

**Reply of Latvia**  
**to the Questionnaire on protection of the rights**  
**of the child in the context of the migration**  
*(in accordance with the Human Rights Council Resolution 12/6)*

**1. Challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration, including in relation to:**

**a) The situation of separated and unaccompanied migrant children**

Procedure by which alien minors enter and reside in Latvia unaccompanied by parents or guardians is prescribed in the Regulation No. 707 of the Cabinet of Ministers of the Republic of Latvia (adopted on 16 April 2003) “Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardians”. This regulation is issued pursuant to Section 7 of the Immigration Law.

The entry into and residence of alien minors in the Republic of Latvia shall be documented and controlled by the State Border Guard, the Office of Citizenship and Migration Affairs and the State Police in co-operation with the Ministry of Foreign Affairs, Orphan's courts (Parish courts) and local governments.

In order to enter into the Republic of Latvia, an alien minor needs: 1) a travel document, that shall be valid for entry into the Republic of Latvia; 2) a valid visa, residence permit, a European Community long-term resident residence permit in the Republic of Latvia, a residence permit of a family member of the European Union citizen or for a third-country national, who has received a new travel document in a foreign state – the previous travel document with a valid residence permit in the Republic of Latvia; 3) a valid health insurance, which guarantees the covering of expenses related to health care in the Republic of Latvia, including the conveying of the third-country national back to the country of residence in the case of his or her serious illness. The Cabinet of Ministers shall determine the cases when a third-country national may enter and reside in the Republic of Latvia without a health insurance policy; 4) absence of any other obstacles prescribed by the law or other regulatory enactments for entry into the Republic of Latvia; 5) necessary financial means in order to reside in the Republic of Latvia and return to the country of residence or to depart to a third country to which he or she has the right to enter. The Cabinet of Ministers shall determine the amount of necessary financial means and how to determine the existence of financial means.

If an unaccompanied minor who does not have one of the above mentioned documents wishes to cross the Latvian border but his identity is known to the officials of the State Border Guard, in order to send this person to the corresponding country the officials immediately get in touch with the competent institution in the country of citizenship, country of residence or in the country where the relatives of the unaccompanied minor reside, or in the country that is ready to accept the unaccompanied minor and that is able to provide corresponding reception and care (hereinafter – host country). Up to now the State Border Guard has not faced the above mentioned cases.

If an unaccompanied minor whose identity is unknown wishes to cross the Latvian border the official of the State Border Guard immediately begins to identify the identity of the unaccompanied minor.

In 2008 in the territory of the Airport "Riga" 4 unaccompanied minors without any identification documents were detained. Identification of persons was complicated as they provided contradictory and false information about themselves and their parents as well as about the conditions of entry. While the identity of the unaccompanied minor is being clarified, the State Border Guard places the unaccompanied minor in the nearest structural unit of the State Police that is meant for minors.

There is a specially trained official of the State Boarder Guard who is appointed for the work with unaccompanied minors (for example, to clarify the identity).

If a minor is a third-country national who has not reached the age of 14 years and is not accompanied by parents or his legal representative illegally crosses the State border of the Republic of Latvia or has in other ways violated the procedures for the entry and residence of third-country nationals in the Republic of Latvia specified in regulatory enactments, a State Border Guard official shall act so as to ensure the rights and interests of the child in accordance with regulatory enactments regulating the protection of children's rights. An unaccompanied minor who arrives in Latvia in order to receive asylum or alternative status shall submit an application to a border guard at the border control point before entry into the Republic of Latvia. If the unaccompanied minor is already located within Latvia application shall be submitted to the territorial unit of the State Border Guard.

After receiving the application the official of the State Border Guard immediately informs the custody court who appoints a representative to the unaccompanied minor for the process of asylum granting. Specially trained officials of the State Border Guard and the Office of Citizenship and Migration Affairs perform the negotiations with the unaccompanied minor in presence of the appointed representative. The State Border Guard sends the information obtained during the negotiations to the Department of the Refugee Affairs of the Office of Citizenship and Migration Affairs that makes a decision about granting or refusal to grant refugee or alternative status in the terms indicated in the law. From 2002 to 2008 7 unaccompanied minors have applied for asylum in Latvia.

A minor or an unaccompanied minor who is granted with a refugee status or an alternative status must be granted with the following rights:

- According to the Asylum Law, an unaccompanied minor shall be accommodated at an accommodation centre for asylum seekers, with a guardian appointed by the Orphan's Court or at a child care institution. A decision regarding accommodation of an unaccompanied minor at an accommodation centre for asylum seekers, with a guardian or in a child care institution shall be taken by the Orphan's Court, upon clarifying the opinion of the Office of Citizenship and Migration Affairs, taking into account the interests and opinion of the minor in accordance with the age and maturity thereof and observing the following conditions: 1) an unaccompanied minor shall be accommodated together with adult relatives; 2) children from one family shall not be separated, except in cases where it is done in the best interests of the children; and 3) the place of accommodation of an unaccompanied minor shall only be changed if it conforms with the interests of this person.

