence.’⁶² On 10 September 2009, the parliament adopted amendments to the Criminal Law explicitly providing for criminal responsibility and strengthening protection against illegal activities with personal data if essential damage has been caused, which foresee imprisonment for up to two years or custodial arrest, community service or a fine up to hundred minimum wages.⁶³ Illegal activities with personal data if performed by personal data system administrator or personal data processor for the purposes of revenge, greed or blackmail shall be punishable by deprivation of liberty of up to four years or custodial arrest, or community service, or a fine of up to 20 minimum salaries.⁶⁴ Coercion of a personal data system administrator or a data subject by violence or threat, or by maliciously abusing trust, or through fraud with the purpose of committing illegal activities with personal data shall be punishable by imprisonment for up to five years or custodial arrest, community service or a fine for up to two hundred minimum wages. An earlier provision of the Criminal Law in force until the adoption of the above amendments provided for criminal liability for “Disclosure of Confidential Information of another Person” without specifically referring to intentional disclosure of personal data.⁶⁵
- [58]. The Medical Treatment Law provides for the right of access to medical data: ‘Patients have the right to receive information from a doctor in a way that they can comprehend the diagnosis of his or her illness, examination and medical treatment plans, as well as regarding other medical treatment methods and the prognosis.’⁶⁶
- [59]. Regarding the right to privacy, there have been few cases brought to courts by the patients of psychiatric hospitals concerning the right of access to their medical data. In the case *A.S. vs Latvijas Republikas Labklājības ministrijas Ārstniecības departaments* [Department of the Medical Treatment of the Ministry of Welfare of the Republic of Latvia (MW)], he claimed he had turned to several psychiatric treatment institutions requesting to issue the copy of his medical history file. As his requests were rejected, he turned to MW, which also refused to issue the requested file. The applicant claimed that the refusal of MW to issue his medical history file violated his right to private life protection as defined by the Article 8 of the European Convention on Human Rights and the Article 93 of *Latvijas Republikas Satversme* [Constitution of the Republic of Latvia]. The court concluded that even though the applicant had indicated that he had turned to several psychiatric treatment institutions with the request to issue his medical history file, he had not submitted any evidence of that. Wherewith, the court had no reason to consider that the mentioned institutions had refused his request. The court also held that the Medical Treatment Law determines medical data as confidential information and the patient is not included in the list of persons who can receive such data. The patient has the right to receive information regarding his diagnosis and treatment plan in a simple language from his attending physician. The court concluded that the petition was ill-founded and should be rejected.⁶⁷

⁶² Latvia/Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Constitution&resultsPerPage=10 (15.10.2009) Article 96

⁶³ Latvia/Krimināllikums [Criminal Law] (10.09.2009), Section 145 para 1, available at <http://www.likumi.lv/doc.php?mode=DOC&id=198386> (26.09.2009)

⁶⁴ Latvia/Krimināllikums [Criminal Law] (10.09.2009), Section 145 para 2, available at <http://www.likumi.lv/doc.php?mode=DOC&id=198386> (26.09.2009)

⁶⁵ Latvia/Krimināllikums [Criminal Law] (10.09.2009), Section 145, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/The_Criminal_Law.doc (26.09.2009)

⁶⁶ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=medical+treatment+law&Submit=Mekl%C4%93t&resultsPerPage=10 (18.09.2009) Section 20.

⁶⁷ Latvia/Rīgas apgabaltiesas Civillietu kolēģija/CA-30295500 (14.11.2001)

- [60]. The right to marry, to found a family and to respect of family life is protected by Article 110 of the Constitution: ‘The State shall protect and support marriage, the family, the rights of parents and rights of the child [...].’ Nevertheless, a person whose legal capacity has been removed cannot exercise the right to marry. In accordance with *Latvijas Republikas Civillikums* [The Civil Law] a person must possess legal capacity in order for a transaction to have legal force.⁶⁸
- [61]. There is no information available about the case law on the right to marry, found a family and respect of family life regarding persons with mental disability.
- [62]. The right to have children and maintain parental rights is protected by Article 110 of the Constitution. Regarding persons with mental disabilities, the right to maintain parental rights is restricted, if a person’s legal capacity is removed. Restriction of legal capacity is not determined as a reason for the removal of parent’s custody rights.⁶⁹ In accordance with the Civil Law, both parents ‘jointly shall represent a child in his or her personal or property relation.’ Nevertheless, in case if ‘trusteeship has been established regarding one of the parents in relation to him or her being recognised as lacking capacity to act due to mental illness or mental deficiency,’ only one parent can represent his or her child.⁷⁰ In accordance with the Civil Law, a person, who has been deprived of legal capacity, has no right to adopt a child.⁷¹ Neither can a person under a trusteeship be appointed to be a guardian over a child.⁷²
- [63]. Regarding the termination of pregnancy due to medical indications or in case of pregnancy *Seksuālās un reproduktīvās veselības likums* [Sexual and Reproductive Health Law] requires a written confirmation of the council of doctors and a written consent of the guardian (if a woman lacks capacity to act).⁷³ The law does not require taking into account the opinion of the woman concerned. Likewise surgical contraception is applicable with the consent of a guardian, without taking into account the opinion of the person concerned. Surgical contraception can only be performed in case of medical indications on the basis of an opinion of the council of doctors.⁷⁴
- [64]. The right to maintain parental rights is closely linked to the deprivation of legal capacity. The case law analysis reflects that the restriction of legal capacity can be used to prevent persons with mental disabilities from maintaining their parental rights. In one such case, an application was submitted by the social care home ‘Jelgava’ with the request to declare

⁶⁸ Latvia/Latvijas Republikas Civillikums [The Civil Law] (28.01.1937), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=civillikums&Submit=Mekl%C4%93t&resultsPerPage=10 (15.10.2009) Section 1405.

⁶⁹ Latvia/Latvijas Republikas Civillikums [The Civil Law] (28.01.1937), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=civillikums&Submit=Mekl%C4%93t&resultsPerPage=10 (15.10.2009) Section 200.

⁷⁰ Civillikums, Section 186.

⁷¹ Latvia/Latvijas Republikas Civillikums [The Civil Law] (28.01.1937), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=civillikums&Submit=Mekl%C4%93t&resultsPerPage=10 (15.10.2009) Section 163.

⁷² Latvia/Latvijas Republikas Civillikums [The Civil Law] (28.01.1937), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=civillikums&Submit=Mekl%C4%93t&resultsPerPage=10 (15.10.2009) Section 242 (1).

⁷³ Latvia/Seksuālās un reproduktīvās veselības likums [Sexual and Reproductive Health Law] (31.01.2002), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Seksu%C4%81%C4%81s+un+reprodukt%C4%ABv%C4%81s+vesel%C4%ABbas+likums&Submit=Mekl%C4%93t&resultsPerPage=10 (15.10.2009) Section 26 (3).

⁷⁴ Latvia/Seksuālās un reproduktīvās veselības likums [Sexual and Reproductive Health Law] (31.01.2002), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Seksu%C4%81%C4%81s+un+reprodukt%C4%ABv%C4%81s+vesel%C4%ABbas+likums&Submit=Mekl%C4%93t&resultsPerPage=10 (15.10.2009) Section 24 (2).

person A. (with diagnosis – multiple sclerosis) as incapable to act and to establish trusteeship. At the moment of the submission of application A. was pregnant and the facility had to look for a solution how to deal with A.'s pregnancy, as the social care home provides services only to adults – thus, they would have no right to provide institutional care services to A., after the birth of her baby. The applicant motivated the request with the fact that A. lived in the social care home, was disabled because of chronic neurological and mental illness and because of her health condition she was not able to act independently and to understand the meaning of her actions and she lacked all mental capacity, therefore she was not able to represent herself and to administer her property. The application was supported by A.'s parents, who insisted that A.'s health condition had deteriorated therefore she required 24 hours of supervised care. The court decided to declare A. legally incapable and to establish trusteeship over her. Later Jelgava Orphan's court appointed A.'s mother as her trustee, as well as the guardian of her child. After giving birth to the child, A. remained in the same social care home, but her child was taken away from her and entrusted to the guardian.⁷⁵

[65]. Article 105 of the Constitution prescribes the right to property. It states: 'Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.'⁷⁶ The right to property cannot be exercised if a person lacks legal capacity. The Civil Law provides that 'The actions of a mentally ill person who is under trusteeship, particularly the alienation of his or her property, do not have legal effect. The same also applies to acts that he or she has committed in a condition of mental illness prior to the establishment of a trusteeship.'⁷⁷

