



PERMANENT MISSION OF THE REPUBLIC OF LATVIA
TO THE UNITED NATIONS OFFICE IN GENEVA

Note No. 2.3.3. – 103

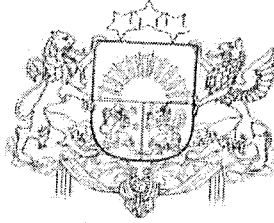
The Permanent Mission of the Republic of Latvia to the United Nations Office in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to enclose herewith the letter of Minister of Foreign Affairs of Latvia addressed to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

The Permanent Mission of the Republic of Latvia avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 9th June 2016



Office of the High Commissioner for Human Rights
Geneva



LATVIJAS REPUBLIKAS ĀRLIETU MINISTRIJA

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LATVIA

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Mr. David Kaye
Special Rapporteur on the promotion and protection
of the right to freedom of opinion and expression

Mr. Maina Kiai
Special Rapporteur on the rights to
freedom of peaceful assembly and of association

No. 37/219-2035

Rīga, June 9, 2016

Dear Mr. Kaye, dear Mr. Kiai,

At the outset let me express my sincere gratitude for the work that has been done by the United Nations and you personally in promoting freedom of expression and peaceful assembly and association. Just as you, Latvia has always underlined the importance of these fundamental freedoms.

With reference to your letter, dated 15 April 2016, in which the concerns were expressed regarding the envisaged amendments to the Criminal Law of the Republic of Latvia, I would like to convey you the following.

On 21 April 2016 the Parliament in the final reading adopted amendments to the Latvian Criminal Law. The amendments entered into force on 11 May 2016.

The amendments are two-fold. Firstly, amendments introduce one new Article 81¹ (assistance to a foreign State in actions against the Republic of Latvia) and revise four of the existing Articles:

- ✓ Article 80 (actions against the Republic of Latvia),
- ✓ Article 80¹ (uniting in an organised group for the purpose of acting against the Republic of Latvia),
- ✓ Article 81 (public incitement to actions against the Republic of Latvia),
- ✓ Article 85 (espionage).

Secondly, amendments delete two Articles from the Criminal Law (Articles 82 and 83).

At the same time the Parliament decided to postpone the examination of the proposal to supplement the Criminal Law with a new Article 95¹ that would introduce criminal liability for illegal direct acquisition of the State secret. According to the instructions from the Legal Affairs Committee of the Parliament, the discussions on the necessity and scope of this provision took place in the Standing Working Group on Criminal Law that functions under the auspices of the Ministry of Justice and with the participation of the representatives from the Ombudsman's Office, the Office of the Representative of Latvia before International Human Rights Organizations, law-enforcement agencies, professional organisations of journalists.

With respect to Criminal Law provisions revised and adopted on 21 April 2016, the following paragraphs will outline the main aspects considered by the Parliament before the amending the Criminal Law. It should also be emphasised that after the adoption of the draft amendments in the first reading on 3 March 2016, the Parliament postponed the second reading until 21 April 2016, in order to allow more time for a comprehensive discussion on all concerns expressed and for a proper review of all proposals submitted. As a result, the draft amendments were scrutinized and further improved in order to guarantee a full compliance with Latvia's obligations under international human rights law, including with a view to ensure that they do not pose any risk to upholding freedom of expression and freedom of assembly. In the framework of these discussions, the draft amendments were examined by the Standing Working Group on Criminal Law. The representatives from the Ombudsman's Office and the Office of the Representative of Latvia before International Human Rights Organizations were included in the discussions of the Standing Working Group.

The amendments to the Criminal Law were drafted to enable the law-enforcement agencies to react with criminal law instruments to the threats posed by certain elements of hybrid warfare to Latvia's security and to the fundamental interests of the State. In the drafting of the amendments a comparative analysis of legal framework of other EU and NATO Member States in protection the constitutional foundations and fundamental interests of the State was conducted, with a conclusion that the relevant domestic law provisions as in force in Latvia were outdated, as they had not been changed since their introduction in 1999.

Therefore, Article 80 as now adopted addresses all actions against the independence, sovereignty, territorial integrity, State authority and State system of the Republic of Latvia if these actions are in a manner not provided for by the Constitution of the Republic of Latvia. Similar approach has been followed in Articles 80¹, 81 and 81¹ that criminalise, respectively, uniting in an organised group for the purpose of acting against the above-described constitutional foundations of the Republic of Latvia, public incitement to such actions, and knowingly assisting a foreign State or organisation of a foreign State in such actions. As already noted, with these amendments Articles 82 (incitement to destroy independence of the Republic of Latvia as a State) and 83 (incitement to destroy the territorial integrity of the Republic of Latvia) of the Criminal Law as in force until now have been deleted.

