

TRANSITIONAL JUSTICE MECHANISMS APPLIED BY LATVIA IN ITS TRANSITION FROM COMMUNIST REGIME*

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List of Abbreviations

Appl.	Application
CoE	Council of Europe
Committee of Ministers	Committee of Ministers of the Council of Europe

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Convention	European Convention for the Protection of Fundamental Rights and Freedoms
CPL	Communist Party of Latvia
CPSU	Communist Party of the Soviet Union
ECtHR	European Court of Human Rights
e.g.	<i>exempli gratia</i> (for example)
<i>Ibid.</i>	<i>Ibidem</i>
KGB	<i>Komitet Gossudarstvennoi Besopasnosti Pri Sowjete Ministrow SSSR</i> (State Security Service of the USSR)
Latvian-Russian agreement	The Latvian-Russian Agreement on the Social Protection of Military Personnel of the Russian Federation and their Family Members
Latvian-Russian treaty	The Latvian-Russian Treaty on the Withdrawal of the Russian Troops
Latvian SSR	Soviet Socialist Republic of Latvia
NKVD	<i>Narodniy komissariat vnutrenikh del</i> (the People's Commissariat for Internal Affairs)
No(s).	Number(s)
PACE	Parliamentary Assembly of the Council of Europe
Para.(s)	Paragraph(s)
p(p).	Page(s)
USSR	Union of Soviet Socialist Republics
VDK	<i>Valsts Drošības Komiteja</i> (State Security Agency of the USSR)
WWII	World War II

I. Introduction

This Article focuses on the post-1990s transition in the former Latvian Soviet Socialist Republic (“Latvian SSR”). Latvia was one of numerous new independent states emerging after the collapse of the former Soviet Union. Almost overnight these states changed from more than half a century of totalitarian regime — communism — to a society based on the rule-of-law democracy and respect for human rights.

The Article establishes how transitional justice was pursued in Latvia: a multi-cultural country in transition that did not set up any special trial or alternative dispute resolution body to deal with transitional justice issues. The Article examines the most prominent transitional justice mechanisms Latvia applied in order to establish whether the choice was successful. In this respect, only the state employed mechanisms and sanctions and not religious or quasi-religious and community sanctions are considered. The Article alleges that the combination of the transitional justice mechanisms Latvia applied demonstrates a one-sided approach that is too narrow given the complexities of transitional justice. This led to certain infringements of human rights and segregation within the population of Latvia. Further, the Article examines whether reconciliation would have been a desirable element within the Latvian transitional justice tool-box. The Article finally comes up with proposals for a successful completion of the still ongoing transition process in Latvia.

II. Latvia — a Country in Transition

1. Definition of a Country in Transition

Generally, post-conflict societies or societies undergoing transition from oppressive / repressive regime abusing human rights to democracy¹ are referred to as “countries in transition”.² Within the contemporary (political) discourse of transitional justice, the term “countries in transition” covers also states moving “from less to more democratic regimes” and accepting “liberal democracy and the rule of law” as, for instance, former Soviet states.³ Consequently, in order to be defined as a country in transition, it is not necessary to qualify the state’s former political order as “repressive” or “oppressive”, or strictly “undemocratic”. It suffices to establish that a democratic country is striving to eliminate such deficiencies as the lack of the rule of law and / or respect for human rights to call it a country in transition. In order to apply this definition to Latvia, its transitional elements and specific judicial problems that are characteristic for countries in transition in general are examined next.

2. Transitional Elements in Latvia

(1) Restoration of Independence

The official date when Latvia regained⁴ its independence is 21 August 1991. On that date the Latvian SSR Supreme Council, the highest legislative body at the time, enacted the Constitutional Law⁵, declaring Latvia an independent and democratic republic according to the Constitution of Latvia of 1922⁶, which was reinstated.

Beforehand, on 4 May 1990 the Latvian Supreme Council adopted the Declaration on the Restoration of the Independence of the Republic of Latvia⁷. It declared Latvia’s incorporation into the Union of Soviet Socialist Republics (“USSR”) in 1940 unlawful and void and restored legal force to the 1922 Constitution.

On the same day Latvia adopted the Declaration on the Accession to Human Rights Instruments.⁸ Part II of the Declaration stated that:

¹ In order to specify the term “democracy” in the context of transitional justice, the standard of the *Rechtsstaat* should be used. It follows the doctrine of the separation of powers (*Montesquieu’s* tripartite system) as a state governance model, while ensuring the observation of at least minimum standards of human rights by all three branches of power: legislative, executive and judiciary.

² Ruti G. Teitel, *Transitional Justice*, (Oxford University Press, New York, 2000), p. 5.

³ *Ibid.*, pp. 4, 5.

⁴ The Republic of Latvia was proclaimed as an independent state for the first time in history on 18 November 1918.

⁵ Constitutional Law on the Status of the Republic of Latvia Law as a State (signed and entered into force 21 August 1991) *Zinotājs* [*Official Reporter*], No. 42, 24.10.1991.

⁶ Constitution of the Republic of Latvia (signed 15 February 1922, entered into force 7 November 1922) *Latvijas Vēstnesis* [*Official Gazette*] No. 43, 01.07.1993.

⁷ Declaration on the Restoration of the Independence of the Republic of Latvia, Latvian Supreme Council (signed and entered into force 4 May 1990) [*Latvijas Padomju Sociālistiskās Republikas Augstākās Padomas Deklarācija par Latvijas Republikas neatkarības atjaunošanu*], at <<http://www.likumi.lv/doc.php?id=75539>> (8 August 2011).

⁸ Declaration on the Accession to Human Rights Instruments, Latvian Supreme Council (signed and entered into force on 4 May 1990) [*Latvijas Padomju Sociālistiskās Republikas Augstākās Padomas Deklarācija par Latvijas*

acknowledging the role of the Council of Europe and the European Parliament in guaranteeing human rights [Latvia] will be guided in its legislative activities by the documents relating to human rights adopted by these organizations.

Latvia thereby obligated itself to transition to democracy in accordance with the policy and standards on human rights set by the Council of Europe (“CoE”).

(2) Accession to the Council of Europe

On 13 September 1991, shortly after restoring its independence *de iure*, Latvia applied to join the CoE. As a general requirement, to become a member State, Latvia had to adhere to the CoE’s standards with regard to: (1) pluralist parliamentary democracy; (2) the rule of law; and (3) human rights.⁹ To meet these requirements, respective democratic institutions had to be set-up and the European Convention for the Protection of Human Rights and Fundamental Freedoms (“Convention”) had to be ratified.¹⁰

In order to establish Latvia’s adherence to the aforementioned standards, the Committee of Ministers of the CoE (“Committee of Ministers”) requested the Parliamentary Assembly of the CoE (“PACE”) to give an opinion thereof.¹¹ The PACE initiated the relevant procedure, in accordance with the stipulations of Statutory Resolution on the admission of new members, and ordered a report on the human rights situation in Latvia.¹²

Normally, the CoE’s principles concerning democracy, the rule of law and human rights have to be “firmly upheld” for a country to become its member State.¹³ However, with regard to Latvia, because of its Special Guest Status, which was granted to the Latvian Parliament on 18 September 1991, PACE’s approach towards Latvia was “more flexible” in that respect.¹⁴

The report on human rights in Latvia, with particular reference to citizenship, cultural rights and the rights of minorities was presented in 1992 by Jan De Meyer, then Judge at the ECtHR, and Cristos Rozakis, then Member of the European Commission of Human Rights.¹⁵ According to the report, the situation of minorities was classified as Latvia’s “main problem”, particularly the issue of citizenship which was considered a highly controversial matter, causing segregation. Furthermore, the language policy adopted by Latvia, namely Latvian becoming the only official state language, was regarded as a further segregation element.¹⁶

pievienošanas starptautisko tiesību dokumentiem cilvēktiesību jautājumos] Ziņotājs [Official Reporter] No. 4, 1991.

⁹ Jan De Meyer and Christos Rozakis, Report on Human Rights in the Republic of Latvia, PACE Doc. AS/Ad hoc-Bur-EE (43), 20 January 1992, reproduced in (1992) Human Rights Law Journal, Vol. 13, No. 5-6, p. 244; Arts. 3 and 4 of the Statute of the Council of Europe (signed 5 May 1949, entered into force 3 August 1949) CETS No. 1; PACE, The Geographical Enlargement of the Council of Europe, Policy Opinions and Consequences, Conclusions of the Bureau as approved on 22 April 1992, published in (1992) Human Rights Law Journal, Vol. 13, No. 5-6, p. 230.

¹⁰ Rudolf Bernhardt and Henry Schermers, Lithuanian Law and International Human Rights Standards, PACE Doc. AS/Ad hoc-Bur-EE (43) 3 of 16 January 1992, reproduced in Human Rights Law Journal, Vol. 13, No. 5-6 (1992), p. 250.

¹¹ For more details see PACE, Report on the application by Latvia for membership of the Council of Europe, PACE Doc. 7169, 6 October 1994.

¹² *Ibid.*

¹³ PACE, The Geographical Enlargement (above n. 10), p. 230.

¹⁴ *Ibid.*, pp. 230, 231.

¹⁵ See De Meyer and Rozakis (above n. 10).

¹⁶ *Ibid.*, p. 249.

The first precondition for the accession to the CoE — a pluralist parliamentary democracy — was considered to be fulfilled after parliamentary elections were held in Latvia on 5 and 6 June 1993.

The human rights precondition was regarded problematic concerning the rights and status of “non-citizens” of Latvia. The term “non-citizens” of Latvia denotes former USSR citizens who are not citizens of Latvia or any other state.¹⁷ The Law on Citizenship, which was adopted on 22 July 1994, was considered insufficient in that respect.¹⁸ Although it had been drawn up with the assistance of CoE experts and included their observations, the PACE observed that the law did “little to improve the position [of non-citizens]”.¹⁹ While expressing understanding for Latvia’s fear for the survival of Latvian culture in view of the “russification” policy of the former Soviet Union²⁰, the CoE had expressed its concern vis-à-vis the individual and the state.²¹ It reiterated that Arts. 1 and 14 of the Convention guaranteed the rights and freedoms without any distinction based on nationality or ethnic origin, stating²² that:

[i]nsofar as laws on citizenship and naturalization are presented as means to change the relative proportions of groups from different ethnic backgrounds, the aspiration for what is represented as Latvia’s “national survival” diverges from the aspiration for democracy and human rights in the sense in which these terms are understood by the Council of Europe.