A minor unaccompanied refugee who is not married has the right to take in his or her mother and father who have arrived from a foreign country.

According to Law on Protection of the Rights of the Child, the child shall receive protection and assistance irrespective of whether the child is accompanied by parents or other adults or alone. The Orphan's Court together with the local government's social service and immigration institutions shall carry out measures to locate the parents of a child and to determine what are the possibilities for the child to return to his or her family. If it is not possible to find the parents, a child shall be provided with the same care as any other child who has been left without parental care.

**b) Access to social services (ensuring, inter alia, protection of the right to health, housing, education, water and access to sanitation), including for migrant children in an irregular situation**

The state shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the state, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members (Protection of the Rights of the Child Law, Section 3, Paragraph 2). This principle of prohibition of discrimination shall be applied also to migrant children, inter alia, regarding the right to health and health services, right to benefit from social security, right to education, child's right to protection from all forms of violence etc.

The state provides social services and social assistance to Latvian citizens and non-citizens and aliens who have been granted a personal identity number, except for persons who have received a temporary residence permit.

Additionally certain types of social services and social assistance are being provided also for persons, who have received temporary residence permit:

- 1) persons, to whom alternative status have been granted and the family members thereof have the right to receive the services of overnight shelters, shelters, information and consultation specified and the guaranteed minimum income benefit (for an adult – 40 LVL per month; for a child – 45 LVL per month);
- 2) Orphans and children left without parental care who have acquired alternative status have the right to receive social care services and specific social rehabilitation services:
  - the social rehabilitation of persons with impaired vision and hearing;
  - the social rehabilitation of children who have suffered from violence;
  - the social rehabilitation in appropriate institutions for children who have become addicted to narcotic, toxic or other intoxicating substances;
  - technical aid for the persons (persons with continuous or lasting organism dysfunctions or anatomic defects have the right to receive technical aids if they have received an opinion of a medical practitioner regarding the need for the technical aids): 1. Disabled children under the age of 18 years; 2. Children for whom the technical

- aid is necessary to reduce or eliminate functional inability; 3. Persons with anatomic defects — a prosthesis or orthopaedic footwear;
- the social rehabilitation of victims of the trafficking in human beings;
  - a support programme for children who have not been declared disabled suffering from coeliac disease;
- 3) Victims of the trafficking in human beings, who are not European Union citizens, and the minor children accompanied by them have a right to social rehabilitation in the cases specified by the Law On the Residence of Victims of the Trafficking in Human Beings in the Republic of Latvia; the right to receive social rehabilitation services is also provided for victims who are EU citizens as well as for his or her minor children accompanied by the person (according to the Law on Social Services and Social Assistance).

The procedures by which social services provided by the local government are received shall be determined by the binding regulations of the local government. The local government in the territory of which a person has registered his or her main place of residence has a duty to provide the person with a possibility to receive social services and social assistance corresponding to his or her needs. With the aforementioned exceptions this local government's duty refers only to Latvian citizens and non-citizens and aliens who have been granted a personal identity number.

State social allowances are provided for Latvian citizens, non-citizens, aliens and stateless persons to whom a personal identity number has been granted and who permanently reside in the territory of Latvia. All such persons have the right to state social allowances provided for caring for a child<sup>1</sup>, if a personal identity number has been granted to the children thereof. Persons who have received a temporary residence permit in Latvia do not have the right to State social allowances (Law on State Social Allowances, Section 4, Paragraphs 1, 2, 3).

On January 1, 2010 the Cabinet Regulations „On the Procedure how the Expense of the Local Authorities are Reimbursed from the State Budget for Maintenance of Unaccompanied Minors in the Day-care Centre and on the amount of these Expenses” (adopted on December 22, 2009) came into force. The regulations define the procedure how the expenses of the local authorities for the maintenance of unaccompanied minor in the day-care centre are reimbursed form the State budget by the Ministry of Welfare.

Concerning the child's right to health services the Medical Treatment Law determines which persons are eligible to receive health care services provided by the law (the amount of medical treatment services paid from the State basic budget and from the funds of the recipient of services):

- 1) Latvian citizens;
- 2) Latvian non-citizens;

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<sup>1</sup> Childbirth allowance, childcare benefit, care of disabled child benefit, remuneration for the care of an adopted child, remuneration for adoption, State family allowance, as well as a supplement to the State family allowance for a disabled child, guardian's allowance for a dependent child and remuneration for the fulfilment of guardian's duties.