[66]. The case law analysis shows that the deprivation of legal capacity or involuntary placement can be used as a means to restrict a person's right to use or own his/her property. In the case *Strokovs vs Sabiedrība ar ierobežotu atbildību 'Vecliepāja'* [limited liability company 'Vecliepāja'] and *'Piejūras slimnīca'* ['Piejūras hospital'], the plaintiff alleged that on 19 May 1998 'Vecliepāja' without any reason demanded his placement in a psychiatric hospital and afterwards – in *pansionāts 'Iļģi'* [social care home 'Iļģi']. After he was placed in the hospital on 21 May 1998, he was evicted from his apartment. The plaintiff alleged that the signature, certifying his wish to refuse from the apartment, was not his, and that due to unlawful action of the defendant, he had lost the right to use his apartment and consequently, the right to privatise the apartment. The court concluded that, 'if the plaintiff has lost his right to use an apartment due to unlawful acts of respondents, he has to pursue a claim for the reestablishment of his right to use an apartment.' A decision regarding his right to privatize an apartment can only be taken after the issue whether the plaintiff actually lost his right to use an apartment will be resolved. The court concluded that there was not sufficient evidence regarding the existence of damages requested by plaintiff.⁷⁸

⁷⁵ Latvia/Jelgavas tiesa/C15233 (23.02045.2005)

⁷⁶ Latvia/Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Constitution&resultsPerPage=10 (15.10.2009) Article 105.

⁷⁷ Latvia/Latvijas Republikas Civillikums [The Civil Law] (28.01.1937), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=civillikums&Submit=Mekl%C4%93t&resultsPerPage=10 (15.10.2009) Section 361.

⁷⁸ Latvia/Latvijas Republikas Augstākās tiesas Senāts/SKC-227 (05.04.2006)

- [67]. Article 101 of the Constitution provides for the right to vote.⁷⁹ Nevertheless, *Saeimas vēlēšanu likums* [The Saeima Election Law] determines, that a person, whose legal capacity has been restricted, has no right to vote.⁸⁰
- [68]. There is no information available about the case law on the right to vote regarding persons with mental disability.

V. Involuntary placement and Involuntary Treatment

- [69]. It should be noted that while Latvia joined the European Union on 1 May 2004, the report on *Compulsory Admission and Involuntary Treatment of Mentally Ill Patients – Legislation and Practice in EU-Member States* (2002) does not cover data regarding Latvia.
- [70]. The UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has considered two periodic reports (in 2004 and 2007), submitted by Latvia. Upon considering the second periodic report by Latvia, in 2007 CAT noted with satisfaction the ‘amendments to the Medical Treatment Law which entered into force on 29 March 2007, introducing a procedure of judicial review of compulsory involuntary placement of patients in psychiatric hospitals and their subsequent treatment’ and ‘the establishment of a new modern ambulatory mental assistance centre in Riga.’ It, however, expressed concern about ‘conditions in psychiatric institutions and hospitals, including the use of physical restraints and isolation.’ It urged Latvia to ‘review the use of physical restraints, consider establishing guidelines on the use of such restraints and limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review.’ It also encouraged Latvia to ‘promptly adopt the draft programme on improvement of the mental health of the population for 2008-2013.’⁸¹
- [71]. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has carried out visits to Latvia in February 1999, October 2002, May 2004 and November 2007. While the CPT was ‘favourably impressed’ by the organisation of mental health care in Latvia and the professional level and commitment of the medical and nursing staff,⁸² it also pointed to inadequate conditions in specific locations (Rīga Neuropsychiatric Hospital ‘observations rooms,’⁸³ Viķi Psychiatric Centre Children’s Section) and under-staffing issues (Viķi Psychiatric Centre, Ezerkrasti Social Welfare Centre⁸⁴).
- [72]. Concerning placement, it highlighted lack of informed consent or written record and registration and drew attention to the fact that the decision-making procedures concerning

⁷⁹ ‘Every citizen of Latvia has the right, as provided for by law, to participate in the activities of the State and of local government, and to hold a position in the civil service. Local governments shall be elected by Latvian citizens who enjoy full rights of citizenship.’

⁸⁰ Latvia/Saeimas vēlēšanu likums [The Saeima Election Law] (25.05.1995), available at: <http://www.likumi.lv/doc.php?id=35261> (15.10.2009) Article 2.

⁸¹ UN CAT (2007) *Concluding observations on Latvia*, available at: <http://www.ohchr.org/EN/countries/ENACARegion/Pages/LVIndex.aspx> (01.10.2009)

⁸² CPT (1999) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁸³ CPT (1999) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁸⁴ CPT (2002) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

initial voluntary /involuntary placement and discharge procedures of many patients offered insufficient guarantees and should be reviewed.⁸⁵ Gaps were also identified in regular review and appeal procedures (also on patient's right to be heard); in patients' information, notably on complaint procedures available during placement. Systematic external inspection by an independent body was considered lacking.⁸⁶ Based on observation, other issues included the importance of juveniles requiring psychiatric care being accommodated separately from adult patients⁸⁷ and of a guardian being appointed *ex officio* for children who were orphans/abandoned or whose parents had been divested of their parental rights.⁸⁸

Concerning involuntary treatment, the CPT noted in 2002 a lack of specific register for the use of means of restraints and seclusion. It registered questionable prescriptions and use of psychotropic drugs with sedative potential on children as well as locking of patients and frequent tranquillising injections without consent (Unit for Elderly Persons, Ezerkrasti Social Welfare Centre⁸⁹). Upon observations, it had in 1999 called for a clearly-defined policy to prevent unregistered or abusive use of means of restraint notably concerning electroconvulsive therapy.⁹⁰

The CPT visit in May 2004 did not lead to considerations relevant to this section. In the fourth periodic visit to Latvia in 2007, the CPT reviewed treatment and living conditions of patients/residents and legal safeguards in the context of admission procedures at *Daugavpils psihoneiroloģiskā slimnīca* [the Daugavpils Neuropsychiatric Hospital] and *Sociālās aprūpes centrā "Kraščiņi"* [Kraščiņi Social Nursing Centre]. The report is not yet available to the public.

A. Legal Framework

- [73]. Performance of 'psychiatric assistance without consent'⁹¹ in Latvia is determined by the Medical Treatment Law which was adopted on 26 February 1998. The Regulations concerning involuntary placement were substantially amended after proceedings were initiated in *Latvijas Republikas Satversmes tiesa* [Constitutional court of the Republic of Latvia] on 30 January 2007 regarding the compliance of the Medical Treatment Law with *Latvijas Republikas Satversme* [The Constitution of the Republic of Latvia] and Part 4 of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Amendments to the law were adopted on 1 March 2007 and are in force since 29 March 2007. In accordance with the amendments, the decision of involuntary placement cannot be adopted only by doctors' council of psychiatrists (as

⁸⁵ CPT (1999) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁸⁶ CPT (2002) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁸⁷ CPT (1999) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁸⁸ CPT (2002) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁸⁹ CPT (2002) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁹⁰ CPT (1999) *Report to the Latvian Government on the visit to Latvia*, available at: <http://www.cpt.coe.int/en/states/lva.htm> (01.10.2009)

⁹¹ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.tc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=medical+treatment+law&Submit=Mekl%C4%93t&resultsPerPage=10 (18.09.2009) Section 68.

before); it has to be approved or refused to be approved by the judge in each particular case.⁹²

It should be noted that *Veselības ministrija* [Ministry of Health] is currently working on the adoption of *Psihiatriskās palīdzības likums* [The Law on Psychiatric Assistance], which would replace the Medical Treatment Law. In accordance with the latest programme of policies,⁹³ the term for submitting the draft law on Psychiatric Assistance to the *Latvijas Republikas Saeima* [the Latvian Parliament] has been postponed until 1 October 2011.

- [74]. At present, the law does not make a distinction between involuntary placement and involuntary treatment. As noted above, the Medical Treatment Law prescribes ‘psychiatric assistance without the consent of the patient’. The above term is clarified in the law as ‘in-patient diagnosis, medical treatment, rehabilitation and care for persons with mental health disorders without the consent of such person.’⁹⁴

It follows thence, that the Medical Treatment law does not comply with Article 18 of the *Council of Europe Recommendation (2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder (CoE Rec (2004)10)*, which requires inclusion in domestic laws criteria for involuntary medical treatment. The legal framework in Latvia does not provide such criteria.

- [75]. Accordingly, the Medical Treatment Law does not organise involuntary placement without treatment. It is broadly presumed that the decision of involuntary placement also covers involuntary medical treatment of the patient.