Nevertheless, the PACE considered that Latvia’s admission to the CoE should not be halted in view of the envisaged ratification of the Convention and the European Social Charter²³ (ratified by Latvia on 31 January 2002), both instruments “already constitut[ing] a very important legal protection for any person resident on Latvian territory”.²⁴ Latvia was expected to sign the Convention upon its accession to the CoE and to ratify it and its Protocols Nos. 1, 2, 4, 6, 7 and 11 within one year from the time of its accession.²⁵

After the Latvian Government committed to draft a law on the rights and status of “non-citizens”, the PACE recommended on 31 January 1995 that the Committee of Ministers invite Latvia to become a member of the CoE.²⁶ In this respect, the PACE indicated, that, pursuant to the Convention, there “must be no arbitrary or unjustified discrimination between citizens and “non-citizens””.²⁷

Subsequently, on 10 February 1995 Latvia joined the Council of Europe and became its 34th Member State.

¹⁷ General Provisions of the Law on Citizenship [*Pilsonības likums*] (signed 22 July 1994, entered into force 25 August 1994) *Latvijas Vēstnesis* [Official Gazette] No. 93 (224), 11.08.1994.

¹⁸ PACE, Report on the application by Latvia (above n. 12), para. 35.

¹⁹ *Ibid.*

²⁰ See PACE, Opinion on the application by Latvia for membership of the Council of Europe, Doc. 7193, 8 November 1994: “Considering the tremendous hardship which the Latvian population has suffered over last fifty years because of its annexation by the Soviet Union ... we must recognize that the Latvians have good reasons and that the right to protect their own identity as well as they can”.

²¹ PACE, Report on the application by Latvia (above n. 12).

²² *Ibid.*, para 18.

²³ European Social Charter (entered into force 26 February 1965) CETS No. 035.

²⁴ PACE, Opinion on the application by Latvia (above n. 21).

²⁵ PACE, Opinion No. 183 (1995) on the application by Latvia for membership of the Council of Europe.

²⁶ *Ibid.*

²⁷ *Ibid.*

The Convention and its Protocols entered into force with respect to Latvia on 27 June 1997. It was signed on 10 February 1995 and ratified on 27 June 1997.

3. Specific Judicial Problems of Countries in Transition in Latvia

Countries in transition differ from one another inter alia in their history, legal system, traditions and the composition of population. Therefore, the problems countries in transition are facing during their transformation to a more democratic regime vary accordingly.²⁸

In respect of former communist states, in particular states belonging to the former Soviet Union, due to their common totalitarian past, several deficits are in general characteristic for these countries in transition.²⁹ These include: the lack of the rule of law, the lack of an independent and competent judiciary³⁰, the lack of trust of the population in state institutions and government, the lack of sufficient official respect for human rights³¹, excessive corruption and nepotism, and a segregated population.³²

As to specific problems in Latvia, first of all, the lack of the rule of law remains an issue there, and was even more so when the PACE was assessing Latvia's eligibility for joining the CoE. Though the PACE did not elaborate on the rule of law issue in its reports and opinions, it apparently sufficed for a potential member state to "recognise" the rule of law³³, pursuant to Art. 3 of the Statute of the CoE.³⁴

Second of all, after Latvia regained its independence, the competence and independence of the judiciary was problematic, in view of the still functioning Soviet system of justice.³⁵ In 2002, according to the report by a mission of experts of the European Commission's Phare Horizontal Programme on Justice and Home Affairs, that although "the independence of judiciary in Latvia seem[ed] well assured both in law and practice", there were still certain gaps and needs.³⁶

The third problem is connected with the lack of trust of in particular the victims of totalitarianism in the competence and independence of judiciary. After Latvia regained its independence, many former Soviet officials of public prosecutor's offices, courts and VDK (*Valsts Drošības Komiteja*; State Security Agency of the USSR) remained or were elected or appointed in high-ranking state positions. This, according to the Principal Public Prosecutor's Office on the investigation of crimes of the totalitarian regime, was the reason why former

²⁸ See, *mutatis mutandis*, UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, Report of the Secretary-General, UN Doc S/2004/616 (2004), para. 14.

²⁹ Rein Müllerson, 'Perspectives on Human Rights and Democracy in the Former Soviet Republics' in Istvan Pogany (ed.), *Law in its Social Setting. Human Rights in Eastern Europe* (Edward Elgar, England, 1995), p. 61.

³⁰ Jiří Příbáň and Karin van Marle, 'Recalling law, politics and justice in post-authoritarian societies' (2003) *Codicillus*, Vol. 44, Issue 2, p. 35.

³¹ UN Secretary-General, *The Rule of Law and Transitional Justice* (above n. 29) para. 3.

³² See e.g. PACE Resolution 1096 (1996) 1 on measures to dismantle the heritage of former communist totalitarian systems.

³³ PACE, Information Report on enlargement of the Council of Europe, Doc. 6629, 16 June 1992.

³⁴ Statute of the Council of Europe (signed 5 May 1949, entered into force 3 August 1949) CETS No. 1.

³⁵ PACE, Political Affairs Committee, Human Rights, The Press & The Courts, Preliminary Draft Report on the application of Latvia for membership of the Council of Europe, 22 June 1992 AS/Pol (44) 11, para. 6.1.

³⁶ PHARE Horizontal Programme on Justice and Home Affairs, *Reinforcement of the rule of law*. Final report on the First Part of the Project (European Commission, The Netherlands, 2002), p. 29.

political prisoners of the Soviet era were not eager to give their witness testimonies during investigations of crimes of the totalitarian regime.³⁷ The victims of the totalitarian regime believed that the investigation would be hindered by the officials.³⁸

Fourth of all, human rights continue to be a problematic issue in Latvia even after the ratification of the Convention, in particular regarding minorities and “non-citizens” of Latvia. These issues were classified as Latvia’s “main” and “most difficult” problems when it applied to join the CoE.³⁹ During the Soviet era there was no distinction in social or political rights on the grounds of nationality or ethnic origin in Latvia and throughout the entire USSR. Two official languages existed in Latvia during the Soviet period: Russian and Latvian. It cannot be ascertained that during that time a certain division of the population into Latvian-speaking and Russian-speaking was non-existent in Latvia, in particular in view of the segregated education system at the time: ethnic Latvians attended schools with Latvian language instruction, while Russians and other minorities attended schools with Russian language instruction⁴⁰. This division even increased after Latvia regained independence in 1991, enhanced by two factors. First of all, Latvia’s citizenship policy, as most of non-citizens belonged to the Russian-speaking population of Latvia. Second of all, Latvian became the only official state language.

4. Conclusion on Latvia — a Country in Transition

Latvia started the process of joining the CoE shortly after it regained its independence. Therefore, its transition from totalitarianism to the rule-of-law democracy has been right from the outset towards the core standards of the CoE: pluralist parliamentary democracy, the rule of law and human rights. Thus, Latvia then fell under the contemporary definition of a country in transition.

When Latvia became a member State to the CoE, it had not entirely complied with at least one of the core principles of the CoE: human rights. The decisive role in enabling Latvia to join the CoE despite the deficiencies identified in the report commissioned by the PACE was, first of all, Latvia’s Special Guest status in the PACE as of 18 September 1991. Because of this status, PACE’s approach towards Latvia was “more flexible” in respect of the identified shortcomings.⁴¹ Second of all, Latvia had committed itself to ratify the Convention and the European Social Charter. It was accordingly expected that, should Latvia not rectify the relevant deficiencies in its national legislation, the guarantees in question would be directly applicable through the Convention and the European Social Charter. Subsequently, after joining the CoE, Latvia was still a country in transition.

It is safe to conclude that Latvia is still a country in transition despite its 20th anniversary of independence and having been a member of the CoE and the Convention for more than ten years for in particular human rights issues regarding Latvia’s citizenship policy continue to be regarded problematic by *inter alia* the CoE (see Part IV. Evaluation of Transitional Justice

³⁷ Dans Titavs, ‘*Viņi tika represēti likumīgi*’ [They Were Repressed Lawfully], Diena (14 April 1998).

³⁸ *Ibid.*

³⁹ PACE, Information Report on enlargement (above n. 34).

⁴⁰ Nils Muižnieks, Latvia’s former Minister for Social Integration, Minority Education in Latvia: From Segregation to Integration, 24 July 2004, at <<http://www.mfa.gov.lv/en/policy/4641/4642/FromSegregationToIntegration/>> (8 October 2011).

⁴¹ PACE, The Geographical Enlargement (above n. 10), pp. 230, 231.

Mechanisms Applied by Latvia).

III. *Transitional Justice Mechanisms Applied by State Institutions in Latvia*

1. Definition of Transitional Justice

In view of the fact that “[t]here is no single definition of transitional justice”⁴², an overview of selected definitions is offered, before defining the notion of transitional justice for the purposes of the present Article.

A number of scholarly definitions could serve as a starting point in order to define the concept of transitional justice. According to, for instance, Teitel⁴³, “[t]ransitional justice can be defined as the conception of justice associated with periods of political change”.

Roht-Arriaza suggests⁴⁴ that:

transitional justice includes that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.

García-Godos proposes⁴⁵ that:

[p]rocesses of transition from ... authoritarian rule presents a number of challenges for the societies and states involved, not only concerning the present and future of their nations, but also their troubled past. The various ways such societies deal with their past in practical terms are commonly referred to as “transitional justice”, that is, the attempt to see justice done in relation to past sufferings and harm.

Transitional justice therefore refers to approaches (mechanisms, tools, practices or ways of dealing) that states, with or without international assistance, apply in the process of dealing with human rights violations after a change of regime. These mechanisms can be of judicial or non-judicial character, or a combination thereof. The notion of “justice” does not necessarily imply criminal justice. The change of regime, within this context, is understood as a transition from non-democratic regime to the rule of law.⁴⁶

The choice of applicable mechanisms of transitional justice depends on various factors: the

⁴² See e.g. Lieselotte Viaene and Eva Brems, ‘Transitional Justice and Cultural Contexts: Learning from the Universality Debate’ (2010) *Netherlands Quarterly of Human Rights*, Vol. 28/2, p. 1.

⁴³ Ruti G. Teitel, ‘Transitional Justice Genealogy’ (2003) *Harvard Human Rights Journal* Vol. 16, p. 69.

⁴⁴ Naomi Roht-Arriaza, ‘The new landscape of transitional justice’ in Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century* (Cambridge University Press, Cambridge, 2006), p. 2.

⁴⁵ Jemima García-Godos, ‘Victim reparation in transitional justice: what is at stake and why’ (2008) *Nordic Journal of Human Rights*, Vol. 26, No. 2, p. 111.

⁴⁶ UN Secretary-General, *The Rule of Law and Transitional Justice* (above n. 29), para. 6: the concept of the “rule of law” “refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

nature of the transition (e.g. from an armed conflict or peaceful change of regimes), the degree of human rights violations and atrocities, political and military standing of actors involved, as well as willingness, expertise and financial means of state institutions applying tools of transitional justice.

