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### **Keeping administrations accountable**

Dear fellow Ombudsmen, ladies and gentlemen,

Until present, the activities of Ombudsmen in the international environment have been related rather to the civil and political area, while seeking solution of social, economical and cultural rights and issues basically on national or, so to say, local level.

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The reality in recent years show, however, that solution of social and economical problems and involvement of Ombudsmen to improve the situation is reaching beyond national scale.

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We share not only by the European Network of Ombudsmen but also by a common space of values. The European Union and its Member States have clearly defined their guiding principles – economic growth that protects the universal values, which lie at the basis of the European Union – freedom, democracy, rule of law and human rights and fundamental freedoms.

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Latvia, as well as the other Member States of the European Union, has undertaken international obligations not only in the sphere of economics and finance, but also in protection of human rights and fundamental freedoms. As a Member State of the European Union and the Council of Europe, Latvia has not only ratified a number of international treaties on human rights, but also accepted an obligation to ensure that the standards laid out in those instruments are implemented in practice. The European Convention for the Protection of Human Rights and Fundamental Freedoms, European Social Charter, the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union and more than 50 other international documents create an obligation for Latvia to take concrete actions in order to guarantee the implementation of human rights standards.

I would like to introduce you with the social and economical situation in Latvia and with activities taken by the Government and by myself as the Ombudsman in solving the situation.

## I. Description of Situation

In spite of information provided by the Government of Latvia about the rapid recovery of national economy and improvement of economic indices, **394.5 thousand people**<sup>1</sup> were exposed to the risk of poverty in Latvia in 2011, in particular the recipients of small pensions and low income people (recipients of salaries under the minimum and recipients of government or municipal allowances). It should be mentioned there that the total population of Latvia barely exceeds 2 million (2 070 371).

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The threshold of poverty risk was defined in 2011 as 157 Latvian lats (223 €) for one person per month, and for family with 2 children it was 329 Latvian lats (468 €);

40% of Latvian people are exposed to the risk of poverty and social exclusion,<sup>2</sup>

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- 43% of children
- 33% of pensioners
- 38.8% of incomplete families with 1 dependent child;
- 37.4% of complete families parenting 3 or more children;
- 33.5% of households composed of a single person under the age of 64 years.

**In the 2<sup>nd</sup> quarter of 2013** the age group of 15 to 74 was presented by 833.8 thousand employees while the number of those seeking employment was 114.7 thousand;

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- 21.1 % (or 176.2 thousand) of employees earn the minimum wage or 146 Latvian lats (208 €) after taxes, **or less than that**;
- 28.9 % (or 241.0 thousand) of employees earn wage under **200 Latvian lats after taxes (285€)**;
- 28.6 % (or 238.5 thousand) earn wage of **200 to 300 Latvian lats after taxes (427€)**;
- Therefore, **57.5%** of employees in Latvia earn wage **under 300 Latvian lats (427 €)** after taxes;

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<sup>1</sup> Data of Central Statistics Office, EU-SILC, Study in 2012

<sup>2</sup> Eurostat, available at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc\\_peps03&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps03&lang=en);  
Central Statistics Office of the Republic of Latvia, available at: [www.csb.gov.lv](http://www.csb.gov.lv); National Social Report, p. 17.

There are 859.8 thousand households in Latvia. The net weight of households unable to afford certain expenditures is distributed as follows:

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- 23.0% of all households – *costs of utility payments*;
- 22.4% - *costs of heating*;
- 75.3% - *unforeseen costs*;
- 28.0% - *meat, fish or chicken products every second day*.

The total number of pensioners is 478.8 thousand including 74.9% recipients of pensions under 200 Latvian lats (285€).

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- 1.2% or 5796 pensioners receive old age pension under 50 Latvian lats (71 euro);
- 4.4% or 21273 people receive old age pension of 50.01 to 100 Latvian lats (142 euro);
- 69.5% or 332601 receive old age pension of 100.01 to 200 Latvian lats (284 euro).

In July, disability pension has been paid to 71 373 inhabitants of Latvia in the average amount of 116.5 Latvian lats (165 euro).<sup>3</sup>

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<sup>3</sup> Social Insurance State Agency, statistic data aso f 1 September 2012; available at: <http://www.vsaa.lv/lv/budzets-un-statistika/statistika>.

