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Country report

Non-discrimination

Latvia

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EXECUTIVE SUMMARY

1. Introduction

Latvia is 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. In 2011, of a population of 2 067 887, 62.1 % were 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, and 1.3 % others.¹ Latvian citizens number 1 732 880 or 83.8 % of the population; of these, ethnic Latvians constitute 71.42 %. 12.1 % or 262 030 inhabitants are non-citizens,² of which ethnic Russians are the largest group. Therefore, 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.

The Roma population experience discrimination in different areas of life as evidenced by a study conducted in 2003, the only such study to date. The number of Roma-only classes has decreased since 2003, and in 2013-2014 such classes took place in only one school. Nevertheless, the share of Roma children attending special schools – 26 % – is disproportionally higher than the national average – 3.5 %.³ The Roma population in Latvia is relatively small, at 8 517 (2012), although it is higher according to data from Roma associations.

According to the study 'Attitude towards the Elderly and their Discrimination on the Latvian Labour Market', people over 40-45 experience discrimination because of their age in the Latvian labour market. The difficulties of disabled persons in finding employment are also common knowledge, although there are no sufficiently representative studies to confirm this.

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 that the most serious problem for ethnic minorities in the labour market is that they face a significantly higher unemployment risk, while the most urgent task is to achieve adequate representation of minorities in public administration.⁴

There is no documented evidence about the difficulties encountered by people in sexual minorities, most probably due to the fact that many of them 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.

The only consultations with NGOs taking place on a regular basis are those addressing issues of disability and gender. While a framework for dialogue with social partners also exists, the issue of discrimination has still only been addressed to a limited extent, and mostly on gender issues. There is very little public debate, and it has largely concentrated

¹ 2011 Population Census.

² Non-citizens are a special category of people - former USSR citizens who were resident in Latvia on 1 July 1991 and who have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons. Data concerning citizenship are as of 01.01.2015.

³ Ministry of Culture (2014) Informative Report on the Implementation of Roma Integration Policy Measures (Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā), 12. lpp, at http://www.km.gov.lv/lv/doc/ministrija/saliedeta_sabiedriba/Romi/KM_230315_romi.pdf.

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.

on issues of Russian-speakers and related issues, as well as in connection with Gay Pride events – the sexual orientation issue.

Since the transposition of the anti-discrimination directives and the closure of the Secretariat of the Special Assignments Minister for Integration Affairs, there has been no national authority co-ordinating issues related to non-discrimination.

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,⁵ which provides, 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 public bodies.

Apart from Protocol No. 12 to the European Convention on Human Rights,⁶ which the country has signed but not ratified yet, Latvia is a party to most of the important international agreements relevant for counteracting discrimination, such as the International Covenant on Civil and Political Rights,⁷ the Optional Protocol to the Covenant,⁸ the Covenant on Economic, Social and Cultural Rights,⁹ the Convention on the Elimination of All Forms of Racial Discrimination,¹⁰ the Framework Convention on the Protection of National Minorities,¹¹ the Convention of the Rights of the Child¹² and, since 2010, the UN Convention on the Rights of Persons with Disabilities.¹³ In 2013 Latvia ratified the Revised European Social Charter.¹⁴ The Latvian Government has not recognised the competence of the Committee on the Elimination of Racial Discrimination, however. These ratified instruments constitute part of the domestic legal order, having been promulgated in the *Official Journal*, and they 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. However, coverage has improved due to the adoption of amendments to existing laws. The main problem is that, since discrimination is not outlawed in the private sector unless

⁵ Latvia, Constitution (*Satversme*), 15.02.1922.

⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 04.11.1950, ETS 5.

⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16.12.1966, United Nations, Treaty Series, vol. 999.

⁸ UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights*, 19.12.1966, United Nations, Treaty Series, vol. 999.

⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16.12.1966, United Nations, Treaty Series, vol. 993.

¹⁰ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21.12.1965, United Nations, Treaty Series, vol. 660.

¹¹ Council of Europe, *Framework Convention for the Protection of National Minorities*, 01.02.1995, ETS 157.

¹² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

¹³ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24.01.2007, A/RES/61/106.

¹⁴ Council of Europe, *European Social Charter (Revised)*, 3.05.1996, ETS 163.

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 Law¹⁵ adopted in 2001, which was subsequently amended to address the remaining gaps. This law prohibits discrimination in the employment relationships that it covers and, since November 2006, its non-discrimination provisions have applied to state civil service relationships.

The Labour Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators¹⁶ are the only laws to include sexual orientation as a prohibited ground and, together with the Law on Social Security¹⁷ and the Consumer Rights Protection Law, they are among the four laws that expressly refer to disability. The Consumer Rights Protection Law (access to goods and services) limits the prohibited grounds to gender, race, ethnic origin and disability. The six laws that refer to age as a prohibited ground of discrimination include the Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security and the Law on Patients' Rights.

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, as in the case of the Law on Social Security, this does not explicitly cover all the 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'. Some laws do not contain any anti-discrimination clauses, for example the Law on Housing, although housing issues come under the amended Consumer Rights Protection Law.

The Criminal Law amended on 25 September (in force from 29 October) 2014 now extends the prohibition of hate crimes/incitement to hatred on grounds of gender, age, disability and other circumstances, along with the prohibition of racially and religiously motivated crimes.¹⁸ Sexual orientation is not expressly mentioned.

The main problem with Latvian anti-discrimination legislation is the patchy nature of the regulations, from which most other problems arise. Generally, all of the required fields are covered, although within those fields not all of the required grounds are covered.

3. Main principles and definitions

The Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security,¹⁹ the Law on Support to Unemployed Persons and Job Seekers²⁰ and the Consumer Rights Protection Law²¹ contain definitions of direct and indirect discrimination and harassment which comply with the directives; they also prohibit instruction to discriminate. Protection against victimisation exists in the framework of the Labour Law, the Consumer Rights Protection Law, the Law on Support to Unemployed Persons and Job Seekers, the Law on Social Security, the Law on the Prohibition of

¹⁵ Latvia, Labour Law (*Darba likums*), 12.06.2001.

¹⁶ Latvia, Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (*Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums*), 19.12.2012.

¹⁷ Latvia, Law on Social Security (*likums 'Par sociālo drošību'*), 07.09.1995.

¹⁸ Latvia, Criminal Law (*Krimināllikums*), 17.06.1998.

¹⁹ The old definition of indirect discrimination narrowing to comparable situations remains in the law.

²⁰ Latvia, Law on Support to Unemployed Persons and Job Seekers (*Bezdarbnieku un darba meklētāju atbalsta likums*), 09.05.2002.