Transitional justice includes more or less tools, depending on how far stretched its framework is. The definition of transitional justice thus varies depending on the tools applied and is broader or narrower, accordingly.⁴⁷

A narrow definition would exclude anything beyond criminal justice,⁴⁸ which has been criticised as being too narrow.⁴⁹

A broad notion of “transitional justice”, on the other hand, according to the UN Secretary General⁵⁰:

comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

Adding new tools of transitional justice to criminal justice therefore broadens the definition of transitional justice, accordingly. Transitional justice is only one element in transferring an entire society from totalitarianism to the rule-of-law democracy. Thus, criminal justice is only one element of the broader spectrum of introducing the rule of law. Therefore a broad definition of transitional justice is applied in the present Article.

2. Generally Available Mechanisms of Transitional Justice

(1) Criminal Sanctions

Usually, one of the core elements of transitional justice is the criminal prosecution of perpetrators in order to achieve a certain degree of criminal justice.⁵¹ Depending on the previous political regime, perpetrators are dictators (transition from dictatorship) or military leaders (transition from military dictatorship) together with their collaborators or supporters, para-military and guerrilla groups, state and public officials of totalitarian or authoritarian as well as one-party state regimes, military personnel, police, as well as leaders and staff members

⁴⁷ Roht-Arriaza (above n. 45), p. 2.

⁴⁸ Teitel, *Transitional Justice* (above n. 3), p. 27: “Punishment dominates our understanding of transitional justice”.

⁴⁹ Gjermund Sæther, ‘The Complementarity of ICC and other Instruments in Transitional Justice — The Case of Northern Uganda’ (2009) *Nordic Journal of Human Rights*, Vol. 27, No. 4, p. 469.

⁵⁰ UN Secretary-General, *The Rule of Law and Transitional Justice* (above n. 29), para 8; Cf. Roht-Arriaza (above n. 45), p. 2: “At its broadest, [transitional justice] involves anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations, from changes in criminal codes to those in high school textbooks, from creation of memorials, museums and days of mourning, to police and court reform, to tackling the distributional inequities that underline conflict”.

⁵¹ Neil J. Kritz, ‘The Dilemmas of Transitional Justice’ in Neil J. Kritz (ed.), *Transitional Justice. How Emerging Democracies Reckon with Former Regimes*. Volume I: General Considerations (United States Institute of Peace, Washington D.C., 1995), p. xxi.

of certain institutions and organisations as political parties. Generally, perpetrators are being prosecuted for human rights violations as defined in international law instruments such as the Universal Declaration of Human Rights of 1948⁵², the European Convention for the Protection of Fundamental Rights and Freedoms, the International Covenant on Civil and Political Rights of 1966⁵³ and the International Covenant on Economic, Social and Cultural Rights⁵⁴.

However, criminal prosecution or even criminal justice is not an indispensable element of transitional justice.⁵⁵ It depends on the choice of transitional justice mechanisms a state makes. Thus, the option of amnesty, blanket or individual, can be chosen instead of prosecution. The Amnesty Committee of the Truth and Reconciliation Commission of South Africa, for instance, was entitled to grant individual amnesty for an act, meaning that the perpetrator was free from prosecution for that particular act.⁵⁶ The lack of prosecution has been criticised, however.⁵⁷

Apart from or in addition to criminal sanctions, there are non-criminal sanctions that are applied as transitional justice mechanisms and other transitional justice mechanisms. Several of them are briefly illustrated next.

(2) Non-criminal Sanctions and Other Transitional Justice Mechanisms

Vetting is another frequently used transitional justice mechanism.⁵⁸ The process of vetting has been applied in various forms, including lustration, purges, bans and administrative justice, by a number of countries in transition since World War II.⁵⁹ In the context of transitional justice in post-communist countries, this process can be called de-communisation, meaning the removal of communist officials from the positions of authority.⁶⁰

Vetting was one of the main mechanisms of transitional justice applied in post-communist countries of Eastern and Central Europe.⁶¹ The purpose of vetting is to facilitate a “stable” rule of law in societies in transition.⁶²

Institutional reforms as creation of new institutions for the promotion of human rights and the closing down of those supporting the old regime have been named as one of the key tools

⁵² Universal Declaration of Human Rights, UNGA Res 217 A (III) (10 December 1948) GAOR 3rd Session Part I 71.

⁵³ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁵⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁵⁵ Truth and Reconciliation Commission of South Africa, Report (2003), Vol. I, at <http://www.info.gov.za/otherdocs/2003/trc/> (29 October 2011), paras. 35, 36.

⁵⁶ South Africa Promotion of National Unity and Reconciliation Act 34 of 1995, at http://www.fas.org/irp/world/rsa/act95_034.htm (29 October 2011).

⁵⁷ See, e.g. Truth and Reconciliation Commission of South Africa, Report (above n. 56), para. 35.

⁵⁸ Kritz, *The Dilemmas of Transitional Justice* (above n. 52), p. xxiv; UN Secretary-General, *The Rule of Law and Transitional Justice* (above n. 29), para 52.

⁵⁹ Moira Lynch, *Vetting in Transitional Societies*, Paper presented at the annual meeting of the MPSA Annual National Conference, Palmer House Hotel Hilton Chicago IL 3 April 2008, at http://www.allacademic.com/meta/p267352_index.html (18 November 2011).

⁶⁰ Eric Stover, Hanny Megally and Hania Mufti, ‘Transitional justice and the US occupation of Iraq’ in Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice* (Cambridge University Press, Cambridge, 2006), p. 239.

⁶¹ Roht-Arriaza (above n. 45), p. 5.

⁶² UN Secretary-General, *The Rule of Law and Transitional Justice* (above n. 29), para 52.

of transitional justice.⁶³ The transformation of public institutions such as the police and the judiciary are of particular importance in this respect.⁶⁴

Truth-seeking is a further mechanism of transitional justice. The truth about the past is considered to be an integral part of any process of justice and in particular transitional justice⁶⁵ which to a large extent is concerned with the process of “political justice”.⁶⁶ In general, establishing the truth is also necessary in order to acknowledge, and not merely to possess the knowledge about the existence of an unjust regime as such.⁶⁷ Establishing a full picture of the past is considered to be important for the successful accomplishment of the democratisation process and transition to the rule of law,⁶⁸ as well as a preventive measure.⁶⁹ In particular, truth-seeking is relevant in establishing wrongdoings and human rights violations committed during a totalitarian regime. With regard to the victims, truth is said to be “important in itself”.⁷⁰

Further mechanism of transitional justice — reparations for victims — is considered as equally essential as bringing perpetrators to justice for achieving lasting peace.⁷¹ It gives the victims a tangible acknowledgment of their sufferings. Reparations can address pecuniary or non-pecuniary damages caused or a combination thereof and include monetary or non-monetary elements such as restitution, compensation, rehabilitation and symbolic measures.

Reconciliation is regarded as a further key element of transitional justice⁷² and has usually been addressed within the context of truth commissions.⁷³ It has been considered as “an

⁶³ See, e.g. Paul van Zyl, ‘Promoting Transitional Justice in Post-Conflict Societies’, in Alan Bryden and Heiner Hänggi (eds.), *Security Governance in Post-Conflict Peacebuilding*, (The Geneva center for the Democratic Control of Armed Forces, Geneva, 2005), pp. 211-212; see also Paul van Zyl, Statement within the meeting of 26 February 2008 of the Working Group on Lessons-Learned: Transitional Justice, at <<http://www.pbcupdate.org/?p=64>> (10 October 2011): “... implementing institutional reforms to change those institutions which aggravated or caused the conflict and creating new ones to promote human rights”.

⁶⁴ International Center for Transitional Justice (ICTJ), *What is Transitional Justice?*, at <<http://www.ictj.org/en/tj/>> (9 November 2011); Per Bergling, Erik O. Wennerström, and Richard Zajac Sannerholm, ‘Rule of Law in Public Administration: Problems and Ways Ahead in Post-Conflict Peace-Building’ (2010) *Hague Journal on the Rule of Law*, Vol. 2, Issue 2, p. 180; Rüdiger Wolfrum, ‘International Administration in Post-Conflict Situations by the United Nations and Other International Actors’ in von Bogdandy, Armin, Wolfrum, Rüdiger (eds.), *Max Planck Yearbook of United Nations Law* (2005), Vol. 9, p. 691.

⁶⁵ Christian Tomuschat, ‘Reparations in Favour of Individual Victims of Gross Violations of Human Rights and International Humanitarian Law’ in Marcelo G. Köhler (ed.) *Promoting Justice, Human Rights and Conflict Resolution through International Law / La promotion de la justice, des droits de l’homme et du règlement des conflits par le droit international*, Liber Amicorum Luzius Cafilish, (Martinus Nijhoff Publishers, Leiden, 2007), p. 589.

⁶⁶ Aurora Voiculescu, *Human Rights and Political Justice in post-Communist Eastern Europe. Prosecuting History* (The Edwin Mellen Press, New York, 2000), p. 286.

⁶⁷ Roht-Arriaza (above n. 45), p. 3.

⁶⁸ Kritz (above n. 52), p. xxvi; Sigall Horovitz, ‘Transitional criminal justice in Sierra Leone’ in Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century, Beyond Truth versus Justice* (Cambridge University Press, Cambridge, 2006), p. 61.

⁶⁹ Anja Seibert-Fohr, ‘Reconstruction through Accountability’ in von Bogdandy, Armin, Wolfrum, Rüdiger (eds.), *Max Planck Yearbook of United Nations Law* (2005), Vol. 9, p. 559.

⁷⁰ Roht-Arriaza (above n. 45), p. 4.

⁷¹ UN Secretary-General, *The Rule of Law and Transitional Justice* (above n. 29), paras. 54, 55; Stover, Megally, Muftić (above n. 61), p. 247.

⁷² van Zyl, Statement (above n. 64); UN Secretary General, *The Rule of Law and Transitional Justice* (above n. 29), para.6.

⁷³ Teitel, *Transitional Justice* (above n. 3), p. 88; Erin Daly, ‘Truth Skepticism: An Inquiry into the Value of Truth in

automatic by-product” of truth commissions.⁷⁴ However, in the contemporary discourse on transitional justice, reconciliation has to be perceived as a separate concept.⁷⁵ The commonly accepted concept of reconciliation can be described as a conflict resolution mechanism which functions as an interactive process in which different parties to the conflict indulge in dialogue about past wrongdoings “in order to agree on the present and [peaceful coexistence in] future”.⁷⁶ The process of reconciliation thus seeks to secure peace, while acknowledging past wrongdoings, by linking the past, present and future.⁷⁷

3. Latvian Transitional Justice Mechanisms

Latvia, as well as Estonia and Lithuania, is said⁷⁸ to differ from their former Soviet fellow republics in that they pursued “transitional justice expeditiously and vigorously”. In general, justice was sought to be brought or ‘restored’, first of all, by prosecuting former communist officials and veterans of war or banning them from exercising certain public offices. Second of all, justice was sought to be restored by providing restitution to and compensating the victims of the communist regime.