- [76]. The Medical Treatment law does not explicitly specify which aims are pursued by the legal framework of involuntary placement. However, the general aims of the Medical Treatment law are defined as follows: ‘The purpose of this Law is to regulate public relationships in medical treatment in order to ensure qualified prophylaxis and diagnosis of diseases or injury, as well as qualified medical treatment and rehabilitation of patients.’⁹⁵

- [77]. The current legal framework does not stipulate adequate aftercare following involuntary placement or treatment.

- [78]. The law does not provide for special regulation for involuntary treatment of children and/or young adults.

- [79]. The legal framework regarding involuntary placement does not determine specific order for the involuntary placement of persons in guardianship. However, special order is prescribed for offenders with mental disorders and persons with addictive behaviour.

⁹² Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=medical+treatment+law&Submit=Mekl%C4%93t&resultsPerPage=10 (18.09.2009) Section 68 (13).

⁹³ Pamatnostādnes “Iedzīvotāju garīgās veselības uzlabošana 2009.-2014.gadā.”(06.08.2008), available at: <http://www.likumi.lv/doc.php?id=179405> (20.09.2009.).

⁹⁴ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 1 (23).

⁹⁵ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 2.

- [80]. Offenders with mental disorders are subjected to the jurisdiction of *Krimināllikums* [The Criminal Law]⁹⁶. Section 13 determines legal incapacity⁹⁷ and sets that ‘for a person who has been found to have a lack of mental capacity, the court shall order compulsory measures of a medical nature as set out in this Law.’⁹⁸ The Criminal Law establishes the following compulsory measures of a medical nature: 1) out-patient medical treatment in a medical institution; 2) medical treatment of a general type in a psychiatric hospital (ward); and 3) medical treatment under guard in a specialised psychiatric hospital (ward).⁹⁹ In case a relevant person does not pose danger to the public, ‘the court may place the person with his or her relatives or other persons who shall care for the ill person, in the charge and under the supervision of a medical institution.’¹⁰⁰ In accordance with the information provided by *Tiesu administrācija* [Administration of Courts], from 01.01.2006 till 30.06.2009 374 persons have been subjected to compulsory measures of a medical nature.¹⁰¹
- [81]. Involuntary placement of a person with addictive behaviour is regulated by Section 62 and 63 (3) of the Medical Treatment Law. Section 62 states: ‘In cases where as the result of the use of alcohol, narcotic, psychotropic, toxic substances, participation in gambling or computer games, a patient performs activities dangerous to the public, systematically commits administrative violations or by his or her actions endangers himself or herself, his or her closest relatives or the public, the compulsory measures of social and psychosocial rehabilitation prescribed by law shall be applied, but for minors – compulsory measures of an educational nature.’ Section 63 defines ‘the compulsory measures of social and psychosocial rehabilitation.’ Among other measures, it also determines ‘a court adjudication regarding the requirement for the convicted person to undergo medical treatment.’¹⁰²

B. Criteria and Definitions

- [82]. Section 68 of the Medical Treatment Law sets the following criteria for ordering an involuntary placement:

‘Psychiatric assistance without the consent of a patient shall be provided if the patient:

1) has threatened or threatens, tried or is trying to do personal injuries to him or herself or to another person or has behaved or behaves violently to other persons and a medical practitioner has determined that the patient has a mental health disorder for which the possible consequences may be personal injury to the patient him or herself or another person;

⁹⁶ Latvia/Krimināllikums [The Criminal Law] (17.06.1998), available at: http://www.ttc.lv/advantagecms/LV/tulkojumi/meklet_dokumentus.html?query=The+Criminal+law&Submit=Mekl%C4%93t&resultsPerPage=10 (07.10.2009)

⁹⁷ Section 13 (1) Legal incapacity

(1) A person who, during the time of the commission of the offence, was in a state of mental incapacity, that is, due to a mental disorder or mental disability was not able to understand his or her acts or control them, may not be held criminally liable.

⁹⁸ Section 13 (2) of the Criminal Law

⁹⁹ Latvia/Krimināllikums [The Criminal Law] (17.06.1998), available at: http://www.ttc.lv/advantagecms/LV/tulkojumi/meklet_dokumentus.html?query=The+Criminal+law&Submit=Mekl%C4%93t&resultsPerPage=10 (07.10.2009) Section 68 (1).

¹⁰⁰ Section 68 (2).

¹⁰¹ Information provided by Tiesu administrācija [Court Administration] via e-mail on 17.09.2009

¹⁰² Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 63 (2).

2) the patient has indicated or indicates an inability to care for him or herself or for a person under his or her guardianship and a medical practitioner has determined that the patient has a mental health disorder for which the possible consequences may be unavoidable and serious deterioration of the persons health.’¹⁰³

- [83]. The law does not specify whether both criteria must be fulfilled or only one of them to order involuntary placement. The case law reflects different approaches taken by the judges in different situations. In some cases judges refer only to one criterion;¹⁰⁴ in some - to both.¹⁰⁵
- [84]. The legal framework in Latvia does not suggest that less intrusive alternatives should be considered before deciding upon involuntary placement.
- [85]. The Medical Treatment Law does not require that the opinion of the patient be taken into account regarding involuntary placement or involuntary treatment. Opinion of the patient matters (as far as possible) in ‘deciding which person shall be notified of the decision regarding the provision of psychiatric assistance’. The law also determines that ‘a judge shall hear a patient (if it is possible)’ during the court proceedings of involuntary placement.¹⁰⁶
- [86]. The Medical Treatment Law does not include specific definitions of the risk level of danger (the law does not mention specific danger thresholds).

C. Assessment, Decision Procedures and Duration

- [87]. In the decision procedure for the involuntary placement the Medical Treatment Law requires a decision by ‘a doctors’ council of psychiatrists.’¹⁰⁷ In accordance with Section 37 of the law, ‘a doctor is a medical practitioner who has acquired education, which conforms to the requirements specified in the Law On Regulated Professions and Recognition of Professional Qualifications, and who with scientifically grounded medical activities, directly or indirectly affects humans and within the scope of his or her professional activities.’¹⁰⁸ Section 10 of the Law On Regulated Professions and Recognition of Professional Qualification determines that ‘a person’s right to perform independent professional activities in the profession of the doctor certifies a diploma of acquired fulltime medical studies programme and a person’s inclusion in the register of the medical practitioners.’¹⁰⁹ Profession ‘psychiatrist’ is included in the Classification of

¹⁰³ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (1).

¹⁰⁴ Latvia/Liepājas tiesa/4.4.000308 (13.02.2008) or Latvia/Valkas rajona tiesa/4-4a/1/07 (26.04.2007)

¹⁰⁵ Latvia/Liepājas tiesa/4.4.000809 (06.08.2009)

¹⁰⁶ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (11).

¹⁰⁷ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (3).

¹⁰⁸ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 37.

¹⁰⁹ Latvia/Par reglamentētajām profesijām un profesionālās kvalifikācijas atzīšanu [Law On Regulated Professions and Recognition of Professional Qualification] (20.06.2001), available at: <http://www.likumi.lv/doc.php?id=26021&from=off> (24.11.2009) Section 10.

Professions of the Republic of Latvia.¹¹⁰ Psychiatrists belong to the general group of doctors and their main objectives are to diagnose and treat medical illnesses.¹¹¹

- [88]. The doctors' council is defined by the Medical Treatment Law as 'a meeting of not fewer than three doctors in order to determine a diagnosis and the further tactics of medical treatment.'¹¹²
- [89]. The decision on an involuntary placement is taken by the judge, who approves or refuses to approve the decision of doctors' council.¹¹³
- [90]. The initial duration of involuntary placement can last 'for a period of up to two months.'¹¹⁴ During the review of the involuntary placement, a judge can take a decision regarding further involuntary placement for up to six months (see section 90). The legal framework does not specify, who decides on the termination of involuntary placement during these two and six months. As the law does not regulate aforementioned question, in practise psychiatric hospitals implement different approaches. In all psychiatric hospitals the decision on the termination of involuntary placement is taken by doctors, when they consider that a person's health condition does not require further involuntary placement. In some hospitals such decision is taken solely by the attending psychiatrist,¹¹⁵ in others - by the doctors' council of psychiatrists.¹¹⁶
- [91]. The Law provides for a single procedure for involuntary placement regardless of whether a person has been a voluntary patient before or not.
- [92]. The first decision regarding involuntary placement is taken by the doctors' council of psychiatrists within a 72-hour period after a person has refused voluntary placement. The doctors' council has to inform a district (city) court about any such decision within a period of 24 hours. The judge has to take a decision regarding involuntary placement within a period of 72 hours after the receipt of the doctors' council of psychiatrists' decision.¹¹⁷ Thus it can be concluded that the maximum period of time between the psychiatric assessment and the beginning of compulsory placement is 144 hours.¹¹⁸
- [93]. The same duration applies to emergency situations (e.g. nights, weekends or urgent cases).