²¹ Latvia, Consumer Rights Protection Law (*Patērētāju tiesību aizsardzības likums*), 18.03.1999.

Discrimination of Natural Persons-Economic Operators and the Education Law,²² and in connection with complaints 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 make it easier to address discrimination based on assumed characteristics than based on association. However, in the absence of 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 there is concern that disability might be interpreted narrowly compared with under the UN Convention on the Rights of Persons with Disabilities, using the technical meaning of this term, i.e. relying on formal recognition of a person's diminished ability to work and excluding de facto disability.

The Labour Law is the only law providing for justification of differential treatment on different grounds in relation to genuine occupational requirement.

Provisions relating to exceptions in other laws ('differential treatment associated with any of the grounds shall only be acceptable in such cases if such treatment is objectively justified with a legitimate purpose, for the achievement of which the selected means are proportionate') such as the Law on Social Security, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Support to Unemployed Persons and Job Seekers, the Education Law and the Consumer Rights Protection Law do not distinguish between direct and indirect discrimination, nor do they distinguish between the grounds covered by the directives and other grounds for differential treatment. The amendments to the laws concerning discrimination (including direct discrimination) have been adopted with the purpose of transposing the directives into national law but, in separate instances, they lack sufficient precision. In such cases it remains for the courts to consult the text of the directives. Additionally, the Labour Law provides for an exemption for employment by religious organisations, which, on the face of it, is broader than the one provided for by the directive. The Labour Law sets out the obligation of the employer to provide reasonable accommodation for disabled people. There are no rules on 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 and in both the public and private sectors, including state civil service relationships (but excluding military service) and contract work carried out by self-employed persons. This includes the establishment of such relationships and concerns, inter alia, gender, race, age, disability, religion and sexual orientation.²³

Access to vocational guidance and training, as well as issues of education in both the public and private sectors, are covered by the Labour Law, which refers to 'occupational training', and by the Law on Education,²⁴ which also applies to both the public and private sectors. The problem with the latter law, however, is that it contains an exhaustive list of grounds which does not include age, disability (although it could be argued that this can be subsumed under the 'health' heading) or sexual orientation. Education and training could

²² Latvia, Education Law (Izglītības likums), 29.09.1998.

²³ 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'.

²⁴ Listing 'property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence' as prohibited grounds.

also come under the Consumer Rights Protection Law, but the list of its prohibited grounds is limited to gender, race, ethnic origin and disability. The Law on Support to Unemployed Persons and Job Seekers, which covers retraining, prohibits discrimination on the grounds of 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; whereas the provisions of the Labour Law apply in relation to the first of these two, professional organisations remain problematic and are not covered. The field of social protection, including social security and healthcare, has been covered by the Law on Social Security, which lists age and disability,²⁵ although express reference to sexual orientation is missing. 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 by the Consumer Rights Protection Law. Its list of prohibited grounds is limited to gender, race, ethnic origin and disability, which is not contrary to the directives as such.

5. Enforcing the law

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

- Courts of general jurisdiction;
- Constitutional Court - legislation which is allegedly discriminatory on the grounds of age has twice been challenged in it;
- 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;
- Ombudsman's Office, which is empowered to strive for an amicable settlement; it can file a complaint in an administrative court if it is in the public interest, or it can bring a case to the civil court if the issue concerns a 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 cases²⁶ has been in force since 2005, yet its real impact has still to be evaluated. NGOs can submit a complaint or bring a case on behalf of natural persons who are the victims of discrimination. The Ombudsman's Office can also bring such a case. However, the amendments to the Civil Procedure Law adopted in December 2013 now restrict representation at cassation court level, including on discrimination matters, to victims and advocates only, and this excludes NGOs, the Ombudsman and other legal practitioners.

The provision on the shift in the burden of proof is included in the Labour Law, (employment), the Consumer Rights Protection Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (both these latter laws covering access to goods and services), as well as in Law on Education and the Law on Support to Unemployed Persons and Job Seekers.

On several occasions, the Supreme Court has criticised lower courts for failing to shift the burden of proof.²⁷ In cases coming under the Administrative Procedure Law, the exception of examination *ex officio* applies.

²⁵ The list of prohibited grounds, with the exception of sexual orientation, is the same as in the Labour Law.

²⁶ State-sponsored legal aid in administrative cases was discontinued in 2009.

²⁷ Latvia, Supreme Court Civil Case Department (*Augstākās tiesas Civillietu tiesu palāta*), R. S. v. Riga New St Gertrude Evangelical Lutheran Church (R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze; Latvia, Supreme Court Senate, (*Latvijas Republikas Augstākās tiesa*) Case Nr. SKC-684/2012 (E.L. v State Joint Stock Company International Airport Riga [E.L. v Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”]).

Latvian national law is silent on the issue of situation testing and the use of statistical evidence. There is no evidence of them being used and hence no case law.

The relatively low average compensations awarded in discrimination cases raises the issue of their proportionality, effectiveness and dissuasiveness. Moreover, the majority of court judgments are not publicly available. The provisions of the Criminal Law providing for penalties of up to two years' imprisonment have never been applied.

The majority of discrimination cases brought before the courts concern the area of employment, and predominantly relate to gender grounds. From 2005 to 2014 inclusive, in the known discrimination cases which resulted in a favourable outcome for the victim (of which there were over a dozen, two concerning discrimination on the ground of gender, two on disability,²⁸ one on ethnic origin,²⁹ one on age³⁰ and one on victimisation), the amounts awarded ranged from EUR 428 (approx. LVL 300)³¹ to EUR 7 142 (LVL 5 000). The highest award was granted in a conciliation case, while the median moral compensation awarded has been EUR 1 500 (LVL 1 000).

Since the ratification of the UN CRPD, several court cases have arisen in relation to the reasonable accommodation of persons with disability in the realm of social protection³² and access to public buildings in relation to healthcare services.³³

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 by the actual action of an institution. The Code of Administrative Offences provides for a fine ranging from EUR 140 to EUR 715 for violation of prohibition of discrimination. The State Labour Inspectorate has imposed sanctions predominantly in discriminatory job advertisement cases on grounds of gender, age or ethnicity. Sanctions have ranged from warnings to fines ranging from EUR 70 to EUR 535, but such small amounts cannot be considered dissuasive. The Supreme Court, in line with Court of Justice of the European Union jurisprudence, has clarified that there is no need to specifically prove the existence of moral damage in cases of discrimination, as moral damage is presumed from the very fact of discrimination in employment relationships.³⁴

6. Equality bodies

Since March 2007, the tasks of the specialised body have been 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 a human rights violation, starting investigations on its own initiative, analysing the observance of human rights and issuing surveys and reports. The 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 can also present its suggestions

²⁸ Latvia, Supreme Court Civil Case Department (*Augstākās tiesas Civillietu tiesu palāta*), R. S. v. Riga New St Gertrude Evangelical Lutheran Church (R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze), 11.04.2007; Latvia, Kurzeme Regional Court (Kurzemes apgabaltiesas Civillietu tiesas kolēģija), case No. C40066110 (V.Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd]), 21.09.2011.