(1) Criminal Sanctions

After Latvia regained its independence, it started to investigate war crimes and genocide crimes committed during World War II and during Soviet repression. It also commenced prosecution of co-operation with the KGB⁷⁹ (*Komitet Gosudarstvennoi Besopasnosti Pri Sowjete Ministrow SSSR*, State Security Service of the USSR) and treason against state. The present Article focuses on the prosecution of war crimes and genocide crimes.

In order to investigate war crimes and genocide crimes, institutions were established and laws adopted. The process began in 1992 with the establishment of the Parliamentary Commission Investigation of Crimes of the Totalitarian Regime. The Commission instigated the set-up of a special division within the Principal Public Prosecutor’s Office on the investigation of crimes of totalitarian regime.⁸⁰ The necessary statutory amendments were introduced by a

Times of Transition’ (2008) International Journal of Transitional Justice, Vol. 2, No. 1, p. 30: “Truth is often conjoined with reconciliation”.

⁷⁴ Roht-Arriaza (above n. 45), p. 12.

⁷⁵ *Ibid.*

⁷⁶ David A. Hoogenboom and Stephanie Vieille, ‘Rebuilding Social Fabric in Failed States: Examining Transitional Justice in Bosnia’ (2010) Human Rights Review, Vol. 11, No. 2, pp. 185-186; see also for a definition and purpose of reconciliation Ronli Sifris, ‘The four pillars of transitional justice: a gender-sensitive analysis’ in Sarah Joseph and Adam McBeth (eds.), *Research Handbook on International Human Rights Law* (Edward Elgar Publishing Limited, United Kingdom, 2010), p. 295.

⁷⁷ Hoogenboom and Vieille (above n. 77), pp. 185-186.

⁷⁸ Lavinia Stan, ‘The former Soviet Union’ in Lavinia Stan (ed.), *Transitional Justice in Eastern Europe and the Former Soviet Union. Reckoning with the communist past* (Routledge, London, 2009), p. 230.

⁷⁹ Law on the Custody, Use of the KGB Documents and Establishment of Persons’ Co-operation with the KGB [*Par bijušās Valsts drošības komitejas dokumentu saglabāšanu, izmantošanu un personu sadarbības fakta ar VDK konstatēšanu*] (signed 19 May 1994, entered into force 3 June 1994) *Latvijas Vēstnesis [Official Gazette]* 65 (196), 02.06.1994, Art. 1 (4).

⁸⁰ Ritvars Jansons, Investigating War and Genocide Crimes [*Kara un genocīda noziegumus izmeklējot*] (Paper presented at the international conference “Political Reliability in Lithuania. War Crimes and Genocide — Investigation and Assessment 1992-2002” Vilnius Lithuania 8 April 2002), at <<http://vip.latnet.lv/lpra/rtvrs.htm>> (21 November

Law of 6 April 1993, in force from 28 April 1994 to 1 April 1999, amending the former Soviet, subsequently Latvian, Criminal Code of 1961. Art. 6-1 stipulated that persons guilty of crimes against humanity, genocide, crimes against peace or war crimes may be convicted irrespective of when the crimes were committed.

Art. 45-1 of the Law excluded the statutory limitation of criminal liability regarding such persons and Art. 68-1 prescribed criminal responsibility for genocide and crimes against the humanity. Art. 68-3 stated:

Any person found guilty of a war crime as defined in the relevant legal conventions, that is to say violations of the laws and customs of war through murder, torture, pillaging from the civil population in an occupied territory or from hostages or prisoners of war, the deportation of such people or their subjection to forced labour, or the unjustified destruction of towns and installations, shall be liable to life imprisonment or to imprisonment for between three and fifteen years.

With effect from 1 April 1999, the 1961 Code was replaced by the New Criminal Code⁸¹, which was introduced in 1998. The substance of Arts. 6-1, 45-1 and 68-3 of the former Code reappeared as Para 4 of Art. 5, Art. 57 and Art. 74 of the Latvian Criminal Code of 1998. However, the maximum prison sentence that could be handed down in the event of no life sentence being imposed was increased to twenty years. The new Code contained the following additional provisions:

Para. 1 of Art. 34

Anyone who executes a criminal order or directive may be excused from liability for so doing only if he or she was unaware of its criminal nature and such nature was not apparent. However, even in such cases, criminal liability shall be incurred for crimes against humanity and peace, war crimes and genocide.

Art. 75

Anyone guilty of unlawful violence against the population of an area in which hostilities have been engaged and of the seizure or unlawful, violent destruction of the property of members of that population shall be liable to imprisonment for between three and fifteen years.

(a) Prosecution of Genocide Committed during Soviet Times

The first goal of the special division created within the Principal Public Prosecutor's Office was to prosecute the persons, mostly the former NKVD (*Narodniy komissariat vnutrenikh del*; the People's Commissariat for Internal Affairs) agents involved in the deportation of the Latvian population⁸², responsible for the genocide committed during Soviet times.⁸³ Altogether eight former NKVD agents were charged with genocide, in accordance with Art. 71 of the 1993 Latvian Criminal Law.⁸⁴

2011).

⁸¹ Latvian Criminal Code [*Latvijas Krimināllikums*] (signed 17 June 1998, entered into force on 1 April 1999) *Latvijas Vēstnesis* [Official Gazette] 199/200 (1260/1261), 08.07.1998.

⁸² Stan, The former Soviet Union (above n. 79), p. 236; Jansons (above n. 81).

⁸³ Jansons (above n. 81).

⁸⁴ *Ibid.*

The trial of Alfons Noviks is being regarded⁸⁵ as the most significant one. Noviks (1908-1996) became the Commissar of NKVD in Latvia after 1940.⁸⁶ In 1994 Noviks was charged with genocide.⁸⁷ On 13 December 1995 the Riga District Court found him guilty of genocide and crimes against humanity; the court also found him guilty of ordering the torture and execution of political prisoners, and of personally taking part in torture, property confiscation and other crimes.⁸⁸ He was sentenced to life imprisonment. Alfons Noviks died in prison in 1996.⁸⁹

The second conviction for genocide was that of Mihails Farbtuhs (born 1916), a former local apparatchik of the NKVD local branch.⁹⁰ On 27 September 1999 the Riga Regional Court found him guilty of crimes against humanity and genocide for his role in the deportation and deaths of tens of Latvian citizens during the period of Stalinist repression in 1940 and 1941, when Farbtuhs was deputy head of police in a department under the authority of the Soviet Ministry of Foreign Affairs in Latvia following the annexation of the Republic of Latvia by the Soviet Union, and sentenced him to seven years imprisonment.⁹¹ On 12 January 2000 the convictions were upheld on appeal by the Criminal Chamber of the Supreme Court, although his sentence was reduced to five years. On 1 March 2000 the Senate of the Supreme Court rejected his cassation appeal on points of law. On 6 December 2001 Mihails Farbtuhs submitted an application with the ECtHR, complaining that his conviction was contrary to Art. 7 of the Convention.

Nikolajs Tess (1921-2006), another former NKVD official, was charged with genocide and crimes against humanity, pursuant to Art. 68-1 of the former Latvian Criminal Code, for his alleged role in mass deportations on 25 March 1949⁹². On 16 December 2003 the Kurzeme Regional Court found Tess guilty of the crime stipulated in Art. 68-1 of the former Latvian Criminal Code. Considering the old age of Tess, the court sentenced him to two years imprisonment suspended. This judgment was upheld by the Criminal Chamber of the Supreme Court on 11 November 2004. On 19 April 2005 the Senate of the Supreme Court dismissed his cassation appeal. Tess complained to the ECtHR that his conviction was contrary to Art. 7 of the Convention.

Nikolajs Larionovs (1921-2005) was a former NKVD official, who was charged with for his alleged role in deportations on 25 March 1949⁹³. On 25 September 2003 the Zemgale Regional Court found Larionovs guilty of genocide, pursuant to Art. 68-1 of the former Latvian Criminal Code and sentenced him to five years imprisonment suspended. The judgment was

⁸⁵ Stan, *The former Soviet Union* (above n. 79), p. 236.

⁸⁶ According to the data at <<http://latvia.globalmuseumoncommunism.org/latvia/bios/noviks>> (10 November 2011).

⁸⁷ According to the data at <http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/alfons_noviks_678.html> (11 November 2011).

⁸⁸ *Ibid.*

⁸⁹ Jansons (above n. 81).

⁹⁰ Benjamin Smith, *Soviet Crimes in Spotlight*, at <<http://vip.latnet.lv/LPRA/smith.htm>> (11 November 2011).

⁹¹ This and the following information according to ECtHR, *Farbtuhs v. Latvia*, Appl. No. 4672/02, (Inadmissibility) Decision of 26 March 2002. This and the following decisions of the ECtHR referred to in the Article are available on the ECtHR's website www.echr.coe.int.

⁹² This and the following information according to ECtHR, *Tess v. Latvia*, Appl. No. 19363/05, (Admissibility) Decision of 4 January 2008, original in French (only).

⁹³ This and the following information according to ECtHR, *Larionovs v. Latvia*, Appl. No. 45520/04, (Admissibility) Decision of 4 January 2008, original in French (only).

upheld by the Criminal Chamber of the Supreme Court on 13 December 2005. On 16 February 2006 the Senate of the Supreme Court dismissed the cassation appeal submitted by Nikolajs Larionov's son, Sergejs Larionovs. Nikolajs Larionovs submitted his application to the ECtHR in 2004, complaining about the alleged violation of Art. 7 of the Convention. After he deceased, his son intervened in the proceedings.

(b) Prosecution of War Crimes Committed During World War II

The second goal of the special division created within the Principal Public Prosecutor's Office was to investigate war crimes committed during World War II.

On 2 August 1998 the Principal Public Prosecutor's Office charged Vassili Kononov with war crimes, pursuant to Art. 68-3 of the former Criminal Code.⁹⁴ The charge was about the events that took place during World War II in a village on the territory of Latvia. On 27 May 1944 a partisan unit killed 9 villagers for their alleged co-operation with German forces. The partisan unit was part of the Red Army and under command of Kononov, who at the time was a Sergeant in the Soviet Army. According to Kononov, he had not personally led the operation or entered the village. In July 1998 the Centre for the Documentation of the Consequences of Totalitarianism, an affiliate of the Constitution Protection Bureau of Latvia launched an investigation into the events of 27 May 1944. It considered that Kononov could have committed a crime, pursuant to Art. 68-3 of the former Criminal Code and forwarded an investigation file.