¹¹⁰ Latvia/Latvijas Republikas Profesiju klasifikators [Classification of Professions of the Republic of Latvia] (09.10.1998), available at: http://www.vid.lv/dati/likumi/prof_klasif/Profesiju_klasifikators_LM_rikojums.doc (24.11.2009)

¹¹¹ Section 2221.

¹¹² Section 1 (6).

¹¹³ Section 68 (11).

¹¹⁴ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (13).

¹¹⁵ Interview with Imants Strolis, the head of the "Piejūras slimnīca" [Seashore hospital] (22.10.2009)

¹¹⁶ Interview with a representative of the psychiatric hospital "Ģintermuiža" (22.10.2009)

¹¹⁷ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (5, 10).

¹¹⁸ It should be noted that The Medical Treatment Law provides for a possibility for a 48 hour term deferment: 'The judge on his or her own initiative or also on the basis of a justified request from the public prosecutor, representative of the patient or advocate shall decide regarding the deferral of examination of the materials for a period, which is not longer than 48 hours if it is not possible to examine the materials because one of the persons referred to in Paragraph eight of this Section has not appeared or it is necessary to acquire additional evidence.' (Section 68 (10))

- [94]. Under the Medical Treatment Law, the initial duration of involuntary placement can last ‘for a period up to two months.’¹¹⁹ The Law sets out an obligation ‘not later than seven days prior to the end of the time period specified by the decision of the judge to examine the patient by the doctors’ council of psychiatrists and take a decision regarding the necessity to continue to provide to the patient without his or her consent psychiatric assistance in the psychiatric medical treatment institution.’ If the doctors’ council decides that further involuntary placement is needed, a judge can approve doctors’ council decision for duration of up to six months.¹²⁰
- [95]. Pursuant to the Cabinet of Ministers Regulations,¹²¹ the former *Veselības statistikas un medicīnas tehnoloģiju valsts aģentūra* [Health Statistics and Medical Technologies State Agency]¹²² has established a database of medical technologies.¹²³ In accordance with the data base, use of 12 psychiatric technologies (with indicated sub technologies) is permitted in Latvia.

Some of the validated in-patient psychiatric technologies are as follows:

- assessment of the psychiatric condition and designation of the therapy course,
- modified electro-convulsive therapy (ECT) (under general anaesthesia, with the use of muscle reluctance)
- short-term (up to 48 hours) deprivation of sleep (with the consent of patient) for the treatment of depressive conditions,
- provision of emergency psychiatric assistance and performance of intensive care to patients with the syndrome of disordered consciousness,
- use of insulin for the general improvement therapy.¹²⁴

In accordance with regulations, a detailed instruction is issued only regarding the use of ECT.¹²⁵ Performance of ECT is permitted only in a modified manner. The regulations enumerate certain psychiatric indications, when the use of ECT is allowed. The use of ECT on patients, aged 16-18, is permitted only with the written consent of the parents or a trustee. ECT cannot be performed on patients who have not reached the age of 16 and on pregnant women. Modified ECT is to be performed by a certified psychiatrist who has mastered the relevant methodology. Before the ECT procedure a patient (or his closest relative, guardian or trustee if the patient has disordered consciousness) has to be informed (in a simple language) about the method of treatment, its positive outcome, known risks and side-effects and asked to provide a written consent to treatment.

¹¹⁹ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (13).

¹²⁰ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (17).

¹²¹ Latvia/Ministru kabineta noteikumi nr. 386 [Cabinet of Ministers Regulations No.386] (31.05.2005), available at: <http://www.likumi.lv/doc.php?id=109638> (21.10.2009)

¹²² From 01.10.2009 the functions of the Health Statistics and Medical Technologies State Agency has been overtaken by *Veselības Ekonomikas Centrs* [The Centre of Health Economics].

¹²³ Latvia/Latvijā apstiprināto medicīnas tehnoloģiju datu bāze [Data base of approved medical technologies in Latvia] (no date indicated), available at: <http://vsmtva.vec.gov.lv/web/lv/datubazes/datubazes/tehnologijas/index.aspx> (21.10.2009)

¹²⁴ Terminology ‘the general improvement therapy’ is not clarified neither in the database of medical technologies nor in any other document. Accordingly, additional clarification of the term cannot be provided.

¹²⁵ Available at: <http://vsmtva.vec.gov.lv/web/lv/datubazes/datubazes/tehnologijas/index.aspx> (21.10.2009). The description of the use of ECT is issued following the Cabinet of Ministers Regulations No.77 (19.02.2002) and Regulation No.581 (02.08.2005)

- [96]. Other coercive measures (such as the use of restraint and seclusion) are registered in the Regulations of the Cabinet of Ministers,¹²⁶ but their use is not prescribed by law or regulations. During the monitoring visits to psychiatric hospitals, the Latvian Centre for Human Rights observed that ‘different hospitals performing similar functions use different regulations for restricting patients’ freedom. [...] Restraining of patients is done in accordance with the orders of the psychiatrist and an act is written in each case of using restraint, which is then attached to the patient’s medical file.’¹²⁷
- [97]. Under the Medical Treatment Law, an appeal against the decision of the court regarding involuntary placement can be submitted within the period of ten days from the day of the notification of the decision by the judge. An appeal (or protest) can be submitted by a person concerned, the public prosecutor, the patient’s representative or advocate. An appeal or protest is examined by the chairperson of the court ‘within a period of ten days from the end of the time period for the submission of an appeal or protest.’
- [98]. While the Medical Treatment Law provides for the right to appeal, pursuant to Article 25 of the CoE Rec (2004)10, it does not provide for a person’s right to be heard during the appeal proceedings as required by the Recommendation. In examining an appeal or protest, a judge is evaluating only the arguments included in the appeal or protest.¹²⁸
- [99]. The Medical Treatment Law prescribes two periodical reviews by the court of involuntary placement: after two and six months of placement.¹²⁹ A person has the right to be heard during review procedures if a judge considers it ‘possible.’¹³⁰
- [100]. In accordance with the Medical Treatment Law, if a person does not have a legal representative for the proceedings of involuntary placement (including appeal and review proceedings), he or she receives free legal assistance, provided by the advocate assigned by the Latvian Sworn Advocates Council.¹³¹

VI. Competence, Capacity and Guardianship

- [101]. Information on Latvia has been included in the *Second Disability High Level Group Report* (2009)¹³², which briefly explains the legal framework currently regulating trusteeship as the only protective mechanism for people lacking capacity in Latvia. Since June 2009, when report was published, discussions in Latvia between relevant ministries (Justice and Welfare) and NGOs have continued on the need to amend current national laws in order to comply with Article 12 of UN CRPD. On October 8 and 16 the Welfare Ministry and NGO – Resource Centre for People with Mental Disability “ZELDA” jointly highlighted to the working group on Civil Law Amendments of the Justice Ministry current problems in the legal framework regulating the issues of legal capacity, such as

¹²⁶ Register of restraint reads as follows: ‘Providing emergency psychiatric assistance to a patient in the event psychomotor agitation: medicated method for patient’s mechanic restraint.’

¹²⁷ Latvian Centre for Human Rights (2006) *Monitoring Report on Closed Institutions in Latvia*, available at: <http://www.humanrights.org.lv/html/news/publications/index.html?yr=2006> (26.10.2009)

¹²⁸ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (15).

¹²⁹ See on this issue also paragraph 54.

¹³⁰ Latvia/Ārstniecības likums [Medical Treatment Law] (26.02.1998), available at: http://www.ttc.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=&resultsPerPage=10 (18.09.2009) Section 68 (9).

¹³¹ Section 68 (7) and 68¹.