²⁹ Latvia, Jelgava Court (Jelgavas tiesa), S.Kozlovska v SIA Palso, Case No C15066406, 25.05.2006.

³⁰ Latvia, Supreme Court Senate (Augstākās tiesas Senāts), Case No No C32276312 (SKC-1702/2013), 29.11.2013.

³¹ Latvia switched to using the euro as its national currency, replacing the *lat* on 01.01.2014.

³² Administrative Regional Court (*Administratīvā apgabaltiesa*), Case No A420528911B. v. State Social Insurance Agency (*B.V. pret Valsts Sociālās apdrošināšanas aģentūru*), 27.09.2013.

³³ Latvia, Administrative District Court (*Administratīvā rajona tiesa*), Case No A420571712, 02.12.2013 Latvia, Supreme Court Civil Case Department (*Augstākās tiesas Civillietu tiesu palāta*), R. S. v. Riga New St Gertrude Evangelical Lutheran Church (R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze).

³⁴ Latvia, Supreme Court Senate (Augstākās tiesas Senāts), Case No. C32276312 (SKC – 1702/2013), 29.11.2013, at <http://www.l2d.lv/v.php?i=82540>.

and recommendations to the relevant institution or official; 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 this is in the public interest, or it can 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. Since 2007 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 during the economic crises inevitably affected the functioning of the body. In 2010 the budget of the office was cut by 57 % compared with 2008. This resulted in cuts to personnel. At different times, there have been one to three staff members specialising in non-discrimination issues in the office, which has raised concerns as to its compliance with the requirements of the Racial Equality Directive (designated equality body) in practice. The budget for 2014 was raised slightly to EUR 1 131 770,³⁵ and the Legal Equality Section comprised three members of staff.³⁶

7. Key issues

Beyond employment, not all areas covered by the non-discrimination directives explicitly refer to all grounds (particularly sexual orientation) addressed by the directives.

Labour Law provision concerning religious ethos seems to create a broader exception than the one provided for in Directive 2000/78, yet it remains to be seen how it will be interpreted by the courts.

In September 2014, the Parliament adopted amendments to the Criminal Law, criminalising hate crimes/speech on 'grounds of gender, age, disability and other circumstances' without naming sexual orientation explicitly. The overall context may impact upon the readiness of the authorities to include all the grounds of discrimination prohibited by the directives in other areas beyond employment.

There remains no national co-ordination on non-discrimination issues. Since 2004, case law has remained limited concerning discrimination on grounds of race/ethnic origin (1), disability (2), age (2), religion (0), and sexual orientation (0).

The amendments to the Civil Procedure Law excluding NGOs from representing victims of discrimination at the instance of cassation contravene the non-regression clauses of the equality directives.

³⁵ The projected budget was EUR 1 157 884.

³⁶ Although, since early 2015, the office has no longer had this section. See: Ombudsman (*LR Tiesībsargs*). Staff, available in Latvian at <http://www.tiesibsargs.lv/par-mums/darbinieki>.

RÉSUMÉ

1. Introduction

La Lettonie est un pays multiethnique, où la proportion des différents groupes ethniques formant la population a cependant varié avec le temps. L'origine ethnique est consignée dans le registre de l'état civil sur la base de l'origine ethnique des parents et peut être modifiée à l'âge de la majorité en choisissant l'origine ethnique des grands-parents. L'inscription de l'origine ethnique dans le passeport est facultative. En 2011, les 2 067 887 habitants se répartissaient comme suit: 62,1 % de Lettons, 26,9 % de Russes, 3,3 % de Biélorusses, 2,2 % d'Ukrainiens, 2,2 % de Polonais, 1,2 % de Litوانيens, 0,3 % de Juifs, 0,1 % d'Estoniens, 0,3 % de Roms, 0,1 % d'Allemands et 1,3 % d'autres origines.³⁷ Les citoyens lettons, au nombre de 1 732 880, représentent 83,8 % de la population, dont 71,42 % de Lettons de souche. Le pays compte 12,1 % de non-ressortissants,³⁸ soit 262 030 habitants, parmi lesquels les Russes de souche constituent le groupe le plus important. Il en résulte que les questions relatives aux non-ressortissants sont souvent traitées comme des questions concernant principalement les Russes ou les russophones, et que les droits des ressortissants et des non-ressortissants, de même que les questions linguistiques, restent des sujets sensibles en Lettonie.

La population rom connaît une discrimination dans différents domaines de vie, comme le montre une étude réalisée en 2003 (et qui reste à ce jour l'unique étude à ce sujet). Le nombre de classes réservées aux élèves rom est en recul depuis 2003, et ce type de classe n'existait plus que dans une seule école en 2013/2014. Il n'en reste pas moins que le pourcentage d'enfants roms suivant un enseignement spécial, à savoir 26 %, est disproportionnellement élevé par rapport à la moyenne nationale de 3,5 %.³⁹ La population rom est relativement peu importante en Lettonie: elle comptait 8 517 personnes selon les chiffres de 2012, mais pourrait être plus nombreuse selon les données des associations roms.

Il ressort d'une étude consacrée à l'attitude envers les personnes âgées et la discrimination à leur égard sur le marché du travail letton que les personnes de plus de 40-45 ans se heurtent sur ce marché à une discrimination fondée sur leur âge. La difficulté rencontrée par les personnes handicapées pour trouver un emploi est également de notoriété publique, même si l'on ne dispose d'aucune étude suffisamment représentative pour le confirmer.

Une étude publiée en 2010 sur le thème «Les minorités ethniques sur le marché du travail letton, 1997–2009: bilan, moteurs et freins de l'intégration»⁴⁰ conclut que l'écart d'emploi fondé sur l'origine ethnique a réapparu par suite de la crise économique, et que la plus grande difficulté rencontrée par les minorités ethniques sur le marché du travail est un risque de chômage nettement plus élevé; elle ajoute que la tâche la plus urgente est l'instauration d'une représentation adéquate des minorités au sein de l'administration publique.

On ne dispose d'aucun élément de preuve circonstancié concernant les difficultés rencontrées par les membres de minorités sexuelles, en raison très probablement du fait

³⁷ Recensement démographique 2011.