Following two sets of preliminary investigations, the Criminal Chamber of the Supreme Court, by a judgment of 30 April 2004, found Kononov guilty of war crimes, according to Art. 68-3 of the 1961 Criminal Code. On 28 September 2004 the Senate of the Supreme Court dismissed his appeal.

On 27 August 2004 Kononov submitted an application with the ECtHR, complaining that his conviction for war crimes as a result of his military expedition on 27 May 1944 was in breach of Art. 7 of the Convention.

(2) Non-criminal Sanctions and Other Transitional Justice Mechanisms

(a) Non-criminal Sanctions: Lustration (Bans)

Lustration, a transitional justice mechanism that was widely applied by the countries of the former Soviet bloc⁹⁵, was applied by specific laws, aiming at specific categories of people, in order to "cleanse" the Communist elements.⁹⁶ The main target was communists, the KGB agents and their supporters. Lustration to the large extent was carried out by bans. This Article examines bans imposed on the Communist Party and the KGB, former KGB Staff and members of the Communist Party, and persons without Latvian citizenship.

Banning the Communist Party and the KGB was one of the first transitional justice tools applied by Latvia after it regained independence in 1991.

⁹⁴ This and the following information according to ECtHR, *Kononov v. Latvia*, Appl. No. 36376/04, (Admissibility) Decision of 20 September 2007; ECtHR, *Kononov v. Latvia*, Appl. No. 36376/04, [GC] Judgment of 17 May 2010; and ECtHR, *Kononov v. Latvia*, Appl. No. 36376/04, Judgment of 24 July 2008.

⁹⁵ Mark Gillis, 'Lustration and Decommunisation' in Jiří Přibáň and James Young (eds.) *The Rule of Law in Central Europe. The Reconstruction of Legality, Constitutionalism and Civil Society in the Post-Communist Countries* (Dartmouth Publishing Company, Aldershot, 1999), p. 56.

⁹⁶ Lynch (above n. 60).

On 23 August 1991 the Latvian Supreme Council adopted a decision⁹⁷ by which it declared the Communist Party of Latvia (“CPL”), the regional branch of the Communist Party of the Soviet Union (“CPSU”), unconstitutional. It concluded that the CPL had become a centre that consolidates, co-ordinates and leads antidemocratic forces aiming at destabilisation of the situation, destroying the process of democratisation and renewing totalitarianism.

On 24 August 1991 the Council suspended the activities of the CPL and the organisations stemming from or linked to it — Working Peoples International Front of the Latvian SSR, the United Council of Working Collectives, Organisation of War and Labour Veterans and the Young Communist League of Latvia⁹⁸. At the same time, the Council instructed the Minister of Justice to examine the unlawful activities of the said organisations and thereafter to propose to the Council on the possibility of a continued existence of the organisations. On 10 September 1991 the Supreme Council adopted a decision on the dissolution of these organisations as unconstitutional.⁹⁹

On 24 August 1991 the Latvian Supreme Council adopted a decision on the dissolution of the KGB in Latvia¹⁰⁰. It declared the activities of the KGB and its territorial branches, including the Latvian branch of the KGB, criminal and directed against the interests of the people of Latvia.

Banning the Communist party and the KGB involved banning former staff of the KGB and communists from such rights as the right to stand for elections and the right to occupy certain posts which will be examined next.

Former staff of the KGB of the former USSR and Soviet Latvia, in accordance with Para. 5 of Art. 5 of the Law on the Elections to the Parliament of 1995¹⁰¹ and Para. 6 of Art. 9 of the Law on the Elections to City Council, District Council and Parish Council of 1994¹⁰², were banned from standing for election to the Latvian Parliament and Municipality Councils.

In 2000 the Constitutional Court of Latvia found the restrictions imposed by the regulations of the Law on the Elections to the Parliament and the Law on Elections to City Council, District Council and Parish Council to be in line with Art. 14 of the Convention and Art. 3 of Protocol No. 1 to the Convention, and Art. 25 of the International Covenant on Civil and Political Rights.¹⁰³ Among the petitioners was Jānis Ādamsons, who at the time was a

⁹⁷ Latvian Supreme Council Decision declaring the Latvian Communist Party Unconstitutional [*AP lēmums “Par Latvijas Komunistiskās partijas antikonstitucionālo darbību Latvijas Republikā”*] (signed and entered into force 23 August 1991), at <<http://www.likumi.lv/doc.php?id=68706>> (9 August 2011).

⁹⁸ Latvian Supreme Council Decision on the Suspension of Certain Social and Political Organisations [*AP lēmums “Par dažu sabiedrisko un sabiedriski politisko organizāciju darbības apturēšanu”*] (signed and entered into force 24 August 1991), at <<http://www.likumi.lv/doc.php?id=68763&mode=DOC>> (9 August 2011).

⁹⁹ Latvian Supreme Council Decision on the Dissolution of Certain Social and Political Organisations [*AP lēmums “Par dažu sabiedrisko un sabiedriski politisko organizāciju darbības izbeigšanu”*] (signed and entered into force 10 September 1991), at <<http://www.likumi.lv/doc.php?id=69231&mode=DOC>> (9 August 2011).

¹⁰⁰ Latvian Supreme Council Decision on the Dissolution of the USSR State Security Institutions [*AP lēmums “Par PSRS valsts drošības iestāžu darbības izbeigšanu Latvijas Republikā”*] (signed and entered into force 24 August 1991), at <<http://www.likumi.lv/doc.php?id=68765>> (10 August 2011).

¹⁰¹ Law on the Elections to the Parliament of the Republic of Latvia of 1995 [*Saeimas vēlēšanu likums*] (signed 25 May 1995, entered into force 7 June 1995) *Latvijas Vēstnesis* [*Official Gazette*] 86 (369), 06.06.1995.

¹⁰² Law on the Elections to the City Council, District Council and Parish Council of 1994 [*Pilsētas domes, rajona padomes un pagasta padomes vēlēšanu likums*] (signed 13 January 1994, entered into force 25 January 1994) *Latvijas Vēstnesis* [*Official Gazette*] 10 (141), 25.01.1994.

¹⁰³ Constitutional Court of Latvia, Judgment of 30 August 2000 in the case No. 2000-03-01.

Member of Parliament. In 2002 Ādamsons, a former officer of the Soviet border-guard unit, was not allowed to run for the parliament because his former position was qualified as an employee of the KGB by the national courts.¹⁰⁴ He lodged an application with the ECtHR in this respect, complaining under Art. 3 of Protocol No. 1 to the Convention¹⁰⁵. After the ECtHR rendered its judgment finding the violation of the Convention, Ādamsons was elected Deputy to the Riga City Council in 2009.

Persons who after 13 January 1991 had been active in the CPSU or the CPL, Working Peoples International Front of the Latvian SSR, the United Council of Working Collectives, Organization of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees, were banned from standing for election to the Parliament and Municipality Councils, pursuant to Para. 6 of Art. 5 of the Law on Elections to the Parliament¹⁰⁶ and Para. 6 of Art. 9 of the Law on the Elections to City Council, District Council and Parish Council¹⁰⁷.

In 1998 the Central Electoral Commission considered that Tatjana Ždanoka's candidacy for the election to the Parliament did not to meet the requirements of the Parliamentary Election Act because of her active participation in the CPL after 13 January 1991, the date of the attempted coup in Latvia.¹⁰⁸ She submitted an application to the ECtHR, complaining under Art. 3 of the Protocol No. 1 to the Convention and Arts. 10 and 11 of the Convention about her disqualification from standing for elections to the Latvian Parliament and to municipal elections.

The regulations concerning the right to be elected to the Parliament of the European Union differ from those of the national and municipal ones. According to Para. 1 of Art. 11 of the Law on the Elections to the European Parliament¹⁰⁹, a candidate has to merely submit the information whether he or she has been an employee of the KGB or has co-operated with them and whether he or she has been active in the CPSU or the CPL, Working Peoples International Front of the Latvian SSR, the United Council of Working Collectives, Organization of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees.

After Latvia became a member of the European Union on 1 May 2004, Ždanoka was allowed run in the elections to the European Parliament, according to the Law on the Elections to the European Parliament. The elections were held on 12 June 2004 and Ždanoka was elected to the European Parliament.

Furthermore, pursuant to Para. 1 (8) and (9) of Art. 7 of the Law on National Civil Service¹¹⁰, former KGB staff and communists are banned from becoming civil servants. Pursuant to Paras. 5 and 6 of Art. 55 of the Law on Judiciary¹¹¹, they cannot become judges.

¹⁰⁴ Ineta Ziemele, E.U. Network of Independent Experts of Fundamental Rights, *Report on the Situation of Fundamental Rights in Latvia in 2003* (CFR-CDF.repLV.2003, January 2004), p. 26.

¹⁰⁵ ECtHR, *Ādamsons v. Latvia*, Appl. No. 3669/03, Judgment of 24 June 2008, original in French (only).

¹⁰⁶ Law on the Elections to the Parliament of the Republic of Latvia of 1995 [*Saeimas vēlēšanu likums*] (signed 25 May 1995, entered into force 7 June 1995) *Latvijas Vēstnesis* [*Official Gazette*] 86 (369), 06.06.1995.

¹⁰⁷ Above n. 103.

¹⁰⁸ This and the following information according to ECtHR, *Ždanoka v. Latvia*, Appl. No. 58278/00, [GC] Judgment of 16 March 2006; ECtHR, *Ždanoka v. Latvia*, Appl. No. 58278/00, Judgment of 17 June 2004.

¹⁰⁹ Law on the Elections to the European Parliament [*Eiropas Parlamenta vēlēšanu likums*] (signed 29 January 2004, entered into force 12 February 2004) *Latvijas Vēstnesis* [*Official Gazette*] 22 (2970), 11.02.2004.

¹¹⁰ Law on National Civil Service [*Valsts civildienesta likums*] (signed 7 September 2000, entered into force 1 January 2001) *Latvijas Vēstnesis* [*Official Gazette*] 331/333, 22.09.2000.

¹¹¹ Law on Judiciary [*likums "Par Tiesu varu"*] (signed 15 December 1992, entered into force 1 January 1993)

Now the focus will switch to the bans introduced with respect to persons without Latvian citizenship.

The Citizenship Law¹¹² can be regarded as a further tool of lustration because Latvian citizenship, as regulated by this law, secures certain political rights such as the right to vote and stand for elections and the right to reside in Latvia, as described below. Persons who do not have Latvian citizenship are accordingly banned from these rights. This is the reason why it has been argued¹¹³ that in Latvia lustration was centred “on exclusionary ideas of citizenship”. By these measures military personnel of the Russian (former Soviet Union) armed forces, communists and KGB staff were in particular targeted. A considerable number of them as well as persons who arrived in Latvia during its Soviet era and approximately half of the Russian-speaking population of Latvia fell into the category of “non-citizens”.

