



Executive Summary

Country Report Latvia 2011 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 of a 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. According to the 2011 Population Census, out of 2,067,887 people registered in the Population Register of Latvia, the ethnic composition was as follows: 62,1% Latvians; 26,9% Russians; 3.3% Belarusians; 2.2% Ukrainians; 2.2% Poles; 1.2% Lithuanians; 0.3 Jewish; 0.1% Estonians; 0.3% Roma, 0,1% Germans, 1,3% - others. Latvian citizens constitute 1, 732, 880 persons or 83,8% of the population; of these, ethnic Latvians constitute 71.42%. 14.1% of inhabitants are non-citizens,¹ of which ethnic Russians constitute the largest group at 65.75%. 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 remain sensitive.

A study conducted in 2002 indicated that the percentage of ethnic Latvians in the public sector is disproportionate. Proportion of minorities among employees in public administration is below 20%, or less than a half of their share in the population.² The Roma population experiences discrimination in employment and accessing services, which was confirmed by a study conducted in 2003, the only such study to date. Roma only classes have decreased since 2003, perceived as a learning aid by some and as discriminatory by others. In 2011/2012 such Roma classes were in two schools. The Roma population in Latvia is relatively small, comprising 8,517 people according to the official data of the 2011 population census, 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.

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.

² Hazans, Mihails. Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers. in Muižnieks, N. (ed) How Integrated is Latvian Society? An Audit of Achievements, Failures and Challenges, Riga: University of Latvia Press, 2010. p.145, available in English http://szf.lu.lv/files/petnieciba/publikacijas/Integracija_anglu.pdf.



According to the study “Attitude towards the Elderly and their Discrimination on the Latvian Labour Market” by 2020 there will be “more people of the retirement age than children and youth under the age of 19 in Latvia.” At the same time, people over 40-45 experience discrimination because of their age in the Latvian labour market. The study highlights the collision between the demographic pressures and the policy goals of facilitating economic activity of the elderly on the one hand and the dominant negative attitude towards employment of the elderly on the other.³

The difficulties of disabled persons in finding employment are also common knowledge, although there are no sufficiently representative studies to confirm this either.

In 2007, a study on specific problems in the labour market of Latvia and its regions was carried out on discrimination monitoring in Latvia; it evaluated the openness of the Latvian labour market as regards ensuring equal attitude towards all social groups, including the so-called risk groups – people with special needs, pre-retirement age etc., and examined the existing social inequality and its expressions among various social groups in regions.

A study published in 2010 “Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers” concludes that the ethnic employment gap re-emerged as a result of the economic crisis and most serious problem for ethnic minorities in the labour market is that they face significantly higher unemployment risk, while the most urgent task is to achieve adequate representation of minorities in the public administration – currently less than half of the minority share in the population.⁴

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. Sexual orientation remains a controversial topic, and the repeated attempts to amend the Labour Law to add express reference to sexual orientation in the non-discrimination clause instead of simply “other circumstances” succeeded only in September 2006. Also the negative publicity to non-discrimination issues resulting from the first Gay Pride in Riga in July 2005 and subsequent Gay Prides has to be noted.

³ Rungule, R., Lāce, T. (2010), Attieksme pret veciem cilvēkiem un viņu diskriminācija Latvijas darba tirgū (Attitude towards the Elderly and their Discrimination on the Latvian Labour Market) Riga, Stradins University, pp. 208-214.

⁴ Hazans, Mihails. Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers. in Muižnieks, N. (ed) How Integrated is Latvian Society? An Audit of Achievements, Failures and Challenges, Riga: University of Latvia Press, 2010. pp.125-158 available in English http://szf.lu.lv/files/petnieciba/publikacijas/Integracija_anglu.pdf.



In this context, it appears that it is necessary to take a more active stand to actually promote equal treatment. 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), as well as after the events surrounding the Gay Pride parade – the sexual orientation issue.

After the transposition of the anti-discrimination Directives and the closure of the Secretariat of the minister for special assignments for Integration of the Society (integrated into the Ministry of Children, Family and Integration Affairs as of 1 January 2009; with its liquidation some of its functions were taken over by the Ministry of Justice and since 2011 - Ministry of Culture) there is no national authority co-ordinating issues regarding discrimination. The Ministry of Welfare is responsible for issues relating to the discrimination in employment relationships, social security as well as in relation to equal opportunities by the disabled persons and gender equality, thus covering grounds of gender, disability and age. The Ombudsperson's Office has not assumed a co-ordinating role nationally on non-discrimination issues.

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 most of the 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, the Convention of the Rights of the Child and since 2010 – also of the Convention on the Rights of Persons with Disabilities. The Latvian Government has not recognized the competence of the Committee on the Elimination of Racial Discrimination, though. The above-mentioned ratified 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 while the laws still contain some scattered and random anti-discrimination clauses that were adopted even before the accession process started, the coverage has improved due to the adoption of amendments to existing laws, such as the latest 28.10.2010 amendments to the Law on Consumer Rights Protection or the 04.03.2010 amendments to the Law on Education. 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; subsequently it was amended to address the remaining gaps. It prohibits discrimination in employment relationships covered by this law, and since November 2006 its non-discrimination provisions apply to state civil service relationships.