³⁸ Les non-ressortissants forment une catégorie spéciale regroupant des ressortissants de l'ex-URSS qui résidaient en Lettonie au 1^{er} juillet 1991 et n'ont obtenu la citoyenneté d'aucun autre pays; le terme n'englobe donc pas ici les ressortissants étrangers ni les personnes apatrides. Les données relatives à la citoyenneté reflètent la situation au 1^{er} janvier 2015.

³⁹ Ministère de la Culture (2014), Rapport informatif sur la mise en œuvre des mesures en faveur de l'intégration des Roms (*Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā*), 12. lpp, disponible sur http://www.km.gov.lv/lv/doc/ministrija/saliedeta_sabiedriba/Romi/KM_230315_romi.pdf.

⁴⁰ Hazans, Mihails. *Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers*. Dans Muižnieks, N. (Éd.) *How Integrated is Latvian Society? An Audit of Achievements, Failures and Challenges*, Riga: Presse de l'université de Lettonie, 2010. p.125-158.

que beaucoup de ces personnes n'ont d'autre choix que de dissimuler leur orientation sexuelle face aux attitudes négatives largement répandues au sein de la société lettone. L'orientation sexuelle reste un sujet controversé.

Les seules consultations régulières d'ONG concernent les questions relatives au handicap et au genre. S'il existe également un cadre de dialogue avec les partenaires sociaux, la question de la discrimination n'y a été abordée jusqu'ici que de façon restreinte et en rapport surtout avec le genre. Le débat public est très limité et se concentre principalement sur la problématique des russophones et les questions connexes, ainsi que sur la problématique de l'orientation sexuelle en rapport avec l'organisation de «Gay Prides».

Depuis la transposition des directives antidiscrimination et la fermeture du secrétariat du ministre chargé des affaires spéciales en matière d'intégration de la société, il n'y a plus d'autorité nationale assurant la coordination des questions relevant de la lutte contre la discrimination.

Le seul groupe spécifiquement ciblé est, dans une certaine mesure, celui des personnes handicapées puisqu'une loi s'efforce d'offrir des mesures d'incitation financière pour encourager les employeurs à les engager. On ne trouve nulle trace dans la législation lettone d'une disposition relative à d'éventuelles actions positives.

2. Législation principale

L'interdiction de discrimination a pour pierre angulaire l'article 91 de la Constitution lettone,⁴¹ qui prévoit notamment que les droits de l'homme seront observés sans discrimination d'aucune sorte. Ainsi donc, la Constitution proscriit toutes formes de discrimination, mais ne spécifie pas explicitement les motifs protégés. La Constitution est considérée comme ayant un effet direct, c'est-à-dire que ses dispositions sont directement exécutoires pour tous les organes publics, mais elle n'a pas d'effet horizontal. En d'autres termes, si la discrimination est illégale dans le secteur public même en l'absence de lois supplémentaires – celles-ci étant uniquement nécessaires pour prévoir des sanctions et l'application du principe de la non-discrimination – il s'avère essentiel d'adopter des lois spéciales pour proscrire la discrimination dans le secteur privé. Il en va de même des traités internationaux: ceux qui sont juridiquement contraignants pour la Lettonie ne s'appliquent qu'aux organes publics.

Hormis le protocole n° 12 de la Convention européenne des droits de l'homme,⁴² qu'elle a signé mais pas encore ratifié, la Lettonie adhère à la plupart des grandes conventions internationales de lutte contre les discriminations, telles que le Pacte international relatif aux droits civils et politiques⁴³ et son protocole facultatif,⁴⁴ le Pacte international relatif aux droits économiques, sociaux et culturels,⁴⁵ la Convention internationale sur l'élimination de toutes les formes de discrimination raciale,⁴⁶ la Convention-cadre pour la protection des minorités nationales,⁴⁷ la Convention relative aux droits de l'enfant⁴⁸ et, depuis 2010, la

⁴¹ Lettonie, Constitution (*Satversme*), 15 février 1922.

⁴² Conseil de l'Europe, *Convention de sauvegarde des droits de l'homme et des libertés fondamentales, telle que modifiée par les protocoles n° 11 et 14*, 4 novembre 1950, STCE n° 005.

⁴³ Assemblée générale des NU, *Pacte international relatif aux droits civils et politiques*, 16 décembre 1966, Nations unies, Recueil des traités, vol. 999.

⁴⁴ Assemblée générale des NU, *Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques*, 19 décembre 1966, Nations unies, Recueil des traités, vol. 999.

⁴⁵ Assemblée générale des Nations unies, *Pacte international relatif aux droits économiques, sociaux et culturels*, 16 décembre 1966, Nations unies, Recueil des traités, vol. 993.

⁴⁶ Assemblée générale des NU, *Convention internationale sur l'élimination de toutes les formes de discrimination raciale*, 21 décembre 1965, Nations unies, Recueil des traités, vol. 660.

⁴⁷ Conseil de l'Europe, *Convention-cadre pour la protection des minorités nationales*, 1^{er} février 1995, STCE n° 157.

⁴⁸ Assemblée générale des NU, *Convention relative aux droits de l'enfant*, 20 novembre 1989, Nations unies, Recueil des traités, vol. 1577.

Convention relative aux droits des personnes handicapées.⁴⁹ La Lettonie a ratifié en 2013 la Charte sociale européenne révisée.⁵⁰ Le gouvernement letton n'a toutefois pas reconnu la compétence du Comité pour l'élimination de la discrimination raciale. Ces instruments ratifiés font partie de l'ordre juridique interne après leur promulgation au Journal officiel et peuvent être appliqués directement par les juridictions nationales sauf si leur application requiert la promulgation d'une loi.

La législation antidiscrimination lettone est fragmentée. Il n'existe pas de loi unique et exhaustive, mais la couverture s'est améliorée suite à l'adoption d'amendements aux lois existantes. Le problème majeur est le fait que la discrimination n'est pas proscrite dans le secteur privé à moins qu'une loi l'interdise explicitement et que, même si elle est proscrite dans le secteur public en vertu de la suprématie de la Constitution, l'absence de loi d'exécution spécifique complique considérablement la mise en application de l'interdiction.

C'est dans la loi sur le travail,⁵¹ adoptée en 2001 et subséquemment modifiée pour combler les lacunes restantes, que l'on trouve l'interdiction de discrimination la plus complète. Cette loi interdit la discrimination dans les relations de travail qu'elle couvre et, depuis novembre 2006, ses dispositions antidiscrimination s'appliquent aux relations dans la fonction publique de l'État.