The new provisions are in full compliance with Latvia's obligations under international human rights law, including Article 19 and Article 22 of the International Covenant on Civil and Political Rights. The specific reference to the Constitution of the Republic of Latvia clearly shows the wish of the legislator to limit the application of the new provisions to anti-constitutional offences undermining the very existence of the democratic state, and to unequivocally exclude any possibly disproportional restrictions of

fundamental rights, notably the freedom of expression and freedom of assembly and association, guaranteed by the Constitution of the Republic of Latvia and by Articles 10 and 11 of the European Convention on Human Rights as interpreted by the European Court of Human Rights. The approach of the Latvian legislator is in line with concept enshrined in Article 17 of the European Convention on Human Rights, namely, that rights and freedoms guaranteed by this Convention must not be abused. In other words, as the European Court of Human Rights itself has recognised in its 2006 Grand Chamber judgment in the case of *Zdanoka v. Latvia*, no one should be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society.

Furthermore, uniform approach in all four Articles – Articles 80, 80¹, 81 and 81¹ – in defining the protected interests will undoubtedly facilitate correct interpretation and application of these provisions.

As regards revisions in Article 85 of the Criminal Law that criminalised espionage already before the amendments of 21 April 2016, the provision has now been clarified to expressly state that the criminal liability is imposed for illegal collection of confidential information with a purpose of transferring such information to a foreign State or an organisation of a foreign State, as well as for illegal collection or transmitting of other information to foreign intelligence agency following explicit assignment from the latter.

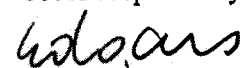
Finally, I would like to reiterate that Latvia is firmly committed to freedom of expression. The Latvian Constitution guarantees freedom of expression and the media, and the Government upholds these rights in practice. Latvia actively advocates for the freedom of expression in international organizations, including the United Nations Human Rights Council and as an active participant in the cross-regional initiative called the Freedom Online Coalition. It was our sincere honour to organize the World Press Freedom Day Conference in Riga last year.

Looking forward to a continuous fruitful cooperation, I wish you success in your future endeavours.

Please find enclosed the English translation of the Articles 80, 80¹, 81, 81¹, 85 of the Criminal Law of the Republic of Latvia as adopted on 21 April 2016.

Please accept the assurances of my highest esteem and consideration.

Yours respectfully,


Edgars Rinkēvičs



Amendments to the Latvian Criminal Law adopted on 21 April 2016:

Article 80. Actions against the Republic of Latvia

(1) For action directed against the independence, sovereignty, territorial integrity, State authority and State system of the Republic of Latvia if this action is in a manner not provided for by the Constitution of the Republic of Latvia,

the applicable punishment is deprivation of liberty for a term of up to eight years and with probationary supervision for a term up to three years.

(2) For the same action if it is carried out using violence or if it is carried out by an organised group,

the applicable punishment is deprivation of liberty for a term of five to fifteen years and with probationary supervision for a term up to three years.

Article 80¹. Uniting in an organised group for the purpose of acting against the Republic of Latvia

For uniting of more than two persons in an organised group for the purpose of acting against the independence, sovereignty, territorial integrity, State authority and State system of the Republic of Latvia in a manner not provided for by the Constitution of the Republic of Latvia,

the applicable punishment is deprivation of liberty for a term of up to five years or temporary deprivation of liberty, or community service, or a fine, and with probationary supervision for a term up to three years.

Article 81. Public incitement to actions against the Republic of Latvia

For a public incitement to actions against the independence, sovereignty, territorial integrity, State authority and State system of the Republic of Latvia in a manner not provided for by the Constitution of the Republic of Latvia, as well for the distribution of materials containing such incitement,

the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, and with probationary supervision for a term up to three years.

Article 81¹. Assistance to a foreign State in actions against the Republic of Latvia

For action with a purpose of assisting to a foreign State or an organisation of a foreign State to act against the independence, sovereignty, territorial integrity, State authority, State system or State security of the Republic of Latvia

the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, and with probationary supervision for a term up to three years.

Article 85. Espionage

(1) For illegal collecting of non-disclosable information with a purpose of transmitting or for transmitting it to a foreign State or an organisation of a foreign State directly or through intermediary person, or for illegal collecting or transmitting directly or through intermediary person of other information to a foreign intelligence service pursuant to an assignment from the intelligence,

the applicable punishment is deprivation of liberty for a term up to ten years, and with probationary supervision for a term up to three years.

(2) For illegal collection or transmitting to a foreign State or an organisation of a foreign State of information that is State secret directly or through intermediary person,

the applicable punishment is deprivation of liberty for a term of three to twenty years, and with probationary supervision for a term up to three years.