The Labour Law is the only law to include sexual orientation as a prohibited ground and, together with the law on Social Security that was amended in December 2005 in order to comply with the Directives and Consumer Rights Protection Law it is also one of the three laws that expressly refer to disability. The Law on Consumer Rights Protection as amended addresses one of the important gaps in the Latvian anti-discrimination legislation, namely access to goods and services, however, its list of prohibited grounds is limited to gender, race, ethnic origin and disability. Gender, race and ethnic origin remain the only prohibited discrimination grounds in the Law on prohibition of discrimination of natural persons who are economic operators that covers access to self-employment and access of self-employed persons to goods and services. The three laws that refer to age as a prohibited ground of discrimination are the Labour Law, the Law on Social Security, and the Law on the Rights of Patients.

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. Even where the list of grounds is left open, which is also the case for the 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, although housing issues now come under the amended Law on Consumer Protection.

The Criminal Law amended in 2007 protects against discrimination on the basis of racial or national origin, as well as "violation of prohibition of discrimination provided for in legal acts". To be efficient, this provision requires adequate coverage of discrimination by other legal acts, which is not the case yet.

In 2011, attempts were made by certain MPs to amend the employment legislation in order to prohibit the employers from applying disproportionate foreign language requirements (predominantly Russian)⁵ to prevent the alleged discrimination of Latvian youth on the labour market, particularly in the private sector. The employment legislation does not mention language explicitly as a prohibited discrimination ground, but leaves a non-exhaustive list.

The main problem with Latvian anti-discrimination legislation is the patchy nature of the regulation, from which most other problems arise. While it can be said that generally all of the required fields are covered, within those fields not all of the required grounds are covered; the basic definitions exist only in four laws (the Labour Law, Law on Social Security, the Law on the support to unemployed persons and job seekers and the Law on Consumer Protection). There is a lack of a consistent system of sanctions, and only after the amendments adopted in November 2006 the hitherto very limited legal standing in discrimination cases for NGOs and other entities with legitimate interest in the implementation of the anti-discrimination provisions was broadened.

The number of discrimination related court cases has been increasing, predominantly on grounds of gender.

3. Main principles and definitions

The Labour Law, the Law on Social Security,⁶ Law on the support to unemployed persons and job seekers and the Law on Consumer Rights Protection contain definitions of direct and indirect discrimination and harassment which were drafted based on those in the directives and comply with them; they also prohibit instruction to discriminate. However, protection against victimisation exists in the framework of the Labour Law, the Law on Consumer Rights Protection, the Law on the support to unemployed persons and job seekers the Law on Social Security and the Law on prohibition of discrimination of natural persons who are economic operators, the

⁵ Spoken on daily basis between 35%-40% of Latvia's population.

⁶ The old definition of indirect discrimination narrowing to comparable situations remains in the law.



Education Law and in connection with a complaint to the Ombudsman's 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 the person who is invoking the provision) race, religious conviction etc. certainly would leave it easier to address discrimination based on assumed characteristics than that 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* disability.

The Labour Law, the Law on Social Security, the Law on prohibition of discrimination of natural persons who are economic operators, the Law on the support to unemployed persons and job seekers and the Law on Consumer Protection are also the 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 Labour Law provides for an exemption for employment by religious organisations which on its face is broader than the one provided for by the Directive. The Labour Law also sets out the obligation of the employer to provide reasonable accommodation for disabled people.

There are no rules nor known plans of adopting such, addressing the issue of multiple discrimination.

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, both in the public and private sector, including state civil service relationships (yet excluding military service) and contract work of self-employed persons (in the latter case the protected grounds include only gender and racial and ethnic origin), including the establishment of such relationships, concerning *inter alia* gender, race, age, disability, religion and sexual orientation.⁷

Access to vocational guidance and training, as well as issues of education in both the public and the private sectors are covered by the Labour Law which refers to "occupational training" and the Law on Education,⁸ which also applies to both the

⁷ The complete list includes "race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances".

⁸ Listing as prohibited grounds "property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence".



public and private sectors. The 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. Education and training could also come under the Law on Consumer Rights Protection, but the list of its prohibited grounds is limited to gender, race, ethnic origin and disability. The Law on the support to unemployed persons and job seekers covering the retraining prohibits discrimination on grounds gender, race and ethnic origin.

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; while in relation to the former two the provision of the Labour law applies, professional organisations remain problematic and uncovered.

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 disability,⁹ 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 covered as of 28 October 2010 by the amended Law on Consumer Rights Protection. However, its list of prohibited grounds is limited to gender, race, ethnic origin and disability which as such is not contrary to the Directives, but shows the unwillingness to address the problem of discrimination in a wider context. The same applies to the Law on prohibition of discrimination of natural persons who are economic operators that prohibits discrimination on access to goods and services of persons who are economic operators, as well as access to self-employment – which raises a concern under Directive 2000/78.