## II Constitutional rank of social rights and international obligations

Article 109 of the Satversme (Constitution) of the Republic of Latvia guarantees for everyone the right to social security in old age, for work disability, for unemployment and in other cases as provided by law. The purpose of such right is to ensure that the country provides, to the possible extent, an existence worthy of human dignity. At the same time, the Satversme of the Republic of Latvia contains no provisions to the amount of such security and to the procedure of its granting. It should be noted that the Constitutional Court of the Republic of Latvia has analyzed the content of the said article in several judgments and indicated that social rights are very important, while at the same time, there are special and different human rights, since implementation of such rights depends on the economic situation in each country and the available financial resources, i.e. it is directly linked to possibilities of each country.<sup>4</sup>

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I would like to point out however, that one of the principles describing social rights is the principle of progressive development. International law places an obligation on the country to achieve as full implementation of the social rights as possible with the maximum of available resources and by appropriate means at a growing pace.

With vote for accession to the European Union in 2003, the people of Latvia decided to join the EU not only as an economic union, with implementation of the common security, cooperation and monetary policy, but also as the union where the Member States are committed to promote economic and social progress for their peoples in accordance with the principle of sustainable development.<sup>5</sup>

Article 2 of the Treaty on European Union defines human rights as the EU fundamental values. Article 3, on its turn, determines among the objectives of the EU the duty to promote well-being of its people as well as to combat social exclusion and to promote social justice.

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The Member States have included In the Treaty on the Functioning of the European Union the desire to ensure the development of prosperity in accordance with the principles of the Charter of the United Nations.

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<sup>4</sup> Paragraph 10 of the Judgment in the Case No.2010-20-0106 of the Constitutional Court of the Republic of Latvia of 17 February 2011; available at: [http://www.satv.tiesa.gov.lv/upload/spriedums\\_2010-20-0106.htm](http://www.satv.tiesa.gov.lv/upload/spriedums_2010-20-0106.htm).

<sup>5</sup> *Treaty on European Union*, Preamble; *Treaty on the Functioning of the European Union*, Preamble, available at: <http://eur-lex.europa.eu>.

Article 9 of the Treaty contains a determination that the EU in the defining and implementing its policies and activities EU shall take into account the requirements linked to the guarantee of adequate level of social protection and the fight against social exclusion.<sup>6</sup>

In accordance with the Charter of Fundamental rights of the European Union (hereinafter referred to as the Charter), the EU recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life. The “Solidarity” chapter of the said document prescribes that in order to combat social exclusion and poverty, the EU recognizes and respects the right to social and housing assistance so as to ensure decent existence to all those who lack sufficient resources, in accordance with the rules laid down by EU law and national laws and practices.<sup>7</sup>

Even though the principles set out in the Charter are directly applicable only in the acts of the EU institutions and bodies, and the Charter should be only applied by public authorities of the Member States when they are implementing the Union law, namely, when they are applying the EU regulations, decisions or implementing the directives,<sup>8</sup> it is my opinion, however, it does not mean that public authorities of the Member States may ignore the objectives and approach to eradicate poverty and to reduce social exclusion on the EU scale.

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<sup>6</sup> Ibid.

<sup>7</sup> Charter of Fundamental Rights of the European Union, 25., Article 34, available at: <http://eur-lex.europa.eu>.

<sup>8</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2010 Report on the Application of the EU Charter of Fundamental Rights, available at: <http://eur-lex.europa.eu>.

### III. Governmental efforts to minimize poverty

Minimization of poverty has been among priority tasks in policy planning documents of the Government of Latvia since 1998 already<sup>9</sup>, with key approaches developed<sup>10</sup>, as well as strategies and action plans for minimization of poverty, and quantitative objectives for the year<sup>11</sup>, Convergence Program of Latvia for the years 2013.-2016 and similar, however 19.4% of people remain exposed to poverty risk (38.1% according to Eurostat data)<sup>12</sup>, and the depth of poverty continues increasing<sup>13</sup>.

The responsible ministry has pointed out in 2004, or 10 years ago already that **“lack or clearly defined policy and mechanism of cooperation** between institutions in the field of social development and minimization of poverty has adversely affected the existing situation”.<sup>14</sup>

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It may be concluded in fact that the Government of Latvia has been unable to solve this task during 10 years, and **the objectives identified 10 years ago remain actual:**

- 1) Quality of education;
- 2) **Establishing of inclusive labor market;**
- 3) Provision of suitable housing for people unable to provide it for themselves;
- 4) Provision of **adequate income** by means of remuneration, tax policy and social security system;
- 5) Development of social services appropriate to persons' needs possibly close to the place of their residence;
- 6) Provision of access to the State-guaranteed minimum health care and the necessary medicine.

According to the most recent policy-planning documents<sup>15</sup>, another task force has been formed to **identify the key causes** of increase of poverty and social exclusion, and **the areas of policy** that require steps to be taken for minimizing poverty and social exclusion.