¹³² Available at: <http://ec.europa.eu/social/BlobServlet?docId=2790&langId=en> (12 June 2009).

lack of partial capacity and other alternatives (e.g. supported decision making); procedural issues (e.g. the right to be heard in person in any legal proceedings, which may affect person's legal capacity); the need for periodic review of legal capacity and difficulties to renew capacity.¹³³

- [102]. *Latvijas Republikas Civillikums* [The Civil Law of Latvia] provides for a framework for trusteeship 'over persons found by a court to be lacking capacity to act due to a mental illness or mental deficiency'.¹³⁴
- [103]. Sections 1405 and 1408 of the Civil Law explain the difference between legal capacity and capacity to act – according to Section 1405 'in order for a transaction to have legal force, it is necessary that the parties to the transaction have legal capacity and the capacity to act; transactions made by persons without legal capacity, or capacity to act, are void.'¹³⁵ Section 1408 of the Civil Law further clarifies that 'minors, persons under guardianship due to a dissolute or extravagant lifestyle, and the mentally ill lack the capacity to act, unless directly otherwise provided by the law.'¹³⁶ The Civil Law itself does not provide for more detailed definition of terms – 'legal capacity' and 'capacity to act'. However, the Commentary to the Civil Law on Obligations law (available only in Latvian) explains that legal capacity *is the ability to be bearer of civil rights* (subject). Physical person has legal capacity since he/she is born, but capacity to act is the person's ability with his/her actions to obtain rights and to undertake obligations.¹³⁷
- [104]. Section 358 of Civil Law of Latvia states that 'the mentally ill, who lack all or a large part of their mental capacity, shall be acknowledged as lacking the capacity to act and as legally incapable to represent themselves'.¹³⁸ The law does not mention medical diagnoses or specify criteria of determination of degree of person's mental capacity.
- [105]. Section 358 of the Civil Law provides only for the total deprivation of capacity, there are no other alternatives (e.g. partial capacity or supported decision making mechanism) available.
- [106]. Trusteeship is the only protective mechanism, provided by law (Sections 358, 359, 360 of the Civil Law). Thus 'if the court finds a person as lacking capacity to act due to mental illness or mental deficiency, it shall inform the orphan's court of this, which, as necessary, shall appoint one or more trustees for the mentally ill person, to whom shall be entrusted the administration of his or her property and special care of his or her person, but without imposing on the trustees a duty to themselves tend to mentally ill person'.¹³⁹
- [107]. The basic features of trusteeship: this protective mechanism is only established over adults with mental disabilities (including mental disorders, as well intellectual disabilities) if the

¹³³ More information about identified problems in current legislative framework is available in Newsletter of Resource Centre for People with Mental Disability "ZELDA", available at

http://www.zelda.org.lv/riect_text/docs/Apkartraksts_2009_ENG.pdf (10.10.2009), 3rd issue, March 2009, p. 2

¹³⁴ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 217.

¹³⁵ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 1405.

¹³⁶ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 1408.

¹³⁷ K.Torgāns (eds) *Latvijas Republikas Civillikuma komentāri, Saistību tiesības (1401.-2400.p.)*, Rīga: Mans Īpašums, 2000, p. 20

¹³⁸ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 358.

¹³⁹ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 360.

court has declared them to be ‘lacking capacity to act’. The trustee is entrusted with the administration of the property of individual and with special care of person, who has been recognised by the court as ‘lacking capacity to act’. In principle the trustee makes all the decisions instead of the person, therefore trusteeship has serious impact on person’s financial matters (right to own, manage and inherit property and right to work); on health and social care decisions (e.g. in many cases after declaring person legally incapable, trustee would place a person in a long-term social care institution); on access to justice (legally incapable person can apply to court only through his/her guardian, thus technically a person cannot even ask the court to review his/her capacity or to renew it); on a person’s private life – the right to make decisions on various aspects of private life, the right to form a family, to have and raise children and on the person’s right to vote and to stand for elections.

- [108]. For placing adults lacking capacity under the protective systems established by the Civil Law, a person with mental illness or intellectual disability should ‘lack all or a large part of their mental capacity’.¹⁴⁰ The Civil Law further states that: ‘mental illness or mental deficiency is associated with legal consequences only when a person has been found by a court to be lacking the capacity to act due to mental illness or mental deficiency.’¹⁴¹ There should be ‘set out the mental illness or mental deficiency and evidence to confirm the incapacity of person’¹⁴² in the application to court on the need to assess a person and to establish trusteeship over him/her.
- [109]. The Civil Law does not provide for minimum or maximum time limits for placing a person under trusteeship. The law also does not require periodic review of incapacity or the need for trustee.
- [110]. According to the Section 359 of the Civil Law ‘each family in which there is a mentally ill person, as well as members of each such family may notify the court regarding this according to the place of residence of the mentally ill person’. Further the same Section of the Civil Law also mentions that ‘any other person, who has proved his or her interest in the matter, as well as the prosecutor, may similarly notify.’¹⁴³
- [111]. a) According to the Section 264 of *Civilprocesa likums* [Civil Procedure Law] the legal incapacity of an adult is declared by the court according to the place of residence of the mentally ill person or by the court according to the location of the medical institution, if a person has been placed in a medical institution.¹⁴⁴
- b) Orphan’s Courts have jurisdiction to take measures aimed at the protection of the person. The responsibilities of Orphan’s Courts are defined by *Bāriņtiesu likums* [Law on Orphan’s Courts], which defines an Orphan’s Court as ‘a guardianship and trusteeship

¹⁴⁰ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 357.

¹⁴¹ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 358.

¹⁴² Latvia/ Civilprocesa likums [Civil Procedure Law] (14.10.1998), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=1> (08.10.2009). Section 265.

¹⁴³ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 359.

¹⁴⁴ Latvia/ Civilprocesa likums [Civil Procedure Law] (14.10.1998), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=1> (08.10.2009). Section 264.

institution established by a county, city or parish local government'.¹⁴⁵ Further in Section 4 (2) the same law emphasizes that 'an Orphan's court shall ensure by priority the protection of the rights and legal interests of a child or another person lacking capacity to act'. Section 17 mentions the protection of the personal and property interests and rights of a child or another person lacking capacity to act among the general duties of Orphan's court. According to the Section 268 (2) of the Civil Procedure Code the Orphan's court should receive a true copy of Court's judgement regarding declaring an adult as legally incapable for appointing of a trustee for this person and his or her property.

c) Orphan's Courts have jurisdiction to take measures concerning the property of the person. Section 41 (1) of the Law on Orphan's Courts states that 'an Orphan's court shall supervise the actions of a trustee to perform transactions in the cases provided for in the Civil Law'. Further the same Section 41 (2) specifies that 'an Orphan's court, in protecting the property interests of a person lacking capacity to act, in the cases provided for in the Civil Law shall:

1) take a decision regarding the permission to accept or reject the inheritance accruing to a person lacking capacity to act;

2) take a decision regarding the sale of the property belonging to a person lacking capacity to act for the market value or at an auction;

3) take a decision regarding the alienating, pledging or encumbrance of the immovable property belonging to a person lacking capacity to act (if the value thereof does not exceed LVL 10,000) of a person lacking capacity to act with other property rights;

4) take decision regarding the usefulness of the alienating, pledging or encumbrance of the immovable property belonging to a person lacking capacity to act (if the value thereof exceeds LVL 10,000) with other property rights;

5) taking a decision regarding the acquisition of property for a person lacking the capacity to act;

6) follow that the trustee does not dispose the property belonging to a person lacking capacity to act without the permission of the Orphan's court, if such permission is necessary in accordance with the Law;

7) examine whether the trustee administers the property of the ward in accordance with the interests of the ward and the requirements or regulatory enactments.¹⁴⁶

d) Orphan's Courts are responsible for ensuring and monitoring the implementation and follow-up of measures aimed at the protection of a person lacking capacity to act and his/her property, implemented by trustees. According to the Section 41 (4) of the Law on Orphan's Courts 'an Orphan's court shall receive and verify the accounting submitted by a trustee each year by 1 February, as well as upon releasing or suspending a trustee. The Chairperson of the Orphan's court shall approve the accounting.'¹⁴⁷ Section 41 (5) also

¹⁴⁵ Latvia/ Bāriņtiesu likums [Law On Orphan's Courts] (22.06.2006), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=5> (08.10.2009). Section 2.

¹⁴⁶ Latvia/ Bāriņtiesu likums [Law On Orphan's Courts] (22.06.2006), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=5> (08.10.2009). Section 41 (2).

¹⁴⁷ Latvia/ Bāriņtiesu likums [Law on Orphan's Courts] (22.06.2006), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=5> (08.10.2009). Section 41 (4).

allows for the Orphan's court to 'impose a trustee with a duty to provide an accounting regarding the administration of the trusteeship at any time.'¹⁴⁸ According to the Section 5 of the Law on Orphan's Courts Orphan's Courts themselves are under functional supervision of the Welfare Ministry, besides an Orphan's court should provide a report regarding their operation thereof to the council of the relevant local government at least once a year. Local government council also has the right to request a report from Orphan's court regarding the operation thereof at any time.