5. Enforcing the law

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

- Courts of general jurisdiction; an increasing, but yet limited number of cases alleging discrimination have been decided by the courts, predominantly on the grounds of gender.
- 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.

⁹ The list of prohibited grounds, with the exception of sexual orientation, is the same as in the Labour Law, see footnote 7.



- 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. Sanctions have mostly been imposed for discriminatory advertisements (age, gender, and in one case - ethnicity).
- Ombudsman's Office, which is empowered to strive for amicable settlement; it can file a complaint in an administrative court if it is in the public interest, or bring a case to the civil court if the issue is violation of equal treatment.

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. After the November 2006 amendments organisations can submit a complaint or being a case on behalf of the natural persons who are the victims of discrimination. Also the Ombudsman's Office can bring such a case.

The provision on the shift in the burden of proof is included in the Labour Law, which only applies to employment relationships, the Law on Consumer Protection and the Law on prohibition of discrimination of natural persons who are economic operators (both latter laws covering access to goods and services), as well as in Law on Education and Law on the Support to Unemployed Persons and job seekers. In two Supreme Court judgements lower courts have been criticised for failing to shift the burden of proof (2011 – employment, gender; 2007 -employment, disability) as the proceedings had continued in adversarial fashion. 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 relatively low average compensations awarded in discrimination cases raise the issue of their proportionality, effectiveness and dissuasiveness. Moreover, the majority of court judgements are not publicly available. The provisions of Criminal Law providing for criminal penalties of up to two years' imprisonment have not been applied yet.

In the context of employment, in 2005-2006 in the discrimination cases brought under the Labour Law the amounts awarded were 1,000 LVL (around 1500 EUR) in the gender discrimination cases; and the courts, when deciding on the amount of damages to be awarded, specifically and expressly use the considerations of the need for the sanction to fulfil the preventive function. From 2007 through 2011 in the known discrimination cases before the courts which resulted in the favourable outcome for the victim (eight - concerning discrimination on ground of gender, two - on ground of disability) the amounts awarded ranged from 300 LVL (~428 EUR) to 5,000 LVL (~7,142 EUR). In two conciliation agreements confirmed by courts in

2008, the claimants were awarded 5,000 LVL (~7,142 EUR, gender (pregnancy, termination of the labour contract) and 800 LVL (1,142 Euros, gender, job interview). In one conciliation agreement in 2007, the claimant was awarded 3,000 LVL (4,285 Euros, disability, dismissal). In 2010, the claimant was awarded 300 LVL (~428 Euros, gender, recruitment, claimed 5,000 LVL (7,142 Euros). In 2011 one claimant was awarded moral compensation 1,000 LVL (1,428 Euros, employment, disability) by appeal court, but the case is pending with the Supreme Court.

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. The Code of Administrative Offences provides for a fine of from 100 to 500 LVL for violation of prohibition of discrimination.

From 1 January 2008 until 31 July 2011, the State Labour Inspectorate took decisions in 11 cases concerning violation of prohibition of discrimination, two cases in 2008, two in 2009, one in 2010, and six in the first seven months of 2011. The majority of cases concern advertisements for job vacancies indicating unjustified requirements concerning potential employee's gender, age or ethnicity. In practice, in discrimination cases the SLI has tended to apply the general provision on violations concerning employment legal relation and not the anti-discrimination provision. Minor sanctions - warnings, small fines 100-200 LVL, availability of decisions only upon requests, small maximum sanction raises the question whether the sanctions are effective, proportionate and dissuasive.

6. Equality bodies

Since March 2007 the tasks of the specialised body are performed by the Ombudsman's Office which is entrusted with the task of promoting the observance of human rights, including the promotion of equal treatment – without listing the grounds of discrimination and thus encompassing all of them. Its functions include inquiring into any individual complaint related to human rights violation, as well as starting investigations on its own initiative, analyzing the observance of human rights and issuing surveys and reports. The Ombudsman's Office is entitled to review individual complaints, to acquire the necessary information and to strive for an amicable settlement. If this fails, the Office can advise the parties of its opinion and proposals in the form of recommendations and also present its suggestions and recommendations; however, it cannot enforce its recommendations, nor can it levy any fines. It has the right to bring a Constitutional Court case if the legislation does not comply with a norm of higher legal force. Likewise, it can file a complaint in an administrative court if it is in the public interest, or bring a case to the civil court if violation of equal treatment is at issue. It also provides legal advice to the victims and can help them to prepare a court case. To-date the Ombudsman has never represented a client in a discrimination case in court, but has facilitated the conclusion of two conciliation agreements.



The budget cuts – in comparison to 2008 the budget of the Office was cut by 57 % in 2010, and slightly raised in 2011 and the personnel has been cut by roughly $\frac{1}{4}$ – inevitably affect the functioning of the body. A legally guaranteed minimal budget might be a solution. The remaining of one –two staff members specialising on non-discrimination issues in the Office raises concern as to the compliance of the Ombudsman's Office with the requirements of the Race Equality Directive (designated equality body) in practice.