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<sup>9</sup> Summary to the Draft Law “General Social Inclusion Memorandum of Latvia”

<sup>10</sup> Action plan for elimination of poverty for the years 2001-2003

<sup>11</sup> National Reform Program of Latvia for implementation of “ES 2020” strategies

<sup>12</sup> According to the Eurostat approach, people are exposed to poverty risk if they live in households with income below the poverty threshold fixed in 60 per cent of the average income in the country in question

<sup>13</sup> The National Social Report, p. 6

<sup>14</sup> Summary to the Draft Law “General Social Inclusion Memorandum of Latvia”

<sup>15</sup> Convergence Program of Latvia for the years 2013-2016.

Planned activities in 2013 according to the Convergence program:

- 1) **Stimulation of active employment** (promotion of remunerated temporary positions in the sector of public works; support programs for the long-term unemployed struggling with addiction; mobility grants (jobs within 20 km from place of residence)<sup>16</sup>, workshops for young adults; profiling system for the unemployed, lifelong education for the adults (50+);
- 2) **Promotion of self-employment and entrepreneurship** (support to small businesses (micro, small, medium) with the infrastructure and consultations; business incubators; crediting programs for acquisition of agricultural lands.<sup>17</sup>

Questions arise as to the effectiveness and usefulness of the planned activities. Also the ability to reach the planned long-term objectives can be questioned.

In the view of the foregoing, a number of **conclusions** can be made:

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To date, the Government's tax policies have contributed to the increase of social equality since only the richer or middle-class of society have benefitted from it. The increase of income for people with the low-income was insignificant.

The government has undertaken activities in relation to increase of minimal salary, increase of non-taxable minimum income and tax alleviations for dependant persons. The planned activities are likely to increase the monthly income of persons previously receiving the minimum salary by 20 to 30 Lats (28 – 43 €).

It is important to acknowledge that, in case of single person households, the income of such person is reaching the surviving minimum calculated by the Central Statistics Office (in July 2013 it was 178.85 Latvian lats or 254.48€), however, it is not sufficient if a person has one or two dependants. Moreover, if a person receiving a minimum salary has two

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<sup>16</sup> Residents of Latvia who are unable to find employment at their place of residence and who participate at the regional mobility support action can claim no more than 280 lats allowance for rent and transport to the place of employment in the minimum distance of 20 km **in aggregate during the first four months of legal employment relations.**

*The question is, whether the support available in the first 4 months is sufficient to enable an employee to keep the employment on continuous basis.*

<sup>17</sup> Cheap loans for acquisition of rural land are intended to support the middle class; half of recipients of the first million, however, is presented by major farmers, according to the magazine "Ir". "Ir" has concluded that at least eight of 16 recipients of loan meet the criteria of large farms (with turnover exceeding 100 thousand euro a year); therefore, the Minister's hope to provide support to small and medium farmers has completely failed.

dependent children, it will not be possible to receive full tax alleviation, since the income does not reach the required level.

It must also be kept in mind that the increase of consumer prices and utility payments<sup>18</sup> could significantly reduce or eliminate the increase of income resulting from tax alleviations.

Taking into account the proportion of retired persons among those subject to social exclusion, it is necessary to consider a more efficient methodology for indexation of pensions. The average increase from this year's indexation was LVL 4.68 (6.66 €).

The same is true in respect of social benefits for persons with disability. Currently the amount of social benefit for disabled persons is LVL 45(64 €), for persons with disability since childhood – LVL 75 (107 €).<sup>19</sup> The planned increase of the benefit is hardly sufficient to cover the basic needs of persons with a disability - one of the groups recognized by the state as most vulnerable.

The success of Latvia in reaching the economic targets is undeniable, yet unfortunately they are achieved in complete ignorance of other priorities such as human rights and social security. In my opinion, the two priorities need to be balanced and economic growth may not be achieved at the expense of vulnerable groups. A situation where economic growth takes priority over fundamental rights should not be permitted. Such situation would be contrary to the very objective Europe 2020 is trying to achieve – creation of Europe that is not only economically prosperous, but is also sustainable, smart and inclusive for its citizens. A Member State's determination to treat human rights as equally important objective should be reflected in policy documents as well as in practical steps taken to implement such policies. Only a simultaneous demonstration of political will and practical action can create a sense of security in the members of our society.

Thus far the government of Latvia has directed its activities at the fulfillment of only one of priorities – the targets of economic growth,

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<sup>18</sup> Increase is forecasted by 8% compared to the present level.

