



Executive Summary

Latvia country report on measures to combat discrimination

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1. Introduction

Latvia is, and always has been, a multi-ethnic country, although the proportion of the different ethnic groups among its population has varied. Ethnic origin is recorded in the Population Register. It is based on the ethnicity of either person's parents and can be changed upon reaching the age of majority by choosing the ethnicity of any grandparents; the entry of ethnicity in passports is optional. By 1 January 2005, out of 2,302,935 people registered in the Population Register of Latvia, the ethnic composition was as follows: 58.8% Latvian; 28.7% Russian; 3.8% Belarusian; 2.6% Ukrainian; 2.5% Polish; 1.4% Lithuanian; 0.4% Jewish; 0.1% Estonian; and 1.6% others, including 0.36% Roma. Latvian citizens constitute 1,816,024 persons or 78.9% of the population; of these, ethnic Latvians constitute 74.4%. 19.6% of inhabitants are non-citizens¹, of which ethnic Russians constitute the largest group at 66.7%. This helps to explain why issues relating to non-citizens are often treated as mainly concerning Russians or Russian-speakers, and the rights of citizens and non-citizens, as well as linguistic issues are very sensitive.

A study conducted in 2002 indicated that the percentage of ethnic Latvians in the public sector is disproportionate. The Roma population experiences discrimination in employment and accessing services, which was confirmed by a study conducted in 2003. It should also be noted that the Roma population in Latvia is relatively small, comprising 8,498 people according to the official data, although more according to the data of Roma associations, since it is possible that the ethnicity of the other, non-Roma parent was chosen for official purposes despite the self-identification of the person and irrespective of his or her perception by others.

There are no studies on the issues of age in employment. However, it is common knowledge that age *is* an issue in employment. The difficulties of disabled persons in finding employment are also common knowledge, although there are no studies to confirm this either. There is no documented evidence about the difficulties encountered by sexual minorities, but this is most probably due to the fact that many homosexuals are forced to conceal their sexual orientation as a result of the negative attitudes commonly found in Latvian society. That this is to a significant extent still a taboo topic was demonstrated by the adoption of the Labour Law when during the consideration of the law in the Parliamentary committee the express reference to sexual orientation in the non-discrimination clause was deleted, adding instead "other circumstances" to leave the list open. The same happened during the adoption of the 2004 amendments to the Labour Law aimed at bringing it into full compliance with the Directives. In addition, the negative publicity to non-discrimination issues resulting from the holding of the Gay Pride in Riga in July 2005 has to be noted. The event triggered very strong sentiments and intolerant statements from high standing

¹ Non-citizens is a special category of people - former USSR citizens who were resident in Latvia on 1 July 1991 and have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons.

officials and resulted *inter alia* in the adoption of a constitutional amendment defining marriage as the union between a man and a woman.

In this context, it appears that it is necessary to take a more active stand to actually promote equal treatment, as the lack of case law cannot be taken as an indicator that no problems exist. Currently, the only consultations with NGOs taking place on a regular basis are those addressing issues of disability and gender. While the framework for dialogue with social partners also exists, the issue of discrimination has so far been addressed to a limited extent only and mostly concentrating on gender issues. Consequently, there is also very little public debate and what discussion there has been has so far concentrated almost exclusively on the issues of Russian-speakers and the related issues (including linguistic ones). The creation of a special post of Minister for Special Assignments for Social Integration has resulted other grounds of discrimination also being addressed and some discussion of them being initiated.

The only group that is being specifically targeted to some extent is that of disabled people, where the law is attempting to provide some financial incentive to employers to employ them. There is no provision on possible positive action anywhere in Latvian legislation.

2. Main legislation

The cornerstone of the prohibition of discrimination is Article 91 of the Latvian Constitution providing, *inter alia*, that human rights shall be observed without discrimination of any kind. Thus, the Constitution outlaws all discrimination, but does not expressly state the grounds on which discrimination is prohibited. The Constitution is regarded as having direct effect, that is, it directly binds all public bodies, but it does not have horizontal effect. This means that while discrimination is illegal in the public sector even without any further laws, which are thus only needed to provide for sanctions and the enforcement of the principle of non-discrimination, in the private sector the introduction of special laws to outlaw discrimination is essential. The same applies to international treaties: the treaties binding on Latvia only bind the public bodies. Apart from Protocol No. 12 to the European Convention of Human Rights, which it has signed but not ratified yet, Latvia is a party to all the most important international agreements relevant for counteracting discrimination such as: International Covenant on Civil and Political Rights, the Optional Protocol to the Covenant; the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), Framework Convention on the Protection of National Minorities and the Convention of the Rights of the Child. The Latvian Government has not recognized the competence of the Committee on the Elimination of Racial Discrimination, though. The above-mentioned instruments constitute part of the domestic legal order after they have been promulgated in the Official Journal and can be applied directly by domestic courts, unless their application depends on the enactment of a statute.