La loi sur le travail et la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique⁵² sont les seules à inclure l'orientation sexuelle en tant que motif interdit de discrimination; elles forment, avec la loi sur la sécurité sociale⁵³ et la loi sur la protection des droits des consommateurs, les quatre lois qui font expressément référence au handicap. La loi sur la protection des droits des consommateurs (accès aux biens et aux services) limite la liste des motifs interdits au genre, à la race, à l'origine ethnique et au handicap. Parmi les six lois mentionnant l'âge en tant que motif interdit de discrimination figurent la loi sur le travail, la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique, la loi sur la sécurité sociale et la loi sur les droits des patients.

Plusieurs autres lois contiennent des clauses de non-discrimination avec des listes exhaustives ou ouvertes de motifs de discrimination interdits, mais celles-ci n'incluent jamais tous les motifs visés par les directives. Même lorsque la liste des motifs est laissée ouverte, comme dans le cas de la loi sur la sécurité sociale, elle ne couvre pas explicitement tous les motifs visés par les directives. La loi sur l'enseignement contient une liste fermée qui se limite à «la fortune et au statut social, à la race, à l'appartenance ethnique, au sexe, aux convictions religieuses et politiques, à l'état de santé, à la profession et au lieu de résidence». Certaines lois ne contiennent aucune clause antidiscrimination: tel est notamment le cas de la loi sur le logement, bien que les questions relatives au logement tombent sous le coup de la loi modifiée sur la protection des droits des consommateurs.

La loi pénale, amendée le 25 septembre (et entrée en vigueur le 29 octobre) 2014 étend désormais l'interdiction de crimes de haine/d'incitations à la haine aux motifs du genre, de l'âge, du handicap et d'autres situations, en sus de l'interdiction des crimes à motivation raciale ou religieuse.⁵⁴ L'orientation sexuelle n'est pas mentionnée de manière expresse.

⁴⁹ Assemblée générale des NU, *Convention relative aux droits des personnes handicapées: résolution adoptée par l'Assemblée générale*, 24 janvier 2007, A/RES/61/106.

⁵⁰ Conseil de l'Europe, *Charte sociale européenne (révisée)*, 3 mai 1996, STCE n° 163.

⁵¹ Lettonie, loi sur le travail (*Darba likums*), 12 juin 2001.

⁵² Lettonie, loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique (*Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums*), 19 décembre 2012.

⁵³ Lettonie, loi sur la sécurité sociale (*likums 'Par sociālo drošību'*), 7 septembre 1995.

⁵⁴ Lettonie, loi pénale (*Krimināllikums*), 17 juin 1998.

La nature fragmentaire de la réglementation est le problème principal de la législation antidiscrimination lettone, et la cause de la plupart des autres problèmes. De manière générale, tous les domaines requis sont couverts mais, à l'intérieur de ceux-ci, tous les motifs requis ne le sont pas.

3. Principes généraux et définitions

La loi sur le travail, la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique, la loi sur la sécurité sociale,⁵⁵ la loi sur l'aide aux chômeurs et aux demandeurs d'emploi⁵⁶ et la loi sur la protection des droits des consommateurs⁵⁷ contiennent des définitions de la discrimination directe, de la discrimination indirecte et du harcèlement conformes aux directives; elles interdisent également toute injonction de discriminer. La protection contre les rétorsions existe dans le cadre de la loi sur le travail, de la loi sur la protection des droits des consommateurs, de la loi sur l'aide aux chômeurs et aux demandeurs d'emploi, de la loi sur la sécurité sociale, de la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique et de la loi sur l'enseignement,⁵⁸ et en rapport avec les plaintes déposées auprès du Bureau du Médiateur.

La loi est muette sur la question de la discrimination par association ou fondée sur des motifs ou caractéristiques présumés; le libellé des dispositions antidiscrimination contenues dans les lois lettonnes faisant référence à la race, aux convictions religieuses, etc. de la personne (invoquant la disposition) permet sans aucun doute de faire valoir plus aisément une discrimination fondée sur des caractéristiques présumées qu'une discrimination par association. Faute cependant de jurisprudence pertinente, tout ce que l'on peut dire avec certitude, c'est que la loi ne contient pas d'interdiction explicite à l'égard de ces deux formes de discrimination.

Les motifs de discrimination ne sont définis ni dans la loi sur le travail ni ailleurs, et l'on peut craindre que le handicap fasse l'objet d'une interprétation étroite par rapport à la Convention des Nations unies relative aux droits des personnes handicapées en utilisant le terme dans son acception technique, autrement dit en se basant sur une reconnaissance officielle de la capacité de travail réduite de la personne concernée et en excluant le handicap de fait.

La loi sur le travail est la seule à prévoir la justification d'une différence de traitement fondée sur divers motifs en rapport avec l'exigence professionnelle essentielle.

Les dispositions relatives aux exceptions figurant dans d'autres lois («une différence de traitement associée à l'un des motifs sera uniquement admissible lorsque le traitement en question est objectivement justifié par un but légitime et que les moyens d'atteindre ce but sont proportionnés») telles que la loi sur la sécurité sociale, la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique, la loi sur l'aide aux chômeurs et aux demandeurs d'emploi, la loi sur l'enseignement et la loi sur la protection des droits des consommateurs, ne font pas de distinction entre discrimination directe et indirecte, ni entre les motifs visés par les directives et d'autres motifs de traitement différencié. Les amendements apportés aux lois relatives à la discrimination (y compris la discrimination directe) ont été adoptés dans le but de transposer les directives dans l'ordre juridique interne, mais ils manquent de précision dans plusieurs cas distincts et c'est alors aux cours et tribunaux qu'il appartient de

⁵⁵ L'ancienne définition de la discrimination indirecte restreignant aux situations comparables subsiste dans la loi.

⁵⁶ Lettonie, loi sur l'aide aux chômeurs et aux demandeurs d'emploi (*Bezdarbnieku un darba meklētāju atbalsta likums*), 9 mai 2002.

⁵⁷ Lettonie, loi sur la protection des droits des consommateurs (*Patērētāju tiesību aizsardzības likums*), 18 mars 1999.

⁵⁸ Lettonie, loi sur l'enseignement (*Izglītības likums*), 29 septembre 1998.

consulter le texte des directives. La loi sur le travail prévoit en outre, pour ce qui concerne l'emploi par des organisations religieuses, une dérogation qui paraît plus large que celle prévue par la directive. La loi sur le travail impose aussi à l'employeur l'obligation d'assurer un aménagement raisonnable pour les personnes handicapées. Il n'existe pas de règles en matière de discrimination multiple.