Furthermore, Latvian citizenship affects also social rights, such as the amount of pension and the right to occupy certain posts. The aforementioned rights are guaranteed by the Convention and are thus generally binding upon Latvia. The rights to vote and stand for elections are guaranteed by Art. 3 of Protocol No. 1 to the Convention. The right to reside in a state is linked with the right to respect for private and family life, guaranteed by Art. 8 of the Convention. And the right to a certain amount of pension falls under Art. 1 of Protocol No. 1 to the Convention. These Convention rights must be secured without discrimination on any ground of race, national origin or association with a national minority, as guaranteed by Art. 14 of the Convention. Consequently, some of the bans imposed by Latvia on the grounds of Latvian citizenship led to applications submitted against Latvia to the ECtHR.

First of all, the ban on persons without Latvian citizenship regarding the right to stand for elections and to vote will be examined.

According to Art. 8 of the Constitution of Latvia¹¹⁴ and Art. 1 of the Law on Elections to the Parliament, non-citizens cannot vote in referenda or national parliament elections. Pursuant to Art. 9 of the Constitution and Art. 4 of the Law on Elections to the Parliament¹¹⁵, they cannot stand as candidates for parliamentary elections. The situation is the same concerning the right of non-citizens to vote and stand as a candidate in municipal elections¹¹⁶ and the European Parliament elections.¹¹⁷ The Law on the Elections to the European Parliament and the Law on the Elections to the City Council, District Council and Parish Council provide for a possibility for EU citizens residing in Latvia, who do not hold Latvian citizenship, to vote and to stand as a candidate.¹¹⁸ Since the Latvian government has ruled that non-citizens of Latvia will not be regarded as EU citizens¹¹⁹, nothing will change for non-citizens in this respect. Consequently,

Ziņotājs [Official Reporter] 1, 14.01.1993.

¹¹² General Provisions of the Law on Citizenship [*Pilsonības likums*] (signed 22 July 1994, entered into force 25 August 1994) *Latvijas Vēstnesis [Official Gazette]* No. 93 (224), 11.08.1994.

¹¹³ Lynch (above n. 60).

¹¹⁴ Constitution of the Republic of Latvia (signed 15 February 1922, entered into force 7 November 1922) *Latvijas Vēstnesis [Official Gazette]* No. 43, 01.07.1993.

¹¹⁵ Above n. 107.

¹¹⁶ Above n. 108.

¹¹⁷ Above n. 110.

¹¹⁸ Para. 1 (2) of Art. 2 and Para. 2 of Art. 4 of the Law on the Elections to the European Parliament (above n. 110) and Para. 2 of Art. 5 and Para. 2 of Art. 8 of the Law on the Elections to the City Council, District Council and Parish Council (above n. 103).

¹¹⁹ Ziemele, E.U. Network (above n. 105), p. 55.

those former Soviet officials, KGB staff who are not citizens of Latvia are deprived of “the important political rights electing and being elected”.¹²⁰

Second of all, the ban on certain groups of persons to reside in Latvia will be illustrated.

Certain groups of persons were deprived of the right to residence in Latvia. The bans were introduced by means of citizenship policy and the relevant laws. The citizenship policy adopted in Latvia had an effect on the right to residence in Latvia of persons who were not granted Latvian citizenship. In particular, personnel of military troops of the former Soviet Union and their family members were affected by this measure.

First of all, military personnel of (former Soviet Union) Russia were subjected to withdrawal from the territory of Latvia by 31 August 1994, pursuant to Art. 2 of the Latvian-Russian treaty¹²¹. The withdrawal concerned all members of the armed forces and their family members. Pursuant to Para. 3 of Art. 2 of the Latvian-Russian treaty:

[t]he closure of military bases in the territory of the Republic of Latvia and the discharge of military personnel after 28 January 1992 shall not be regarded as the withdrawal of military troops.

Pursuant to the relevant part of Para. 5 of Art. 3 of the Latvian-Russian treaty:

[t]he Russian Federation shall inform the Republic of Latvia about its military personnel and their families in the territory of Latvia. It shall provide regular information, at least every three months, about the withdrawal of, and quantitative changes in, each of the above-mentioned groups.

The persons affected by the withdrawal had to be guaranteed rights and freedoms by Latvia, according to its national laws and the principles of international law, pursuant to Art. 9 of the Latvian-Russian treaty.

In view of the Latvian-Russian treaty, both states cooperated in establishing the names of the Russian military personnel affected by the withdrawal. On 31 March 1994 the Russia submitted a list of Russian military officers located in Latvia to the Latvian authorities, making a request to prolong their temporary stay in Latvia.¹²²

Pursuant to the Latvian-Russian agreement¹²³, on 30 April 1994 there were 22 320 Russian military pensioners living in Latvia.

By 14 November 2001, approximately 900 persons, close relatives of Russian military officers required to leave Latvia under the Latvian-Russian treaty, were able to legalize their

¹²⁰ Lavinia Stan, ‘Post-communist transition, justice, and transitional justice’ in Lavinia Stan (ed.), *Transitional Justice in Eastern Europe and the Former Soviet Union. Reckoning with the Communist Past* (Routledge, New York, 2009), pp. 4, 231.

¹²¹ The Latvian-Russian Treaty on the Withdrawal of the Russian Troops [*Latvijas Republikas un Krievijas Federācijas LĪGUMS par Krievijas Federācijas Bruņoto spēku pilnīgas izvešanas no Latvijas Republikas teritorijas nosacījumiem, termiņiem un kārtību un to tiesisko stāvokli izvešanas laikā*] (signed 30 April 1990, entered into force 27 February 1994) *Latvijas Vēstnesis [Official Gazette]* 144(275), 10.12.1994.

¹²² According to the information submitted by the Latvian Government and the Russian Government in the course of proceedings at the ECtHR, *Slivenko v. Latvia*, Appl. No. 48321/99, [GC] Judgment of 9 October 2003, paras. 23, 24.

¹²³ The Latvian-Russian Agreement on the Social Protection of Military Personnel of the Russian Federation and their Family Members [*Krievijas Federācijas Valdības un Latvijas Republikas Valdības VIENOŠANĀS par Latvijas Republikas teritorijā dzīvojošo Krievijas Federācijas militāro pensionāru un viņu ģimenes locekļu sociālo aizsardzību*] (signed 30 April 1994, entered into force 27 February 1995) *Latvijas Vēstnesis [Official Gazette]* 144(275), 10.12.1994.

stay in Latvia because they were either Latvian citizens or close relatives of Latvian citizens, and had not arrived in Latvia in connection with service in the former Soviet armed forces.¹²⁴

As to the persons discharged from the Russian armed forces before 28 January 1992, pursuant to Art. 2 of the Latvian-Russian agreement:

[t]he persons to whom this agreement applies ... and who were permanently resident within the territory of the Republic of Latvia before 28 January 1992, including those in respect of whom the relevant formalities have not been carried out and who are on the lists verified by both parties and appended to this agreement, shall retain the right to reside without hindrance in the territory of Latvia, if they so desire. By agreement between the Parties, any persons who were permanently resident within the territory of Latvia before 28 January 1992 and, for various reasons, have not been included on the lists referred to above may be added to them.

Para. 2 of Art. 2 of the Law on the Status of Former USSR Citizens¹²⁵ prohibited the deportation of “non-citizens”, “save where deportation takes place in accordance with the law and another State has agreed to receive the deportee”. Art. 8 (until 7 April 2000, Art. 5) provided that the above regulation applied also to stateless persons and their descendants who were not and had never been citizens of any State, if they were resident in Latvia before 1 July 1992 and were registered there as permanent residents.

The aforementioned bans on the right to reside in Latvia introduced by Latvia’s citizenship policy led to numerous applications submitted to the ECtHR. These applications can be divided into two groups: (1) Personnel, including retired members, of the Russian armed forces and their family members;¹²⁶ and (2) Persons who arrived in Latvia after World War II not in connection with the former Soviet army.¹²⁷

Third and fourth of all, restrictions imposed on persons without Latvian citizenship to occupy certain posts and receive a certain amount of pension will be illustrated.

Non-citizens are banned from becoming civil servants, pursuant to Para. 1 (1) of Art. 7 (1) of the Law on National Civil Service¹²⁸. They cannot candidate for posts of judges, in accordance with Para. 1 (1) of Art. 52 of the Law on Judiciary¹²⁹. Nor can they become sworn

¹²⁴ According to the submissions by the Latvian Government in the course of proceedings at the ECtHR, *Slivenko v. Latvia* (above n. 123), para.57.

¹²⁵ Law on the Status of the Former USSR Citizens who are not Citizens of Latvia or any other State [*Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības*], (signed 12 April 1995, entered into force 9 May 1995) *Latvijas Vēstnesis* [Official Gazette], 3 (346), 25.04.1995.

¹²⁶ *Anna Pančenko v. Latvia*, Appl. No. 40772/98, lodged on 16 December 1997; *Tatjana Slivenko and Karina Slivenko v. Latvia*, Appl. No. 48321/99, lodged on 28 January 1999; *Aleksandr Kolosovskiy v. Latvia*, Appl. No. 50183/99, lodged on 18 June 1999; *Yevgeniy and Vera Kovalenok v. Latvia*, Appl. No. 54264/00, lodged on 11 October 1999; *Aleksandr Ivanov v. Latvia*, Appl. No. 55933/00, lodged on 12 January 2000; *Aleksandr Dremlyuga v. Latvia*, Appl. No. 66729/01, lodged on 1 December 2000; *Sergueï Vikoulov and Others v. Latvia*, Appl. No. 16870/03, lodged on 9 May 2003.

¹²⁷ *Aleksandr Gribenko v. Latvia*, Appl. No. 76878/01, lodged on 13 September 1999; *Tatyana Mikheyeva v. Latvia*, Appl. No. 50029/99, lodged on 21 May 1999; *Natella Kaftailova v. Latvia*, Appl. No. 59643/00, lodged on 10 April 2000; *Nina Shevanova v. Latvia*, Appl. No. 58822/00, lodged on 28 June 2000; *Svetlana Sisojeva and Others v. Latvia*, Appl. No. 60654/00, lodged on 29 August 2000; *Jeļena Fjodorova and Others v. Latvia*, Appl. No. 69405/01, lodged on 13 March 2001.

¹²⁸ Law on National Civil Service [*Valsts civildienesta likums*] (signed 7 September 2000, entered into force 1 January 2001) *Latvijas Vēstnesis* [Official Gazette] 331/333, 22.09.2000.

advocates, pursuant to Para. 1 of Art. 14 of the Law on Bar¹³⁰.