Anti-discrimination law is fragmented in Latvia: there is no one single comprehensive law, and the law still mostly contains scattered and random anti-discrimination clauses that were adopted even before the accession process started. This remains the main problem in relation to Latvian anti-discrimination law since discrimination is not outlawed in the private sector unless expressly provided for by statute and, even though it is outlawed in the public sector due to the supremacy of the Constitution, the absence of a specific implementing law considerably complicates enforcement of the prohibition.

The most comprehensive prohibition is found in the Labour Law adopted in 2001 and drafted taking into account the requirements of the relevant Directives; in 2004 it was amended to address the remaining gaps. It prohibits discrimination in employment

relationships covered by this law, yet it does not apply to state civil service relationships which are left uncovered (thus, the employment by the state is only covered if the relationship is based on an employment contract). The Labour Law is the only law to include a provision on the shift in the burden of proof and, together with the law on Social Security that was amended in December 2005, to comply with the Directives, it is also one of the two laws that expressly refer to age and disability; the complete list of grounds include "property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence". However, even these two laws do not expressly prohibit discrimination on the basis of sexual orientation, which is thus not prohibited anywhere.

A number of other laws contain non-discrimination clauses with exhaustive or open lists of prohibited grounds of discrimination, which never include all the grounds covered by the Directives. Sexual orientation is notably missing from all Latvian laws and age is also problematic. Even where the list of grounds is left open, which is also the case of the Labour Law and law on Social Security, thus potentially encompassing all grounds, this does not comply with the requirement that the law be expressly applicable to all specific grounds addressed by the Directives. The Law on Education contains a closed list limited to "property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence". Also, there are laws that do not contain any anti-discrimination clauses, for example, the law on housing.

Two grounds of discrimination are covered by Criminal Law - discrimination on the basis of racial or national origin (in the field of economic, political or social rights only and only if intent to discriminate can be shown) and discrimination based on religion or belief. Neither of these provisions has ever been applied to cases of discrimination and the requirement of intent in relation to racial discrimination is considered to set a nearly insurmountable threshold for its application.

The main problem with Latvian anti-discrimination legislation is the patchy nature of the regulation, from which most other problems arise. Some fields are left uncovered, notably, access to goods and services available to the public, and even within the fields covered, some of the grounds remain ambiguous; the basic definitions exist only in the Labour Law and Law on Social Security, and only the Labour Law provides for the shift of burden of proof. There is a lack of a consistent system of sanctions, and there is a very limited legal standing in discrimination cases for NGOs and other entities with legitimate interest in the implementation of the anti-discrimination provisions. The nearly complete lack of Directives-related case law (one case on discrimination based on sexual orientation is still pending) serves to confirm both the incomplete character of the Latvian legislation and the lack of awareness.

3. Main principles and definitions

After the amendments made on 22 April 2004, the Labour Law contains definitions of direct and indirect discrimination and, victimisation and harassment which were drafted based on the model of those of the directives and comply with them; it also prohibits instruction to discriminate. Together with the Law on Social Security amended in December 2005 it is one of the two laws to contain these definitions, while protection against victimisation exists only in the framework of the Labour Law and in connection with a complaint to the National Human Rights Office. The law is silent on the issue of discrimination by association or on presumed grounds or characteristics; the wording of the anti-discrimination provisions in Latvian laws referring to a person's (meaning – that person's who is invoking the provision) race, religious conviction etc. certainly would leave it easier to address the discrimination based on assumed characteristics than the one based on association, however, in the

absence of the relevant case law testing these two issues, the only thing that can be said with certainty is that the law contains no express prohibitions.