4. Champ d'application matériel

La loi sur le travail prévoit une protection contre toutes les formes de discrimination (la discrimination directe, la discrimination indirecte, le harcèlement, l'injonction de discriminer et les rétorsions) dans tous les aspects des relations de travail, tant dans le secteur public que dans le secteur privé, y compris les relations dans la fonction publique (mais à l'exclusion du service militaire) et le travail sous contrat effectué par des indépendants. Cette protection inclut l'établissement des dites relations, en rapport notamment avec le genre, la race, l'âge, le handicap, la religion et l'orientation sexuelle.⁵⁹

L'accès à l'orientation professionnelle et à la formation professionnelle ainsi que les questions d'éducation dans le secteur public comme dans le secteur privé sont couverts par la loi sur le travail qui fait référence à la «formation professionnelle» et par la loi sur l'enseignement,⁶⁰ qui s'applique également aux secteurs public et privé. Cette dernière pose néanmoins problème dans la mesure où elle comporte une liste exhaustive de motifs n'incluant ni l'âge, ni le handicap (même si on pourrait faire valoir que celui-ci est couvert par la rubrique «santé»), ni l'orientation sexuelle. L'éducation et la formation pourraient également relever de la loi sur la protection des droits des consommateurs, mais celle-ci limite la liste des motifs interdits au genre, à la race, à l'origine ethnique et au handicap. La loi sur l'aide aux chômeurs et aux demandeurs d'emploi, qui couvre la reconversion professionnelle, interdit la discrimination fondée sur le genre, la race et l'origine ethnique.

Les lois relatives à l'affiliation et à la participation à des organisations de travailleurs ou d'employeurs ou à des organisations professionnelles ne contiennent pas toujours de clauses antidiscrimination; si les dispositions de la loi sur le travail s'appliquent aux deux premiers types d'organisations susmentionnées, les organisations professionnelles continuent pour leur part de poser problème et ne sont pas couvertes. Le domaine de la protection sociale, y compris la sécurité sociale et les soins de santé, a été couvert par la loi sur la sécurité sociale qui cite l'âge et le handicap,⁶¹ mais ne fait aucune mention explicite de l'orientation sexuelle. Cette loi définit les services sociaux comme ceux prestés par l'État ou la municipalité, et ne s'applique donc pas au secteur privé.

L'accès aux biens et aux services est couvert par la loi sur la protection des droits des consommateurs, dont la liste des motifs interdits se limite au genre, à la race, à l'origine ethnique et au handicap, ce qui n'est pas en soi incompatible avec les directives.

5. Mise en application de la loi

Plusieurs voies légales permettent d'adresser un recours en cas de discrimination:

- les juridictions de compétence générale;
- la Cour constitutionnelle: une législation prétendument discriminatoire en rapport avec l'âge a été contestée à deux reprises auprès de cette instance;

⁵⁹ La liste complète comprend «la race, la couleur de peau, l'âge, le handicap, les convictions religieuses, politiques ou autres, l'origine nationale ou sociale, la fortune ou l'état matrimonial, l'orientation sexuelle ou d'autres situations».

⁶⁰ Énumérant comme motifs interdits «la fortune et le statut social, la race, l'appartenance ethnique, le genre, les opinions religieuses ou politiques, l'état de santé, la profession et le lieu de résidence».

⁶¹ La liste des motifs interdits, à l'exception de l'orientation sexuelle, est la même que celle figurant dans la loi sur le travail.

- une plainte peut être déposée auprès de l'institution publique ayant elle-même pratiqué une différence de traitement à l'égard de la personne introduisant le recours ou auprès d'une institution de niveau supérieur;
- l'Inspection nationale du travail si la discrimination s'est produite dans le cadre d'une relation de travail. Celle-ci peut infliger une amende;
- le Bureau du Médiateur, qui est habilité à rechercher un règlement à l'amiable; il peut saisir une juridiction administrative lorsqu'il y va de l'intérêt public, ou une juridiction civile s'il s'agit d'un cas de non-respect de l'égalité de traitement.

La voie de recours normale serait une juridiction de compétence générale. Une loi portant sur l'assistance juridique subventionnée par l'État dans les affaires civiles et administratives⁶² est en vigueur depuis 2005, mais il faut encore en évaluer le véritable impact. Des ONG peuvent déposer une plainte ou engager une action au nom de personnes physiques victimes de discrimination. Le Bureau du Médiateur peut lui aussi saisir la justice. Les amendements apportés en décembre 2013 à la loi sur les procédures civiles limitent cependant désormais la représentation au niveau de la cassation, y compris dans les affaires de discrimination, aux victimes et aux avocats uniquement, et excluent par conséquent les ONG, le Médiateur et d'autres praticiens du droit.

La disposition relative au renversement de la charge de la preuve est incluse dans la loi sur le travail (emploi), dans la loi sur la protection des droits des consommateurs et dans la loi sur l'interdiction de discrimination à l'égard des personnes physiques – prestataires d'une activité économique (ces deux dernières lois couvrant l'accès aux biens et aux services), ainsi que dans la loi sur l'enseignement et dans la loi sur l'aide aux chômeurs et aux demandeurs d'emploi.

La Cour suprême a reproché à plusieurs occasions à des juridictions inférieures de ne pas avoir renversé la charge de la preuve.⁶³ Dans les affaires relevant de la loi sur les procédures administratives, l'exception d'examen d'office s'applique.

La législation nationale est muette sur la question du recours au test de situation et aux preuves statistiques; on ne trouve nulle trace de leur utilisation et, dès lors, aucune jurisprudence en la matière.

Le montant moyen relativement faible des indemnités allouées dans le cadre d'affaires de discrimination soulève la question de savoir si elles sont effectives, proportionnées et dissuasives. La plupart des arrêts prononcés par les cours et tribunaux ne sont, en outre, pas rendus publics. Les dispositions de la loi pénale prévoyant des peines allant jusqu'à deux ans d'emprisonnement n'ont jamais été appliquées.

La majorité des affaires de discrimination portées en justice concernent le domaine de l'emploi et principalement des motifs liés au genre. Dans les affaires connues de discrimination soumises à la justice entre 2005 et 2014 et dont l'issue a été favorable à la victime (il y en a eu plus d'une douzaine, dont deux portaient sur une discrimination fondée sur le genre, deux sur une discrimination fondée sur le handicap,⁶⁴ une sur une

⁶² L'assistance juridique subventionnée par l'État dans les affaires administratives a été interrompue en 2009.

⁶³ Lettonie, chambre juridictionnelle civile de la Cour suprême (*Augstākās tiesas Civillietu tiesu palāta*), R. S. c. Nouvelle Église luthérienne évangélique Ste-Gertrude de Riga (*R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze*); Lettonie, Sénat de la Cour suprême (*Latvijas Republikas Augstākās tiesa*), affaire n° SKC-684/2012 (E.L. c. State Joint Stock Company International Airport Riga (*E.L. v Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”*)).