By means of the State Pensions Act¹³¹ and the Citizenship law¹³², persons not possessing Latvian citizenship are banned from receiving the same amount of old-age pension as citizens. This policy led to an application against Latvia to the ECtHR. Natālija Andrejeva, a “permanently resident non-citizen” of Latvia, submitted an application, complaining that the order of calculating the amount of her pension, namely the application in her case of Para. 1 of the transitional provisions of the State Pensions Act, which made a distinction on the basis of nationality between those in receipt of retirement pensions, constituted discrimination prohibited by Art. 14 of the Convention in the exercise of her right of property under Art. 1 of Protocol No. 1¹³³.

(b) Other Transitional Justice Mechanisms: Truth-seeking and Reparations

Further important transitional justice mechanism applied by Latvia was truth-seeking.

Latvia, as other republics of the former Soviet Union, had a secret documents archive of the KGB. These documents contained information concerning the KGB staff, agents and their collaborators. Once the former Soviet Union started to fall apart, “the KGB made sure to transfer to Moscow most of the secret files”.¹³⁴ Therefore, information that was left behind in Latvia was incomplete and not always unequivocal as information was codified and nicknames used.¹³⁵ The remainder of the secret files (5,000 file cards¹³⁶) is stored at the Latvian Center for the Documentation of the Consequences of Totalitarianism. The storage and use of the documents is regulated by the Law on the Custody, Use of KGB Documents and Establishment of Persons’ Co-operation with the KGB¹³⁷. Although one of the goals of the law is to give the possibility to conduct political, historical and legal research and assessment of material and moral damage imposed by the KGB on the state of Latvia and its inhabitants (Para 6 of Art. 1), the information contained in these files has not been made public up to date. The main (official) reason for that appears to be the fact that the archive is incomplete.¹³⁸ The lack of direct access to the totality of secret files still hinders identification of former KGB collaborators.¹³⁹ This situation “continue[s] to pose legal, political and social problems in Latvia. ... It is obvious that Latvia has to deal with this problem.”¹⁴⁰

¹²⁹ Law on Judiciary [*likums “Par Tiesu varu”*] (signed 15 December 1992, entered into force 1 January 1993) *Ziņotājs* [Official Reporter] 1, 14.01.1993.

¹³⁰ Law on Bar [*Advokatūras likums*] (signed 27 April 1993, entered into force 21 May 1993) *Latvijas Vēstnesis* [Official Gazette] 27, 20.05.1993.

¹³¹ State Pensions Act [*Par valsts pensijām*] (signed 2 November 1995, entered into force 1 January 1996) *Latvijas Vēstnesis* [Official Gazette] 182 (465), 23.11.1995.

¹³² Above n. 18.

¹³³ ECtHR, *Andrejeva v. Latvia* (above n. 72).

¹³⁴ Stan, *The former Soviet Union* (above n. 79), pp. 226, 230.

¹³⁵ *Ibid.*, pp. 226, 230, 236.

¹³⁶ *Ibid.*, p. 235.

¹³⁷ Law on the Custody, Use of the KGB Documents and Establishment of Persons’ Co-operation with the KGB [*Par bijušās Valsts drošības komitejas dokumentu saglabāšanu, izmantošanu un personu sadarbības fakta ar VDK konstatēšanu*] (signed 19 May 1994, entered into force 3 June 1994) *Latvijas Vēstnesis* [Official Gazette] 65 (196), 02.06.1994.

¹³⁸ Stan, *The former Soviet Union* (above n. 79), p. 236.

¹³⁹ *Ibid.*, p. 224.

¹⁴⁰ Ziemele, E.U. Network (above n. 105), p. 27.

Meanwhile, according to Art. 11 of the Law on the Custody, Use of KGB Documents and Establishment of Persons' Co-operation with the KGB¹⁴¹, state security institutions are entitled to access the archive for examination of its files. According to Para. 1 of Art. 12 of the law, any person can inquire whether there are any documents of the KGB on him/her. If the answer is affirmative, the person is allowed to examine the relevant documents, insofar it does not affect the rights of third persons, pursuant to Para. 2 of Art. 12. Arts. 14 and 15 of this law stipulate that, upon a request of the person, a prosecutor initiates a case on the establishment of the fact of the co-operation of the said person with the KGB and forwards it to the relevant court for adjudication. The initial statute of limitation in this respect, according to Art. 17, was set for ten years since the entry into force of the law, i.e. 3 June 1994. The Law was amended on 28 June 2004, extending the statute of limitation for further ten years. Apparently, the extension was pursuant to the request of the president of Latvia at the time, Vaira Vīķe-Freiberga.¹⁴² The necessity of the extension has been questioned by Latvian human rights experts.¹⁴³ The new statute of limitation will accordingly expire on 3 June 2014.

A further tool applied by Latvian state authorities was reparations, which are divided into four categories.

The first category is restitution, consisting of return of property and return of rights. After Latvia regained its independence, the process of denationalisation was instigated. In order to return the property nationalised after 1940 to its respective owners, the following legal acts were adopted.

On 30 October 1991 the Law on the Return of Real Estate to the Legitimate Owners¹⁴⁴ and the Law on Denationalisation of Real Estate in the Republic of Latvia¹⁴⁵ were adopted. The first Law guaranteed that real estate that had been expropriated without compensation by the State between 1940 and the end of the 1980s would be returned to its former owners or their legal heirs. The second Law defined the real estate which could be denationalised, and fixed the terms of and procedure for denationalisation, as well as the form of compensation and the social guarantees for existing tenants. Pursuant to these laws, the relevant real estate was denationalised and returned to its legitimate owners; however, leases concluded between former owners of the real estate and tenants were binding on the new owners. In many buildings there were at the time — and still are — tenants who had concluded a lease before the restoration of the property rights concerned.

As to the return of rights as a form of restitution, pursuant to Art. 9 of the Law on the Status of Persons Subjected to Political Repression by Communist and Nazi Regime¹⁴⁶, persons

¹⁴¹ Above n. 138.

¹⁴² Stan, *The former Soviet Union* (above n. 79), p. 236: "In 2004 President Vaira Vīķe-Freiberga asked for the KGB files to remain closed until 2014".

¹⁴³ Ziemele, E.U. Network (above n. 105), p. 26: "[Footnote 96 See M Mits, "Demokrātijas deficīta paraugstunda", published on 10.12.2003., at <<http://www.politika.lv>>".

¹⁴⁴ Law on the Return of Real Estate to the Legitimate Owners [*likums "Par namīpašumu atdošanu likumīgajiem īpašniekiem"*] (signed 30 October 1991, entered into force 20 November 1991) *Ziņotājs [Official Reporter]*, 46, 21.11.1991.

¹⁴⁵ Law on Denationalisation of Real Estate in the Republic of Latvia [*likums "Par namīpašumu denacionalizāciju Latvijas Republikā"*] (signed 30 October 1991, entered into force 1 January 1992) *Ziņotājs [Official Reporter]*, 46, 21.11.1991.

¹⁴⁶ Law on the Status of Person Subjected to Political Repressions by Communist or Nazi Regime [*Likums par Politiski represētās personas statusa noteikšanu komunistiskajā un nacistiskajā režīmā cietušajiem*], (signed 12 April

subject to political repressions were guaranteed restitution of their civil, economic and social rights. This included reduced taxes¹⁴⁷, social rehabilitation, free medical care, and special regulations regarding pension and public transport.

The second category of reparations as a transitional justice tool applied by Latvian state authorities that will be examined is rehabilitation.

The issues of rehabilitation of the persons subjected to political repression of communist totalitarian regime were addressed already shortly before the collapse of the Soviet Union. On 2 November 1988 the Council of Ministers of the Latvian SSR passed a decision on the Unfounded Administrative Deportation of Citizens from the Latvian SSR in 1949¹⁴⁸. On 8 June 1989 the Steering Committee of the Supreme Council of the Latvian SSR passed the Decree on the Rehabilitation of the Citizens Deported from the Territory of the Latvian SSR in the Forties and Fifties.¹⁴⁹

On 3 August 1990 the Supreme Council of the Republic of Latvia passed the Law on the Rehabilitation of Persons Unlawfully Subjected to Repressions.¹⁵⁰ And on 13 May 1992, the Law on the Status of Persons Subjected to Political Repressions.¹⁵¹ The latter declared totalitarian regimes of communism and national-socialistic organisations unlawful, as well as political repression, the regimes subjected Latvian citizens to because of inter alia their political beliefs and / or political activities (Art. 1). Pursuant to Art. 2 of this law, persons subjected to political repression were regarded citizens of Latvia, who, for the above reasons until 21 August 1991 were:

- 1) killed or died as a result of repressions;
- 2) imprisoned;
- 3) deported from Latvia.

Pursuant to Art. 3, persons:

- 1) who were evicted from their domicile;
- 2) who were subjected to higher taxes;
- 3) whose property had been nationalised;
- 4) who were subjected to restrictions to occupy certain posts or study because of their

1995, entered into force 27 April 1995), *Latvijas Vēstnesis* [Official Gazette], 64 (347), 26.04.1995.

¹⁴⁷ Regulations of the Cabinet of Ministers On Additional Tax Reductions [MK Noteikumi par iedzīvotāju ienākuma nodokļa papildu atvieglojumiem invalīdiem, politiski represētajām personām un nacionālās pretošanās kustības dalībniekiem], No. 138 (signed 8 April 1997, entered into force 12 April 1997) *Latvijas Vēstnesis* [Official Gazette], 94 (809), 11.04.1997.

¹⁴⁸ Council of Ministers of the Latvian SSR Decision No. 350 of 2 November 1988 on the Unfounded Administrative Deportation of Citizens from the Latvian SSR in 1949 [*Latvijas PSR Ministru Padomes 1988.gada 2. novembra lēmums Nr. 350 «Par pilsoņu nepamatotu administratīvu izsūtīšanu no Latvijas PSR 1949. gadā»*].

¹⁴⁹ Steering Committee of the Supreme Council of the Latvian SSR Decree on the Rehabilitation of the Citizens Deported from the Territory of the Latvian SSR in the Forties and Fifties [*Latvijas PSR Augstākās padomes prezidija 1989.gada 8.jūnija dekrēta "Par četrdesmitajos un piecdesmitajos gados no Latvijas PSR teritorijas izsūtīto pilsoņu reabilitāciju"*].

¹⁵⁰ Law on the Rehabilitation of Persons Subjected to Unlawful Repressions [*Likums par nelikumīgi represēto personu reabilitāciju*] (entered into force 3 August 1990) *Ziņotājs* [Official Reporter], 34, 23.08.1990.

¹⁵¹ Law on the Status of Persons Subjected to Repressions [*Likums par politiski represētās personas statusa noteikšanu*] (entered into force 13 May 1992, null and void as of 27 April 1995), *Ziņotājs* [Official Reporter] 22/23, 04.06.1992.

political beliefs,

were regarded as subjected to “indirect” political repression of the totalitarian regime.