The grounds for discrimination are not defined either in the Labour Law or elsewhere and it is particularly feared that disability might be interpreted narrowly, using the technical meaning of this term, i.e. depending on formal recognition of a person's diminished ability to work and excluding *de facto* and milder forms of disability. Both age and disability are expressly mentioned only in the Labour Law and Law on Social Security, while sexual orientation - a topic not well received by both the public at large and the politicians, and even more so after the Gay Pride parade held for the first time in Riga in 2005 that resulted in constitutional amendment defining marriage as a union between a man and a woman - is completely absent from Latvian law; when the law leaves the list of grounds open, as is the case for the Labour Law and the Law on Social Security, it may be argued that it is subsumed under 'other circumstances'. However, this obviously is not the best solution, even if the only sexual orientation-based discrimination case decided so far shows that the courts considered it as covered ground.

The Labour Law and the Law on Social Security are also the two laws dealing with exceptions and they only provide for a general genuine occupation requirement exception and the Law on Social Security specifies that harassment cannot be thus justified; there is no case law yet. Additionally, the Law on Religious Organisations specifically provides that religious organisations elect or appoint their religious personnel in accordance with their regulations, while other employees are employed and dismissed in accordance with the law regulating employment. While the Labour Law does not expressly provide for an exemption for employment by religious organisations, such exemptions are clearly implied.

After the amendments of 7 May 2004, the Labour Law sets out the obligation of the employer to provide reasonable accommodation for disabled people. Prior to these amendments several laws contained the right of disabled people to such social security as necessary, inter alia, for their involvement in society, by creating for them suitable conditions for employment that correspond to their ability to work and to their interests, yet the corresponding obligation to enforce it was missing.

4. Material scope

The Labour Law provides protection against all forms of discrimination (direct, indirect, harassment, instruction to discriminate and victimisation) in all aspects of employment relationships, including the establishment of such relationships, both in the public and private sphere, concerning race, age, disability and religion², but without express reference to sexual orientation. However, the state civil service, including specialised civil service (police, for example) and military service are not covered by the provisions of this law and there are no anti-discrimination provisions in the laws governing them.

Access to vocational guidance and training, as well as issues of education in both the public (with the exception of the civil service) and the private sectors are covered by the Labour Law which refers to "occupational training" (without express reference to sexual orientation) and the Law on Education³, which also applies to both the public and private sectors. The

² The complete list includes "race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status or other circumstances"

³ Listing as prohibited grounds "property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence".

problem with the latter, however, is that it contains an exhaustive list of grounds which does not include age, disability (although it could be argued that the latter can be subsumed under the “health” heading) and sexual orientation.

The respective laws on membership of and involvement in organisations of workers or employers or in professional organisations do not always contain anti-discrimination clauses. Thus, the requirements of the Directives have not been complied with in this sphere.

The field of social protection, including social security and healthcare, has been covered by the amendments to Law on Social Security adopted in December 2005; they do list age and disability⁴, yet express reference to sexual orientation is missing. Also, this law defines social services as those provided by the state or municipality; hence it does not apply to the private sector.

Access to goods and services is a field which is not covered at all, with any express prohibition of discrimination. It must, however, be noted that discrimination on the grounds of religion in any sphere, and both in the public and private sectors, is outlawed by Article 150 of the Criminal Law.

5. Enforcing the law

There are a number of legal avenues for addressing cases of discrimination:

- * courts of general jurisdiction; so far only a few cases alleging discrimination have been decided by the courts – three cases in 2005 (two in employment context – sexual orientation based discrimination and gender discrimination and one on access of a disabled person to services available to the public) and a few earlier cases decided prior to the transposition of the Directives.
- * Constitutional Court - legislation which is allegedly discriminatory on the grounds of age has twice been challenged in it. In one of the cases, the age restriction for university teachers and higher administrative positions in scientific institutions was invalidated, while in the second case the age restriction for remaining in the civil service was allowed to stand.
- * possibility of submitting a complaint to the same public institution that has treated the person differently or to a higher institution.
- * State Labour Inspectorate if discrimination has occurred within the framework of a labour relationship; the inspectorate can impose a fine. However, no complaints about discrimination have been received by the Inspectorate so far.
- * National Human Rights Office which is empowered to strive for amicable settlement; failing this, it may, after the amendments adopted in December 2005, with the agreement of the person concerned, submit an application to the institution that has discriminated or bring an application to the court.