⁶⁴ Lettonie, chambre juridictionnelle civile de la Cour suprême (*Augstākās tiesas Civillietu tiesu palāta*), R. S. c. Nouvelle Église évangélique luthérienne Ste-Gertrude de Riga (*R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze*), 11 avril 2007; Lettonie, tribunal régional du Kurzeme (*Kurzemes apgabaltiesas Civillietu tiesas kolēģija*), affaire n° C40066110 (V.Trusēvičs c. SIA Bio-Venta [Bio-Venta Ltd]), 21 septembre 2011.

discrimination fondée sur l'origine ethnique,⁶⁵ une sur une discrimination fondée sur l'âge⁶⁶ et une sur une discrimination relevant de rétorsions), les montants attribués se sont situés dans une fourchette allant de 428 euros (300 LVL environ)⁶⁷ à 7 142 euros (5 000 LVL). Le montant le plus élevé a été accordé dans une affaire de conciliation, et l'indemnité moyenne pour préjudice moral s'établit à 1 500 euros (1 000 LVL).

Depuis la ratification de la Convention des Nations unies relative aux droits des personnes handicapées, plusieurs procédures ont été engagées en justice en rapport avec l'aménagement raisonnable à l'intention de ces personnes pour ce qui concerne la protection sociale⁶⁸ et l'accès aux bâtiments publics où sont dispensés des soins de santé.⁶⁹

La loi sur les procédures administratives prévoit une indemnisation pour perte financière ou préjudice personnel, y compris le préjudice moral, causé(e) à un particulier par un acte administratif ou par l'action concrète d'une institution. Le code des infractions administratives prévoit une amende de 140 à 715 euros en cas de non-respect de l'interdiction de discrimination. L'Inspection nationale du travail a surtout imposé des sanctions dans des cas d'offres d'emploi entachées de discrimination fondée sur le genre, l'âge ou l'origine ethnique. Les sanctions en question sont allées d'avertissements à des amendes de 70 à 535 euros – soit des montants trop faibles pour être considérés comme dissuasifs. La Cour suprême a précisé, dans le droit fil de la jurisprudence de la Cour de justice de l'Union européenne, qu'il n'y a pas lieu de démontrer spécifiquement l'existence d'un préjudice moral en cas de discrimination, ce préjudice étant présumé du fait même de l'établissement d'une discrimination dans les relations de travail.⁷⁰

6. Organismes de promotion de l'égalité de traitement

Depuis mars 2007, les tâches incombant à l'organisme spécialisé sont exécutées par le Bureau du Médiateur, lequel a pour mission de promouvoir le respect des droits de l'homme et notamment la promotion de l'égalité de traitement – sans énumération des motifs de discrimination et, par conséquent, les englobant tous. Il est chargé d'enquêter sur toute plainte individuelle liée à la violation des droits de l'homme, d'entreprendre des enquêtes de sa propre initiative, d'analyser le respect des droits de l'homme et de publier des études et des rapports. Le Bureau est habilité à examiner les plaintes individuelles, à se procurer les informations nécessaires et à s'efforcer de parvenir à un règlement à l'amiable. S'il échoue, le Bureau peut faire connaître aux parties son avis et ses propositions sous la forme de recommandations; il peut également présenter ses suggestions et recommandations à l'institution compétente. Il ne peut cependant ni faire appliquer ses recommandations ni infliger d'amendes. Il a le droit de porter une affaire devant la Cour constitutionnelle lettone si la législation n'est pas conforme à une norme juridique supérieure. De même, il peut saisir une juridiction administrative si la démarche est d'intérêt public, ou une juridiction civile si une violation de l'égalité de traitement est en cause. Il apporte également ses conseils juridiques aux victimes et peut les aider à préparer leur dossier. Le Médiateur n'a encore jamais représenté depuis 2007 un client en justice

⁶⁵ Lettonie, tribunal de Jelgava Court (*Jelgavas tiesa*), S.Kozlovskā c. SIA Palso, affaire n° C15066406, 25 mai 2006.

⁶⁶ Lettonie, Sénat de la Cour suprême (*Augstākās tiesas Senāts*), affaire n° C32276312 (SKC-1702/2013), 29 novembre 2013.

⁶⁷ La Lettonie a adopté le 1^{er} janvier 2014 l'euro comme sa monnaie nationale en remplacement du *lats*.

⁶⁸ Tribunal administratif régional (*Administratīvā apgabaltiesa*), affaire n° A420528911, B. c. Agence nationale d'assurances sociales (*B. v. pret Valsts Sociālās apdrošināšanas aģentūru*), 27 septembre 2013.

⁶⁹ Lettonie, tribunal administratif de district (*Administratīvā rajona tiesa*), affaire n° A420571712, 2 décembre 2013. Lettonie, chambre juridictionnelle civile de la Cour suprême (*Augstākās tiesas Civillietu tiesu palāta*), R. S. c. Nouvelle Église évangélique luthérienne Ste-Gertrude de Riga (*R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze*).

⁷⁰ Lettonie, Sénat de la Cour suprême (*Augstākās tiesas Senāts*), affaire n° C32276312 (SKC – 1702/2013), 29 novembre 2013, sur <http://www.l2d.lv/v.php?i=82540>.

dans une affaire de discrimination, mais il a facilité la conclusion de deux accords de conciliation.

Les restrictions budgétaires imposées par la crise économique ont inmanquablement affecté le fonctionnement du Bureau du Médiateur, dont le budget était réduit de 57 % en 2010 par rapport à celui de 2008. Elles ont entraîné des réductions de personnel avec pour conséquence qu'à différents moments, le Bureau n'a compté qu'un à trois membres spécialisés dans les questions de discrimination – ce qui a suscité certaines préoccupations quant à sa conformité dans la pratique avec la directive sur l'égalité raciale (organisme désigné pour la promotion de l'égalité de traitement). Le budget 2014 a été légèrement augmenté pour atteindre 1 131 770 euros,⁷¹ et le département juridique en charge de l'égalité comptait trois personnes.⁷²

7. Points essentiels

En dehors de l'emploi, tous les domaines couverts par les directives antidiscrimination ne font pas expressément référence à l'ensemble des motifs (et à l'orientation sexuelle en particulier) visés par ces directives.

La disposition de la loi sur le travail relative à l'éthique religieuse semble créer une dérogation plus large que celle prévue par la directive 2000/78; mais il reste à voir de quelle manière les cours et tribunaux vont l'interpréter.

Le Parlement a adopté en septembre 2014 des amendements à la loi pénale qui pénalisent les crimes/discours de haine liés au motif du genre, de l'âge, du handicap et d'autres situations – sans citer expressément l'orientation sexuelle. Le contexte général peut avoir une incidence sur la volonté des autorités d'inclure tous les motifs de discrimination interdits par les directives dans d'autres domaines que l'emploi.