- [112]. If a person has been declared legally incapable by the first instance court, the decision according to the Section 415 of the Civil Procedure Code can be appealed to the regional court within 20 days. The problems sometimes arise, if a person has not been informed that an application on the assessment of his/her legal capacity has been lodged and that the court has made a decision on incapacity, as the Section 266 (2) of the Civil Procedure Law¹⁴⁹ allows to hold court hearings without the presence of the person concerned if his/her medical condition does not allow it. The suggestion to invite a person to a court hearing or not is usually made by expert-psychiatrist in court psychiatric expert-examination. Thus in such cases, when a person has not been invited to a court hearing, it can happen that a person is also not informed about the court's decision to declare him/her as incapable to act. In such case the person would also lose the opportunity to appeal. In most cases court of appeal orders in-patient court psychiatric and psychological expert-examination, if the first instance court has had only out-patient expert-examination. Section 267 of the Civil Procedure Law does not provide in detail if the court should order in-patient or out-patient psychiatric expert-examination. However usually court of appeal will decide for in-patient psychiatric expert examination. Latvia has four mental health care institutions providing out-patient court psychiatric expert-examinations and only one institution (Riga Psychiatric and Narcology Centre) providing in-patient court psychiatric expert-examinations. Thus in reality people do not have second choice options in case they are not satisfied with the decision of in-patient court psychiatric expert-examination.
- [113]. The implementation of measures placing an adult under a system of protection - according to the Section 355 of the Civil Law 'trustees of adults shall be appointed pursuant to judgement of a court, by the appropriate orphan's court, which shall, in the first place appoint as trustee, the spouse of the person to be placed under trusteeship or one of the nearest kin.'¹⁵⁰
- [114]. Further Section 356 of the Civil Law specifies that 'trusteeship for adults shall be subject to the relevant provisions regarding guardianship for minors, insofar as these provisions do not conflict with the following Sections' (*sections on trusteeship*).¹⁵¹ Thus the sub-chapter of the Civil Law on Guardianship of Minors includes provisions on guardians, which also apply to trustees. Section 240 of the Civil Law states that 'in all those cases, where the confirmation or appointment of a guardian is dependent on an orphan's court, it shall examine the person to be confirmed or appointed to ensure he or she has the abilities and qualities necessary for the performance of such duty.'¹⁵² Further the law states (Section

¹⁴⁸ Latvia/ Bāriņtiesu likums [Law on Orphan's Courts] (22.06.2006), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=5> (08.10.2009). Section 41 (5).

¹⁴⁹ Latvia/ Civilprocesa likums [Civil Procedure Code] (14.10.1998), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=1> (08.10.2009). Section 266 (2).

¹⁵⁰ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 355.

¹⁵¹ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 356.

¹⁵² Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 240.

241) that ‘the orphan’s court has a duty generally to not allow to be guardians, but if an appointment has already been made, to remove from guardianship, all those, whose administration may pose the threat of any loss to the minor.’¹⁵³ Section 242 of the Civil Law also provides for a list of persons who cannot be guardians, thus guardians may not be: ‘persons who are under trusteeship; persons from whom parental authority has already once been taken away by court judgement and who have been removed from guardianship due to improperly performing the duties of guardianship; persons who have been found to be insolvent to debtors; persons whose parents or grandparents have by will rejected regarding guardianship over their surviving minor children; persons whose interests manifestly are in conflict with significant interests of the ward; the members of the orphan’s court that has jurisdiction regarding guardianship concerned; aliens, except in cases where guardianship is established over citizens of their state and minors.’¹⁵⁴ Section 243 states that ‘a guardian must reside in the same city or parish where the ward resides; only in exceptional cases, when circumstances require it, may the orphan’s court allow persons who reside elsewhere to also be guardians.’¹⁵⁵

- [115]. According to Section 245 of the Civil Law ‘the position of guardian is a public duty that no one may refuse without lawful cause.’¹⁵⁶ However Section 246 of the Civil Law also provides for lawful causes for refusal: ‘state or local government service, with which it is difficult to combine the duties of guardianship; inability to read or write; age of more than sixty years; supervision over three guardianships or trusteeships, or even over only one but over such as is associated with great effort; a large family; poverty; illness, which hinders proper performance of the duties of a guardian; moving to another orphan’s district court; frequent and lengthy official absences, or such distance between the place of residence and the location of the guardianship as makes difficult the performance of guardianship duties.’¹⁵⁷
- [116]. Scope and extent of powers of the entrusted person/body - Section 360 of the Civil Law, which defines orphan’s court’s responsibility to appoint one or more trustees for the mentally ill person, mentions also as responsibility of trustee the administration of mentally ill person’s property and special care for the person, but without imposing on the trustees a duty to tend to the mentally ill person.
- [117]. Taking into account Section 356 of the Civil Law (mentioned already previously) stating that ‘trusteeship for adults shall be subject to the relevant provisions regarding guardianship for minors, insofar as these provisions do not conflict with the following Sections (*sections on trusteeship*)’ a more detailed list of duties and rights of trustee can be derived from Sections 252 to 310, regulating the duties of guardian; administration of property; accounting; compensation of guardians and liability of guardian. Amongst the duties the Civil Law (Section 264) also obligates a guardian to ‘represent his or her ward

¹⁵³ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 241.

¹⁵⁴ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 242.

¹⁵⁵ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 243.

¹⁵⁶ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 245.

¹⁵⁷ Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 246.

in court proceedings. Without the guardian he or she may not bring action, not defend an action, except in cases provided for by law.’¹⁵⁸

- [118]. The appeal procedures against a decision of the appointment of a person/body entrusted to implement the system of protection - the decisions on the appointment of a trustee is taken by the Orphan’s court, thus according to Section 49 (2) of the Law on Orphan’s courts ‘the interested party may appeal a decision of an Orphan’s court to court in accordance with the procedures specified in *Administratīvais procesa likums* [the Administrative Procedure Law].’¹⁵⁹ However this right to appeal the decisions of Orphan’s court cannot be exercised by legally incapable person him/herself, as according to Section 21 of the Administrative Procedure Law a person, submitting a complaint, must have the capacity to act. The same Section 21 (2) further states that ‘procedural rights of those natural persons who have not attained the age of 15 years or who have been found to lack capacity to act, shall be exercised by their legal representatives’.¹⁶⁰
- [119]. Although the *Council of Europe Recommendation R(99)4* and recent ECHR judgement in the case *Shtukaturov v Russia* suggests periodic review of incapacity, the Civil Law does not require periodic review, therefore the incapacity of a person is never reviewed, unless the trustee applies to Orphan’s court or prosecutor with a request to renew capacity. Renewal of capacity happens in very few cases. According to the information provided by the Court Administration from 2006 to 30 June 2009 altogether 19 cases have been submitted to the courts of first instance on the renewal of legal capacity and only in eight cases has the capacity been renewed.¹⁶¹ Renewal of person’s legal capacity is regulated by Section 364 of the Civil Law and Section 270 of the Civil Procedure Law. Section 364 of the Civil Law states: ‘if a court has found a mentally ill person as having recovered their health, i.e. as having the capacity to act, it shall direct the orphan’s court to release the trustees from their appointment after they have submitted an accounting and transferred the property which was under their administration to the person who has recovered his or her health.’¹⁶² According to Section 270 of the Civil Procedure Law in case of deciding on the renewal of legal capacity, a court psychiatric expert-examination opinion is mandatory. The experience of NGO – Resource Centre for people with mental disability “ZELDA”, which represents clients in cases of renewal of legal capacity, shows that in the case of intellectually disabled persons, with diagnosis ‘mental retardation’ or persons with mental disorders, having diagnosis ‘schizophrenia’ or ‘dementia’ the court psychiatric expert-examination opinion does not recommend to renew capacity, because persons with the above diagnoses cannot be approved as ‘having recovered their health’.
- [120]. The need for a trustee is interrelated with the status of incapacity. The Civil Law does not require periodic review of incapacity, neither does it require reviewing periodically the need for a trustee.

¹⁵⁸ Latvia/ Civilprocesa likums [Civil Procedure Code] (14.10.1998), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=1> (08.10.2009). Section 264.

¹⁵⁹ Latvia/ Bāriņtiesu likums [Law On Orphan’s Courts] (22.06.2006), available at <http://www.ttc.lv/advantagecms/LV/tulkojumi/dokumenti.html?folder=%2fdocs%2fLRTA%2fLikumi%2f¤tPage=5> (08.10.2009). Section 49 (2).