3) citizens of Member States of the European Union, of European Economic Area states and Swiss Confederation who reside in Latvia in relation to employment or as self-employed persons, as well as the family members thereof;

4) third-country nationals who have a permanent residence permit in Latvia;

5) refugees and persons who have been granted alternative status; and

6) persons detained, arrested and sentenced with deprivation of liberty.

Children of the aforementioned persons shall have the right to receive free of charge the medical treatment services. Other persons shall receive medical treatment services for a fee.

However emergency medical care shall be provided to everybody.

In order to support migrants' children and their families it is crucial to develop cooperation among different branches of policies, educational establishments, social services, and asylum and immigration services. The content of education has to ensure respect for diversity, intensive state language courses and e-programs for recently arrived migrant pupils, adjusted study methods and programs as well as informative materials for parents. It is vital to prevent segregation and facilitate progress of migrant pupils.

Migrant pupils with special needs are evaluated by the state medical pedagogical commission which recommends studies in educational institutions adjusted for pupils with motion, hearing, vision and language disabilities.

The Asylum Law and normative acts of the Cabinet of Ministers provides the right to receive an asylum in the Republic of Latvia. The status of an asylum seeker is granted by the Office of Citizenship and Migration of the Ministry of the Interior. Education to under aged asylum seekers is provided by the Ministry of Education and Science.

Under aged asylum seekers:

- obtain the obligatory primary education to the age of 18;
- can continue studies after the age of 18;
- have additional lessons of Latvian;
- receive financial support to purchase study books;
- get individual tutoring classes;
- if asylum seekers' children attend minority schools they study their native language.

From January 2008 to December 2009 acquisition of secondary school education has been ensured to 7 minor asylum seekers.

In 2010 the Ministry of Education and Science has been developing adaptation program for under-aged asylum seekers, guidelines for pedagogues and informative materials for parents. The program provides for an additional number of Latvian language lessons, social science subjects and individual tutoring classes.

The programs, guidelines and informative materials are financed within the framework of the European Solidarity and Migration Flow Monitoring Program 2007-2013.

The Ministry of Education and Science completes an agreement with the educational establishment attended by the particular under aged asylum seeker. The Ministry of

Education and Science allocates additional funding from the state budget for the pedagogues remuneration and purchase of study aids for asylum seekers.

Upon entering an educational establishment an under-aged asylum seeker submits education documents (if available) and an application. According to the established procedure the principal has to admit a pupil who has studied abroad. The principal is entitled to claim from the pupils documents that certify the content of their education and the evaluation of their progress. If necessary, the school can test the pupil's knowledge to decide on the appropriate grade for the pupil. Upon agreement with the parents of the child, the school can take additional measures to facilitate studies of the child in Latvia such as, for example, individual consultations.

The Ministry of Justice is in charge of the European Fund for the Integration of Third-Country Nationals under the Programme of Solidarity and Management of Migration Flows in Latvia. The activities implemented within the framework of annual programmes of the European Fund for the Integration of Third-Country Nationals under the Programme of Solidarity and Management of Migration Flows promotes access of third-country national immigrants to language training, labour market and public services.

**c) Legislative framework and practice in the context of detention and repatriation, including mechanisms to ensure protection from refoulement and to ensure family unity**

The Ministry of Interior is the main state administration institution in the field of internal affairs, which also develops and implements the policy in the field of migration. The Ministry of Foreign Affairs, Ministry of Welfare, Ministry of Economics, Ministry of Health, Ministry of Education and Science, Ministry of Justice, as well as state security institutions and local governments are also dealing with questions of migration and asylum.

The Immigration Law of the Republic of Latvia and its subordinate Regulations define procedure of entry, residence, transit, departure and detention of a third-country national, as well as the procedure according to which third-country nationals are held under the guard in the Republic of Latvia and expelled from it, in order to ensure the execution of migration policy according to rules of international law and state interests of Latvia.

On June 15, 2009 the Parliament of the Republic of Latvia adopted a new Asylum Law which entered into force on July 14, 2009. This Law contains legal norms arising from the European Union obligations such as:

1) European Union Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;

2) European Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;

3) European Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;

4) European Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons

as refugees or as persons who otherwise need international protection and the content of the protection granted; and

5) European Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

In accordance with the Section 38 of the Asylum Law:

(1) A person who has acquired refugee and alternative status has the right to reunite with family members who are located in foreign countries. A person who has acquired alternative status has such right if he or she has resided in the Republic of Latvia for at least two years after acquisition of such status.

(2) A minor unaccompanied refugee who is not married has the right to take in his or her mother and father who have arrived from a foreign country.

(3) A family member of a refugee shall be issued a permanent residence permit. A family member of a person who has acquired alternative status shall be issued a temporary residence permit for the same period of time for which a temporary residence permit has been issued to the person who has acquired alternative status.

(4) The procedures for reunification of the family referred to in Paragraphs one and two of this Section shall be determined by the Cabinet.