<sup>19</sup> Expected: social security allowance for persons with the 1<sup>st</sup> group disability should be 58.50 lats; with the 2<sup>nd</sup> group disability – 54 lats, while for the 3<sup>rd</sup> group it would remain unchanged; in case of people with the 1<sup>st</sup> group disability from childhood, the allowance would be increased from 75 to 97.50 lats/month, for people with the 2<sup>nd</sup> group of disability – from 75 to 90 lats, and for people with the 3<sup>rd</sup> group of disability it would remain unchanged, 75 lats. State social security allowance is currently paid to 17.7 thousand people with disability.



failing to take into consideration the public opinion, the social reality in the state and the opinion of international organizations.

## IV Initiatives of the Ombudsman

While participating in several events devoted to human rights issues on a European and international level, I have had the opportunity to reflect on the role of an ombudsman in creation of legal policies. As the Ombudsman of Latvia, my prime responsibility is protection of human rights and supervision of efficient use of state powers. I believe that a situation where the national government follows a single objective of fulfilling the requirements of an article in an international treaty, ignoring at the same time other equally important obligations under the same treaty is impermissible. That is especially true where such other obligations are related to the protection of human rights.

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The British scientists Richard Wilkinson and Kate Pickett have compared developed countries by inequality of income and driven to surprising congruency: the higher is inequality, the higher is the number of murders and prisoners, people with mental conditions including alcohol and drug addiction, and mortality, low social mobility and lack of trust in Government. Their studies also show that in countries with high inequality of income the above-listed factors have adverse effect on population in general, needy as well as wealthy.

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Further I will refer just to one illustrative example I have selected, since a large part of the applications in the field of social rights is received by the Ombudsman office from the pensioners and they all contain just one question: how can a person survive with so small pension to say nothing of dignified human life and enjoying well-earned old age.

The minimum amount of old-age pension has been set in Latvia since 1996. Consequently, if the amount of pension calculated for a person is low, the country has defined an additional payment to a particular level. At present, the minimum old-age pension is calculated on the basis of the state social security benefit, by application of relevant coefficients to it, taking into account the duration of insurance periods of the person.

In November 2011 the Ombudsman's opinion on the determination of the amount of old-age pension was sent to the Presidium of the Saeima and to the Cabinet of Ministers<sup>20</sup>. According to the Opinion, no criteria have been developed in Latvia for the determination of the minimum social security level. The state social security benefit, to which the

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<sup>20</sup> Ombudsman Office outgoing documents No. 1-8/19 and No.1-8/20, dated 4 November 2011. *Regarding the amount of minimum pensions* (unpublished).

minimum amount of old-age pension is linked, is 45 Latvian lats (64 euro) per month, and this amount has remained constant since 1 January 2006. It is based neither on economic indicators, nor estimates of the necessary means to ensure the needs of an individual, and it is obviously far below the estimated threshold of poverty risk. This opinion appealed to the Cabinet of Ministers to determine the minimum amount of old-age pensions based on definite calculations and the method aimed at determination of the minimum amount of social security. I have also insisted that, although the country enjoys wide freedom of action in the field of social rights and as a result of political decision it may select the most suitable form of guaranteeing social security to minimum amount, it can not completely depart from such an obligation.

However, the Saeima and the government of the Republic of Latvia have not yet expressed willingness to address this sensitive issue in a systemic manner.

Analyzing the trends in policy-making and activities of the Government of Latvia, it is clear that the commitment to protect human rights, reduce social inequality, eradicate poverty and ensure sustainable growth is only declarative and not accompanied by concrete action.

It is understandable that during the economic crisis (2008 - 2010) a number of austerity measures have been taken, however, in my opinion, economic growth should not have been achieved at the expense of vulnerable groups – children, persons with a disability, elderly people and new families. Austerity measures should not affect such areas as healthcare, education and social security.

Latvia still has one of the lowest rates of percentage of GDP allocated to healthcare and social security among the member States of the European Union (hereinafter – the EU).<sup>21</sup>

In the context of protecting one's rights it is important to recognize that no real possibility exists to receive compensation for violations of social and economic rights. At the same time there exist various mechanisms, such as the European Court of Human Rights, to obtain an effective remedy for violation of civil and political rights.

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<sup>21</sup> Eurostat, "General government expenditure in 2011 – Focus on the functions 'social protection' and 'health'", available at: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-13-009/EN/KS-SF-13-009-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-13-009/EN/KS-SF-13-009-EN.PDF)

## **In conclusion...**

Given the efforts to promote the observation of human rights in as well as outside the European Union, I would like to encourage Ombudsmen to pursue active work with the officials of European institutions and national governments to ensure that implementation of human right standards is not merely declarative and that it finds expression in real actions aimed at providing equality, development and welfare.

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