The normal avenue for redress would be a court of general jurisdiction. A law on state-sponsored legal aid in civil and administrative cases has been in force from 2005, which is a welcome development, yet its real impact has still to be evaluated. Even if there are associations willing and able to support the victims of discrimination in their complaint, the Civil Procedure Law currently does not permit them to engage formally in the proceedings; the only exceptions to this are members of the trade unions who have the right to represent and defend the rights and interests of their members in the State institutions, including

⁴ The list of prohibited grounds is the same as in the Labour Law, see footnote 2.

bringing a case in the court. The same applies to voluntary organisations, if such provision is made in their regulations and only in relation to the members of the organisation. The recently introduced possibility of bringing the case on behalf of the victim by the National Human Rights Office is an exception.

The provision on the shift in the burden of proof has been included in the recent Labour Law, which only applies to employment relationships. It does not exist in any other sphere and the scarce number of cases (namely, two so far) in which it was applied does not yet permit drawing any conclusions about its application. In cases coming under the Administrative Procedure Law the exception of examination *ex officio* applies.

The national law is silent on the issue of situation testing and the use of statistical evidence, and there is no evidence of them being used and hence no case law; it is difficult to predict how the courts would react to the use of such evidence.

The scarcity of case law also means that it is difficult to evaluate the application of sanctions: the provisions of Criminal Law providing for criminal penalties of up to ten years' imprisonment in some very limited cases of serious discrimination have never been applied. In the context of employment, in the two discrimination cases brought under the Labour Law the amounts awarded were 2000 Lats (around 3000 Euros, the judgment has been appealed) in the sexual orientation-based discrimination case, and 1000 Lats (around 1500 Euros) in the gender discrimination case; in all three cases decided in 2005, the courts, when deciding on the amount of damages to be awarded, specifically and expressly used the considerations of the need for the sanction to fulfil the preventive function. The Administrative Procedure Law provides for compensation for financial loss or personal harm, including moral harm, which has been caused to an individual by an administrative act or an actual action of an institution. Some sanctions which are not specific to discrimination which could nevertheless be applied to discrimination cases, namely fines, can be found in the Code of Administrative Offences. The current case law suggests that, in the absence of discrimination-specific provisions in the Civil Law, the other provisions in the Civil Law for moral damages in relation to the violation of dignity and honour might be and indeed have been applied. However, none of these sanctions has ever been applied in the context of discrimination covered by the Directives thus, their character of being "effective and dissuasive" depends on their application in the future. It is also apparent that there are gaps in legislation that should be filled by providing for administrative punishment in cases which do not fall under the provisions of the Criminal Code. All in all, the incomplete legal framework makes the issue of sanctions, as well as in general that of actually applying and enforcing the existing anti-discrimination law, rather problematic.

6. Equality bodies

The tasks of the specialised body are currently performed by the National Human Rights Office (NHRO). The NHRO is an independent ombudsman-like institution entrusted with the task of promoting the observance of human rights. By the amendments to the Law on the National Human Rights Office adopted 15.12.2005 the national NHRO has been officially designated the specialised body for the promotion of equal treatment – without listing the grounds of discrimination and thus not limited to any specific one, but encompassing all of them. Until this amendment the national Human Rights Office did not have a special mandate in the field of non-discrimination, but a wider one relating to human rights in general. Its functions include inquiring into any individual complaint related to human rights violation, taking immediate measures in cases of human rights violations and identifying

situations causing human rights violations on its own initiative, monitoring the human rights situation in the country and preparing and promoting programmes for the promotion of the observance of human rights. The NHRO is entitled to review individual complaints, to acquire the necessary information and to strive for an amicable settlement. If this fails, the NHRO advises the parties of its opinion and proposals in the form of recommendations and also presents its suggestions and recommendations for the prevention of human rights violations to the relevant institution or official. However, it cannot enforce its recommendations, nor can it levy any fines; it may bring a Constitutional Court case if it considers that the legislation does not comply with a norm of higher legal force, which it has done on a number of occasions. The recent amendments confer on the National Human Rights Office the new right after the examination of the complaint, with the agreement of the person concerned, to submit an application to the institution that has discriminated or to bring an application to the court in civil or administrative cases where the essence of the case is related to the violation of the prohibition of differential treatment

This leaves the NHRO with a rather limited mandate and its role in enforcing the principle of non-discrimination is further undermined by insufficient funding and a heavy workload. The reform of the National Human Rights Office is expected to take place by January 2007 resulting in the creation of an ombudsman institution.