(5) The residence permit of a family member of a person who has acquired refugee or alternative status shall be cancelled in accordance with the procedures specified in the Immigration Law if the refugee or person who has acquired alternative status loses or is being withdrawn the status granted thereto.

Section 46 paragraph 2 of the Asylum Law provides a right to reunite with family members for a person who has been granted temporary protection. Temporary protection in the Republic of Latvia shall be granted to a family member who arrives in the Republic of Latvia in order to reunite with a person who has been granted temporary protection.

On 26 January 2010 the Cabinet of Ministers adopted Regulation No. 74 „ Procedure by which Reunification of Family is Provided for a Person who is Granted Refugee Status, Alternative Status or Temporary Protection”.

**d) Criminalization of irregular migration**

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**e) Access to the right to identity, including birth registration**

The birth of the child is registered in the Latvian Birth Register if the child is born in the territory of the Republic of Latvia. The nationality of both – the child and parents – as well as ethnic background, absence of residence permit or any other grounds can not prejudice the registration of the birth of the child in the Latvian Birth Register. The only condition which is taken into account is that the child should be born within the territory of Latvia. The name and surname of the child is registered in Latvian Birth Register according to the will of parents.

**f) Protection of children left behind in countries of origin**

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**2. Examples of best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, with particular regard to:**

**a) National legislation, policies and practice, including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration**

At the legislative level, Latvia has joined several international treaties aimed to protect children's rights and interests in the context of the migration (cross-border situations), namely, Convention of October 1980 on the Civil Aspects of International Child Abduction, Convention of October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. At the same time Latvia has adopted European Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing European Council Regulation (EC) No. 1347/2000.

**b) Joint efforts and strategies available at the bilateral, regional and international levels to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration**

On bilateral level there is cooperation between the State Border Guard and countries of origin and transit of immigrants, joint trainings with border guards of neighboring countries. The bilateral agreements and understandings with third countries regulate the cooperation of the State Border Guard with countries of transit of illegal migration; agreements regarding the cooperation in the field of prevention and combating of organized crime mostly envisage also cooperation possibilities in the field of prevention and combating of illegal immigration.

On July 14, 2009, the Asylum Law has entered into force which, inter alia, provides the implementation of the conditions of the European Council Directive 2001/55/EC of July 20, 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. The State Border Guard has developed procedures that shall be applied in case of crises if there is a mass influx of asylum seekers in some EU Member State, in order it would be possible to send officials of the State Border Guard to the relevant Member State as assistants and thus implement more efficient solidarity with the relevant country. Until now, Latvia has not been involved in activities of resettlement and in the implementation of the resettlement programmes and also does not plan such participation in the nearest future.

On the basis of the European Council Regulation No.2007/2004 of October 26, 2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the State Border Guard on a regular basis participates in joint operations and other activities in the



Member States, where the risk of illegal immigration has increased or where influx of asylum seekers can be expected. In such case and upon a request of the FRONTEX, well-prepared and experienced border guards are selected for the participation.

On the basis of the European Council Regulation (EC) No.863/2007 of the European Parliament and of the Council of July 11, 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams (hereinafter – the RABIT) and amending Council Regulation (EC) No.2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, the State Border Guard has assigned 21 border guards who upon a request of the FRONTEX, according to emergency, are ready to be involved in procedures of border control as well as interviewing of asylum seekers in Member States with increased risk of illegal immigration.

### **c) The work of National Human Rights Institutions and other relevant stakeholders**

The Ombudsman, who was elected by the Latvian Parliament in 2007, acts to protect the rights and legal interests of a person in situations when State and municipal authorities have breached the human rights defined by the Constitution and international human rights documents. Inter alia, the Ombudsman pays attention to the issues of the rights of children, including the migration aspect. Although, comparing to the other aspects of the children's rights, the scope and amount of complaints on presumable violation of children's rights in the context of migration and identified problems has been relatively small. The activities of the Ombudsman Bureau in the area of migrant children rights have been mostly of preventive nature or the Bureau has tried to solve individual situations (for example, a successful case in 2009 is related to ensuring the right to education – the parents and the child who are citizens of another country with a permanent residence permit in Latvia have been requested by the educational establishment to pay fee for the studies of the child because he is an alien. Only after the Ombudsman got engaged in solving this situation, pointing to the Article 3 of the Law on Education of Latvia, which says that every person who has received a permanent residence permit and their children have equal right to acquire education, the solution was found allowing this child to acquire the state funded education.).

The Ombudsman Bureau has been actively engaged in elaboration of the Asylum Law of Latvia. With a view to make sure that the rights and well-being of migrant children are ensured, the Bureau pays visits to the asylum seekers reception centre „Mucenieki” and the detention centre for illegal immigrants „Olaine”. The Ombudsman Bureau also provides consultations and participates in awareness-raising events.

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