This law became void on 27 April 1995, when it was replaced by the Law on the Status of Persons Subjected to Political Repression of Communist and Nazi Regimes.¹⁵² Art. 1 stated that criminal are Communist and Nazi ideology, Communist and Nazi totalitarian regime, and political repression that citizens and permanent residents of Latvia were subjected to because of *inter alia* their political beliefs or activities, religious beliefs, ethnic or national affiliation. Section 2 stipulates the status of persons subjected to political repressions by Communist regime (Section 3 stipulates the status of such persons regarding the Nazi regime). Pursuant to Art. 2, persons subjected to political repression by communist regime are current or former citizens of Latvia, Estonia, Lithuania, Finland and Poland and permanent residents of Latvia who legally arrived to Latvia by 17 June 1940, including their descendants, Latvians and Livs who were subjected to repression in Latvia or outside it, as well as permanent residents of Latvia who, after 8 May 1945 were subjected to repressions in Latvia, if they until 21 August because of the reasons stated in Art. 1 were:

- 1) killed or died during repressions;
- 2) arrested, imprisoned;
- 3) deported or evicted from their domicile.

Persons who were subjected to repression are entitled to rehabilitation certificates on their rehabilitation, pursuant to Art. 3 of the Law on the Status of Persons Subjected to Political Repression of Communist and Nazi Regimes. This applies to, for instance, the alleged corroborators with Nazi Germany military forces or their surviving family members who were persecuted and subjected to reprisals by competent authorities after World War II:

[i]t was stated in their rehabilitation certificates that they [had] not committed ‘crimes against peace [or] humanity, criminal offences ... or taken part ... in political repressions ... by Nazi regime’.¹⁵³

Pursuant to Para. 5 of Art. 1 of the Law on the Custody, Use of KGB Documents and Establishment of Persons’ Co-operation with the KGB¹⁵⁴, among the goals of the law was to politically, legally and morally rehabilitate persons whom the KGB had repressed, pursued and spied on.

Further categories of reparations were compensation and symbolic measures.

Pursuant to Para. 2 of Art. 9 of the Law on the Status of Persons Subjected to Political Repressions by Communist and Nazi Regime¹⁵⁵, persons subject to political repression are entitled to compensation regarding the lost property.

In 1993 the Museum of the Occupation of Latvia 1940-1991 was established,¹⁵⁶ and

¹⁵² Law on the Status of Person Subjected to Political Repressions by Communist or Nazi Regime [*Likums par Politiski represētās personas statusa noteikšanu komunistiskajā un nacistiskajā režīmā cietušajiem*], (signed 12 April 1995, entered into force 27 April 1995), *Latvijas Vēstnesis* [*Official Gazette*], 64 (347), 26.04.1995.

¹⁵³ ECtHR, *Kononov v. Latvia*, [GC] Judgment (above n. 91), para. 38.

¹⁵⁴ Above n. 138.

¹⁵⁵ Above n. 153.

¹⁵⁶ At <http://www.omf.lv/index.php?option=com_frontpage&Itemid=1&lang=english> (9 July 2011).

demonstrates the memorialisation efforts. This was in line with Art. 8 of the Law on the Status of Persons Subjected to Political Repression by Communist and Nazi Regime, which obligated the State to provide for historic research of destinies of persons subjected to political repression.

Beforehand, in 1990, even before Latvia regained its independence officially, the Law on National Holidays and Remembrance Days was adopted.¹⁵⁷ It introduced two national holidays: May 4 as a Day of Restoration of Independence of the Republic of Latvia and November 18 as a Day of Proclamation of the Republic of Latvia.

The Law introduced also the following remembrance days:

- 1) 20 January: Commemoration Day of Defenders of the Barricades in 1991;
- 2) 25 March: Commemoration Day of Victims of Communist Terror;¹⁵⁸
- 3) 8 May: The Defeat of Nazism and Commemoration Day of Victims of World War II;
- 4) 14 June: Commemoration Day of Victims of Communist Terror;
- 5) 17 June: Occupation of the Republic of Latvia;
- 6) 11 August: Commemoration Day of the Latvian Freedom Fighters; and
- 7) The First Sunday of December: Commemoration Day of Victims of Genocide against the Latvian People by the Totalitarian Communist Regime.

IV. *Evaluation of Transitional Justice Mechanisms Applied by Latvia*

The standards by which tools of transitional justice applied by Latvia are being evaluated are the requirements of the CoE, especially the Convention and the case-law of the ECtHR as these are the standards every Member State is obliged to fulfil.

Thus, being a member State of the CoE, Latvia must comply with the main goals of the CoE: strengthening democracy, promoting the rule of law and human rights. In order to do so, the more specific goals of the CoE such as the fight against corruption and organised crime¹⁵⁹, or building a stable legal framework and strengthening independent judiciary¹⁶⁰ according to the standards of the Convention, must be complied with.¹⁶¹

Latvia has been striving for two major goals after renewal of its independence. These were establishing and then ensuring respect for the rule of law and the protection of human rights.¹⁶² This was to a certain extent motivated by Latvia's wish to join the CoE. According to Arts. 3 and 4 of the Statute of the CoE¹⁶³, the observance of the rule of law and guaranteeing human rights and fundamental freedoms were the preconditions for Latvia to become a Member of the CoE.

¹⁵⁷ Law on National Holidays and Remembrance Days [*Par svētku, atceres un atzīmējamām dienām*], (signed 3 October 1990, entered into force 3 October 1990), Ziņotājs [*Official Reporter*], 42, 18.10.1990.

¹⁵⁸ This date as well as 14 June, 8 May and 4 July were introduced pursuant to Art. 7 of the Law on the Status of Persons Subjected to Political Repressions of Communist or Nazi Regime.

¹⁵⁹ See, generally, www.coe.int/greco.

¹⁶⁰ See, generally, www.venice.coe.int

¹⁶¹ See e.g. Address by Milo Đukanovic, Prime Minister of Montenegro, at the PACE Session, 22 June 2010, at <http://www.coe.int/t/dc/files/pa_session/june_201020100622_news_djukanovic_en.asp> (23 September 2011).

¹⁶² European Commission against Racism and Intolerance (ECRI), *Report on Latvia*, Strasbourg, 13 March 1999.

¹⁶³ Above n. 10.

Because of its Special Guest Status, Latvia was admitted to the CoE despite the established shortcomings regarding, in particular, respect for human rights (for more details see Part II.B.2. Accession to the Council of Europe). These deficiencies led to several violations of the rights guaranteed by the Convention, as established by the ECtHR in cases against Latvia, as demonstrated below. Consequently, it can be concluded that Latvia has not completely complied with all goals and requirements of the CoE and the Convention system regarding human rights.

Latvia, a multi-cultural country in transition, did not set up any special trial or alternative dispute resolution body to deal with transitional justice issues. Its main tools of transitional justice were criminal sanctions and non-criminal sanctions as lustration and bans, truth-seeking and reparations.

The application of lustration to a large extent through the citizenship policy in Latvia is the main drawback with regard to other transitional justice mechanisms employed in Latvia. It has continuously infringed human rights of Latvia's non-citizens, of whom the majority belong to the Russian-speaking population of Latvia. The division of the population of Latvia into citizens and non-citizens led to segregation.¹⁶⁴ Non-citizens have been deprived of certain rights and are being discriminated against vis-à-vis citizens. Non-citizens are not entitled to vote even at the local level, although Latvia has been urged by the Congress of Local and Regional Authorities in a recommendation to the CoE Committee of Ministers to grant them this right.¹⁶⁵ In *Andrejeva v. Latvia* case¹⁶⁶, the ECtHR found that Latvia had discriminated against non-citizens as compared to citizens in not recognising their employment before 1991 by organisations which had been legally registered in former Soviet Republics other than Latvia, as counting towards pensions. In *Slivenko v. Latvia* case¹⁶⁷ the ECtHR found that the removal of Slivenko family from Latvia as family members of a former Soviet military officer, without evaluating their particular circumstances such as the fact that they had spent virtually all their life in Latvia, was in breach of the Convention.

Consequently, Latvia should change the way it applies lustration by amending the Law on Citizenship and its application according the standards of the CoE and the Convention.

Deficiencies with regard to the banning of the former KGB staff have been established by the ECtHR. In *Ādamsons v. Latvia* case¹⁶⁸, the ECtHR found a violation of Art. 3 of Protocol No. 1 to the Convention. The main reasons were that the legal provision disqualifying him was too broad and that he had held a number of important government positions since 1991. The ECtHR considered that this was contrary to the principles of legal foreseeability and legitimate expectations.

Whether any further deficiencies will be established with respect to the banning of the former KGB staff is unclear yet. The access to the secret files of the KGB has been postponed, which hinders the identification of the persons concerned. This is another deficiency in the transitional justice mechanisms applied by Latvia, with which Latvia has to deal as it continues to "pose legal, political and social problems in Latvia".¹⁶⁹

¹⁶⁴ Ziemele, *State Continuity and Nationality* (above n. 834), p. 3.

¹⁶⁵ *Ibid.*

¹⁶⁶ ECtHR, *Andrejeva v. Latvia* (above n. 72).

¹⁶⁷ ECtHR, *Slivenko v. Latvia* (above n. 123).

¹⁶⁸ ECtHR, *Ādamsons v. Latvia* (above n. 106).

¹⁶⁹ Ziemele, E.U. Network (above n. 105), p. 27.

The prosecution for genocide during Soviet times and the prosecution for war crimes committed during World War II might eventually be contrary to the human rights standards enshrined in the Convention. Currently two cases are pending before the ECtHR on these issues¹⁷⁰.

The combination of the transitional justice tools Latvia has been applying demonstrates a one-sided approach that is too narrow given the complexities of transitional justice. This has led to certain infringements of human rights and to segregation within the population of Latvia. Thus the question arises whether reconciliation is a desirable element within transitional justice tools applied by Latvia.

Latvia has not yet considered reconciliation as a transitional justice mechanism. One should, however, consider this option. First of all, it would provide a forum for discussions between groups which seem to oppose each other: citizens and non-citizens, the Latvian-speaking population and the Russian-speaking population, and former communists and victims of the communist regime. All these groups could and should be brought together by means of reconciliation. As pointed out by Rozakis and De Meyer¹⁷¹:

[t] here are grounds for hoping that those who oppose each other on these difficult questions will learn to listen more to each other and to find the way to conciliation.

Furthermore, such discussions could also contribute to truth-seeking, and eventually lead to national unity in a multi-cultural country such as Latvia.

¹⁷⁰ ECtHR, *Tess v. Latvia* (above n. 93); ECtHR, *Larionovs v. Latvia* (above n. 94).

¹⁷¹ See De Meyer and Rozakis (above n. 10).