¹⁶⁰ Latvia/ Administratīvā procesa likums [Administrative Procedure Law] (25.10.2001), available at <http://www.likumi.lv/doc.php?id=55567> (08.10.2009). Section 21 (2).

¹⁶¹ Data provided by Court Administration by e-mail to Resource Centre for people with mental disability „ZELDA” on September 17, 2009.

¹⁶² Latvia/ Latvijas Republikas Civillikums [The Civil Law of Latvia] (28.01.1937), available at <http://www.ttc.lv/export/sites/default/LV/publikacijas/civillikums.pdf> (08.10.2009). Section 364.

VII. Miscellaneous

Annex – Case Law

In different Sections of the Guidelines, experts have been asked to refer to case law. Please present the case law reference in the format below

Case title	
Decision date	16.06.2004
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	C36-0057/04, Talsu rajona tiesa [Talsu district (city) court]
Key facts of the case (max. 500 chars)	The complaint was lodged in the court by <i>Latvijas Republikas Labklājības ministrijas</i> [Ministry of Welfare of the Republic of Latvia (MW)] <i>Specializētais aprūpes centrs ‘Veģi’</i> [Specialised children’s care centre ‘Veģi’] with a request to dismiss three teachers from the children’s care centre. A petition was filed based on by-decision of the criminal case heard by the criminal court on 19.05.2003 regarding cruel treatment of children in ‘Veģi.’
Main reasoning/argumentation (max. 500 chars)	MW grounded their request on Section 101 (5) of <i>Darba likums</i> [Labour Law] which determines employer’s right to give a written notice of termination of an employment contract if the employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons. The applicant indicated that in accordance with <i>Bērnu tiesību aizsardzības likumu</i> [Law on the Protection of the Rights of Children] ‘A child has the right to be protected from economic exploitation, and from employment in conditions that are dangerous or harmful to his or her health or physical, psychological or moral development [...]’
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court indicated that the applicant has ‘not sufficiently motivated’ why labour relationships should be terminated as the respondents have not been convicted for cruel treatment of children. The court considered that the evidence given to court was insufficient regarding cruel treatment of children (‘the court cannot conclude that children’s explanations were reflecting the true circumstances of the case.’)
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	After evaluating evidence and explanations given by the parties, the court came to conclusion that the petition is ill-founded and should be rejected.
Proposal of key words for data base	Cruel treatment, children with mental disabilities

Case title	Valentīna Beiere vs Latvia
Decision date	
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Application no.30954/05, European Court of Human Rights Lodged on 28.07.2005
Key facts of the case (max. 500 chars)	The applicant indicated that she was placed in a psychiatric hospital to have a complex psychiatric-psychological assessment, based on a decision adopted by Saldus district public prosecutor. On 02.05.2002 a judge of <i>Saldus rajona tiesa</i> [Saldus District Court] issued a decision authorising the applicant's placement in psychiatric hospital in order to have a psychiatric assessment carried out. The applicant did not participate in the proceedings and found out about the decision only when she was delivered to psychiatric hospital by 10 to 12 policemen. Taking aforementioned into account, the applicant missed an opportunity to submit an appeal.
Main reasoning/argumentation (max. 500 chars)	The applicant complains under Article 5 (1) of the European Convention on Human Rights about the lawfulness of her detention in psychiatric hospital and her inability to challenge that lawfulness.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The case is still pending.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The case is still pending.
Proposal of key words for data base	Involuntary placement, Article 5 of the ECtHR

Case title	
Decision date	03.04.2007
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	2007-05-0106, <i>Latvijas Republikas Satversmes tiesa</i> [Constitutional court of the Republic of Latvia (Constitutional court)]
Key facts of the case (max. 500 chars)	Complaint was lodged in the Constitutional court by <i>Valsts cilvēktiesību birojs</i> [The National Human Rights Office] regarding the compliance of <i>Ārstniecības likums</i> [Medical Treatment Law] with Article 5 (4) of the European Convention on Human Rights.
Main reasoning/argumentation (max. 500 chars)	The applicant indicated that in accordance with the Medical Treatment Law, a decision of involuntary placement is approved only by doctors' council and no judicial review is ensured. Likewise in accordance with current legal framework no right to periodical review of detention is ensured. Such provision restricts person's right to access to court that must be ensured in cases of deprivation of liberty and accordingly violates person's right to liberty.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Constitutional court adopted decision on dismissal of proceedings after the amendments of the Medical Treatment Law were adopted by <i>Latvijas Republikas Saeima</i> [Parliament of Latvia] in an accelerated procedure on 01.03.2007. Adopted amendments of the Medical Treatment law ensure judicial review of involuntary placement in psychiatric institutions and prescribe periodical review of detention.
Proposal of key words for data base	Constitutional court, compliance of laws, involuntary placement

Case title	
Decision date	14.11.2001
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	CA-30295500, <i>Rīgas apgabaltiesas Civillietu tiesas kolēģija</i> [Civil Law collegium of the Riga regional court]
Key facts of the case (max. 500 chars)	A complaint was submitted by Alberts Sirmulis against <i>Latvijas Republikas Labklājības ministrijas Ārstniecības departaments</i> [Department of the Medical Treatment of the Ministry of Welfare of the Republic of Latvia (MW)]. Alberts Sirmulis indicated that he had addressed an application to several psychiatric treatment institutions with a request to issue the copy of his medical history file. As his requests were rejected, he turned to MW, which also refused to issue required file.
Main reasoning/argumentation (max. 500 chars)	The applicant claimed that the refusal of MW to issue file of his medical history violated his right to private life protection as defined by Article 8 of the European Convention on Human Rights and Article 93 of <i>Latvijas Republikas Satversme</i> [Constitution of the Republic of Latvia]. The applicant grounded his complaint on Article 65 of <i>Ārstniecības likums</i> [Medical Treatment Law] which prescribes that ‘Persons with mental disorders and mental illness shall be ensured all the civil, political, economic and social rights provided for by law.’
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court stated that even though the applicant has indicated that he has turned to several psychiatric treatment institutions with the request to issue his medical history file, he has not submitted any evidence of that. Wherewith, the court has no reason to hold that mentioned institutions had refused his request. The court also considered that the Medical Treatment Law determines medical data as confidential information and the patient is not included in the list of persons who can receive such data. Patient has the right to receive information regarding his diagnosis and treatment plan in a simple language from his attending physician.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court concluded that the petition was ill-founded and should be rejected.
Proposal of key words for data base	Access to medical data, private life protection

Case title	
Decision date	05.04.2006
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	SKA-227, <i>Latvijas Republikas Augstākās tiesas Senāts</i> [Senate of the Supreme Court of the Republic of Latvia (Supreme Court)]
Key facts of the case (max. 500 chars)	A complaint was submitted by the representative of Viktors Strokovs against <i>sabiedrība ar ierobežotu atbildību 'Vecliepāja'</i> [limited liability company 'Vecliepāja'] and ' <i>Piejūras slimnīca</i> ' ['Seashore hospital']. The plaintiff indicated that on 19.05.1998 'Vecliepāja' without any reason demanded his placement in psychiatric hospital and afterwards – in <i>pansionāts 'Iļģi'</i> [social care home 'Iļģi']. After the plaintiff was placed in the hospital on 21.05.1998, he was evicted from his apartment. The plaintiff alleged that the signature, certifying his will to refuse from the apartment, was not his.
Main reasoning/argumentation (max. 500 chars)	The plaintiff stated that due to unlawful action of the respondents, he has lost the right to use an apartment and accordingly – the right to privatize aforementioned apartment. Taking into account the Civil Law of the Republic of Latvia, the plaintiff requested the court to award him LVL 4200 (approximately EUR 5976) for the damages he has suffered.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court stated that, 'if the plaintiff has lost his right to use an apartment due to unlawful acts of respondents, he has to pursue a claim for the reestablishment of his right to use an apartment.' Decision regarding his right to privatize an apartment can be only taken after the question whether the plaintiff had actually lost his right to use an apartment will be resolved. The court considered that there is not enough of evidence regarding the existence of damages requested by plaintiff.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Taking previously mentioned facts and arguments into account, the court decided that the plaintiff's claim must be rejected.
Proposal of key words for data base	The right to property

Case title	
Decision date	13.02.2008
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	4.4./000308, <i>Liepājas tiesa</i> [Liepāja court]
Key facts of the case (max. 500 chars)	The case is based on ‘Piejūras slimnīca’ [‘Seashore hospital’] doctors’ council’s decision regarding the necessity of performance of psychiatric assistance without the consent of a person.
Main reasoning/argumentation (max. 500 chars)	In the decision of the doctors’ council it is indicated that a person has been delivered to the hospital due to aggressive and inadequate behaviour. She had cut neighbours’ electrical wires and had attacked medical and police personnel. In the receiving-room of the hospital she acted aggressively towards personnel, expressed threats to other people’s health. Due to the uncontrollable and dangerous behaviour, a patient needs medical treatment and supervision.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The judge stated that after listening to the opinions of the representative of the psychiatric hospital and attorney of the person concerned, he came to the conclusion that the decision of the doctors’ council is well-grounded. The facts included in the case materials and information reflected during the court proceedings creates a confidence in the judge that ‘there exist circumstances described in Article 68 (1) point 1. Such circumstances are a legitimate and sufficient ground for patient’s placement in psychiatric institution for medical treatment without her consent.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Taking previously mentioned into account, on the basis of Article 68 (1) point 1 of the Medical Treatment Law, the judge approved the decision of the doctors’ council of performance of psychiatric assistance without the consent of a person up to 2 months.
Proposal of key words for data base	Involuntary placement, the right to liberty

Case title	
Decision date	06.08.2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	4.4./000809, <i>Liepājas tiesa</i> [Liepāja court]
Key facts of the case (max. 500 chars)	The case is based on ‘Piejūras slimnīca’ [‘Seashore hospital’] doctors’ council’s decision regarding the necessity of performance of psychiatric assistance without the consent of a person.
Main reasoning/argumentation (max. 500 chars)	In the decision of the doctors’ council it is indicated that ‘a patient needs medical treatment in psychiatric hospital without his consent due to circumstances prescribed in Article 68 (1) point 1.’ The representative of the psychiatric hospital noted that the patient has been medically treated for five years in Ireland and also in hospitals in Latvia. He has been treated in hospital in Jelgava and now has been delivered here. The patient is not using medicine, has no critical assessment regarding his illness and has intensified aggression. The prosecutor and attorney agree with the representative of hospital.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The judge stated that after listening to the opinions of the parties of the case, he came to the conclusion that the decision of the doctors’ council is well-grounded and legitimate. The facts included in the case materials and information reflected during the court proceedings creates a confidence in the judge that ‘there exist circumstances described in Article 68 (1) point 1 and 2.’
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Taking previously mentioned into account, on the basis of Article 68 (1) point 1 and 2 of the Medical Treatment Law, the judge approved the decision of the doctors’ council regarding involuntary placement of a patient up to 2 months.
Proposal of key words for data base	Involuntary placement, the right to liberty

Case title	
Decision date	26.04.2007
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	4.4a/1/07, <i>Valkas rajona tiesa</i> [Valka district court]
Key facts of the case (max. 500 chars)	The case is based on <i>Strenču psihoneiroloģiskā slimnīca</i> [Strencu psychiatric hospital] doctors' council's decision regarding the necessity of performance of psychiatric assistance without the consent of a person.
Main reasoning/argumentation (max. 500 chars)	In the decision of the doctors' council it is indicated that a patient has been placed in psychiatric hospital due to initiated criminal proceedings against him (violence against his mother). He was delivered to hospital by policemen because of expressed repeated threats to his mother. Upon registration in hospital, denies his aggressive reaction, considers that his family members have mental illnesses, not him. Taking into account his medical condition, doctor's council does not suggest delivering him to court proceedings.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The judge indicates that she has no reasons to question the information provided by doctor's council's decision. Accordingly a judge considers it possible to hear to a case without participation of the patient. After evaluating circumstances of the case, she considers that a person has a psychiatric disorder, which could result in a serious bodily harm caused to patient himself or to other persons by the patient. Accordingly, in the particular case a judge can identify circumstances prescribed in Article 68 (1) point 1 of the Medical Treatment Law.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Taking previously mentioned into account, on the basis of Article 68 of the Medical Treatment Law, the judge approved the decision of the doctors' council of performance of psychiatric assistance without the consent of a person up to 2 months.
Proposal of key words for data base	Involuntary placement, the right to liberty

Case title	
Decision date	23.05.2005
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	C15233204 796/05, <i>Jelgavas tiesa</i> [Jelgava court]
Key facts of the case (max. 500 chars)	An application was submitted by social care home 'Jelgava' with request to declare person A. (with diagnosis – multiple sclerosis) as incapable to act and to establish trusteeship. At the moment of submission of application A. was pregnant and care home had to look for solution how to deal with A.'s pregnancy, because social care home provides services only to adults – thus they would have no right to provide institutional care services to A., after her baby would be born.
Main reasoning/argumentation (max. 500 chars)	The applicant motivated the request with fact that A. lived in social care home, was disabled because of chronic neurological and mental illness and because of her health condition she was not able to act independently and to understand the meaning of her actions and she lacked all mental capacity, therefore she was not able to represent herself and to administer her property. Application was supported by A.'s parents, who insisted that health condition of A. had deteriorated, therefore she needed 24 hours of supervised care.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court based its decision on the results of in-patient court psychiatric expert-examination, suggesting that A. lacks a large part of her mental capacity and that she is incapable of controlling her actions and understanding of significance of these actions. Court also emphasized that the testimonies of witnesses cannot be sufficient ground for proving the mental capacity of a person.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court decided to declare A. as legally incapable and to establish trusteeship over her. Later Jelgava Orphan's court appointed A. mother as a trustee of A., as well as a guardian of A.'s child. After giving birth A. stayed in the same social care home, but child of A. was taken away from her and given to the guardian.
Proposal of key words for data base	Assessment of legal capacity, family rights (right to raise a child)

Case title	
Decision date	14.10.2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	C35070207; <i>Rīgas apgabaltiesas Civillietu tiesu kolēģija</i> [Civilil Law Collegium of the Riga Regional court]
Key facts of the case (max. 500 chars)	An application was submitted by Allazi Orphan's court with request to renew legal capacity and to terminate the trusteeship of person K., currently residing in long term social care institution (social care home 'Allazi').
Main reasoning/argumentation (max. 500 chars)	The applicant motivated the request with fact that the health condition of K. had improved. K. was able to communicate with people, take care of himself, t manage his money and perform simple jobs. K. had received psycho-social rehabilitation in a half-way house program and had been recognised as able to live in community-based group home (supported residential service, with regular supervision of social workers). Also the psychiatrist of social care home supported the need for the renewal of K. legal capacity. The incapacity status does not allow K. to leave social care institution and to move in community-based group home.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court based its decision on the results of in-patient court psychiatric expert-examination, stating - 'the fact that K. health condition has been improved compared to 2000, when he was declared incapable, cannot be the reason for renewal of legal capacity.' The court stated that there is no doubt that health condition of K. has considerably improved and it is gradually progressing. However taking into account K. diagnosis (schizophrenia), his full recovery is impossible.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court decided not to renew K. legal capacity, because the improvement of his health condition is not sufficient in order to legally represent himself and to administer his property, because he still lacks large part of his intellectual capacity. Court also concluded that after renewal of capacity K. would be socially vulnerable, because he is not able to solve his daily social problems without support from other people.
Proposal of key words for data base	Renewal and assessment of legal capacity, right to live in community

Case title	
Decision date	20.01.1997
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	2-417/5, <i>Rīgas pilsētas Ziemeļu rajona tiesa</i> [Riga city North district court]
Key facts of the case (max. 500 chars)	An application was submitted to court by Ludmila Jasņicka with the request to declare her husband as incapable to act and to establish trusteeship.
Main reasoning/argumentation (max. 500 chars)	The applicant indicated that her husband is mentally ill, currently is staying in a psychiatric hospital and has already been in psychiatric hospital for treatment for more than three times. Psychiatrist also indicated that applicant's husband has a mental illness (paranoid schizophrenia) and due to the seriousness of it he is incapable to control his actions and understand the meaning of the action.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court considered the materials of the case, explanations given by the wife of the applicant and affirmation of the psychiatrist that applicant's husband has a mental illness. It also evaluated the impatient court psychiatric expert-examination and decided that the request of the applicant must be satisfied.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Accordingly, the court decided to declare husband of the applicant as legally incapable and to establish trusteeship over him. It should be mentioned that the applicant was not informed about the court hearing and did not participate in it.
Proposal of key words for data base	Assessment of legal capacity, right to fair trial