Il n'y a plus de coordination nationale sur les questions relevant de la lutte contre la discrimination. La jurisprudence reste limitée depuis 2004 pour ce qui concerne la discrimination fondée sur la race/l'origine ethnique (1 cas), le handicap (2 cas), l'âge (2 cas), la religion (aucun cas) et l'orientation sexuelle (aucun cas).

Les amendements à la loi sur les procédures civiles qui excluent les ONG de la représentation de victimes de discrimination au niveau de la cassation enfreignent les clauses de non-régression des directives relatives à l'égalité.

⁷¹ L'allocation budgétaire projetée s'élevait à 1 157 884.

⁷² Ceci étant dit, le Bureau ne comprend plus ce département depuis début 2015. Voir le site du Médiateur (LR Tiesībsargs), page «Personnel» (*Darbinieki*), disponible en letton sur <http://www.tiesibsargs.lv/par-mums/darbinieki>.

ZUSAMMENFASSUNG

1. Einleitung

Lettland ist ein multiethnisches Land, wobei die Anteile der unterschiedlichen ethnischen Gruppen im Wandel begriffen sind. Die ethnische Herkunft wird im Melderegister verzeichnet. Sie beruht auf der ethnischen Zugehörigkeit der beiden Elternteile und kann bei Erreichen der Volljährigkeit durch die ethnische Zugehörigkeit eines Großelternteils ersetzt werden. Der Eintrag der ethnischen Zugehörigkeit im Pass ist freigestellt. Im Jahr 2011 setzte sich die insgesamt 2 067 887 Einwohner zählende Bevölkerung Lettlands wie folgt zusammen: 62,1 % Letten, 26,9 % Russen, 3,3 % Weißrussen, 2,2 % Ukrainer, 2,2 % Polen, 1,2 % Litauer, 0,3 % Juden, 0,1 % Esten, 0,3 % Roma, 0,1 % Deutsche und 1,3 % sonstige ethnische Gruppen.⁷³ Lettische Staatsbürger sind 1 732 880 Personen oder 83,8 % der Bevölkerung, davon sind 71,42 % ethnische Letten. 12,1 % oder 262 030 Einwohner sind Nichtbürger,⁷⁴ in diesem Bevölkerungssegment bilden Russen die größte Gruppe. Deshalb wird das Thema der Nichtstaatsangehörigkeit meist ausschließlich auf die russische bzw. russischsprachige Bevölkerung bezogen, die Rechte von Bürgern und Nichtbürgern und die Sprachpolitik sind äußerst sensible Themen.

Nach einer Studie aus dem Jahr 2003, der einzigen aktuellen Untersuchung zu diesem Thema, werden Roma in vielen Lebensbereichen diskriminiert. Allerdings hat seit 2003 die Zahl der Sonderklassen ausschließlich für Roma abgenommen und im Zeitraum 2013-2014 gab es nur noch in einer Schule entsprechende Klassen. Dennoch ist der Anteil der Kinder, die Sonderschulen besuchen bei den Roma mit 26 % wesentlich höher als im Landesdurchschnitt (3,5 %).⁷⁵ Die Bevölkerungsgruppe der Roma ist in Lettland mit 8 517 Personen (2012) relativ klein, allerdings gehen Roma-Vereinigungen von höheren Zahlen aus.

Nach der Studie „Einstellung gegenüber älteren Menschen und ihre Diskriminierung auf dem lettischen Arbeitsmarkt“ werden Menschen über 40-45 Jahren auf dem lettischen Arbeitsmarkt wegen ihres Alters diskriminiert. Es ist auch allgemein bekannt, dass Menschen mit Behinderungen nur schwer eine Arbeit finden, obwohl sich diese Annahme nicht durch ausreichend repräsentative Untersuchungen belegen lässt.

Eine Untersuchung aus dem Jahr 2010 mit dem Titel „Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers“ kommt zu dem Ergebnis, dass die Diskrepanz bei der Beschäftigung zwischen den einzelnen Bevölkerungsgruppen durch die Wirtschaftskrise wieder zugenommen hat. Ethnische Minderheiten sind wesentlich stärker von Arbeitslosigkeit bedroht und die wichtigste Aufgabe der Politik ist es, für eine angemessene Repräsentation von Minderheiten in der öffentlichen Verwaltung zu sorgen.⁷⁶

Es gibt keine dokumentierten Fälle, in denen Angehörige sexueller Minderheiten diskriminiert wurden. Dies liegt aber vermutlich daran, dass viele ihre sexuelle Ausrichtung verstecken, weil entsprechende Vorurteile in der lettischen Gesellschaft weit verbreitet sind. Die sexuelle Ausrichtung ist weiterhin ein umstrittenes Thema.

⁷³ Volkszählung von 2011.

⁷⁴ Nichtbürger sind eine ganz besondere Gruppe – ehemalige Bürger der UdSSR, die am 1. Juli 1991 in Lettland lebten und nicht die Staatsbürgerschaft eines anderen Landes angenommen haben. Daher fallen Bürger von Drittstaaten und Staatenlose nicht unter diesen Begriff. Die Daten zur Staatsangehörigkeit sind auf dem Stand vom 01.01.2015.

⁷⁵ Kultusministerium (2014), Informationsbericht über die Umsetzung der politischen Maßnahmen zur Eingliederung der Roma (Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā), 12. lpp, unter http://www.km.gov.lv/lv/doc/ministrija/saliedeta_sabiedriba/Romi/KM_230315_romi.pdf.

⁷⁶ Hazans, Mihails. Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers. [Ethnische Minderheiten auf dem lettischen Arbeitsmarkt 1997-2009. Ergebnisse, Triebkräfte und Hindernisse der Integration] In Muižnieks, N. (Hg.) How Integrated is Latvian Society? An Audit of Achievements, Failures and Challenges, Riga, University of Latvia Press, 2010. S. 125-158.

Regelmäßige Konsultationen finden nur mit NRO statt, die sich für die Rechte von Behinderten und für Geschlechtergleichstellung einsetzen. Es gibt zwar einen Rahmen für den Dialog mit den Sozialpartnern, das Thema Diskriminierung wird jedoch nur selten behandelt und wenn, dann meist in Bezug auf die Gleichstellung von Frauen und Männern. Es gibt kaum eine öffentliche Debatte zum Thema, höchstens zur Stellung der russischsprachigen Minderheit oder, im Zusammenhang mit Schwulen- und Lesbian-Veranstaltungen, zu Fragen der sexuellen Ausrichtung.

Seit der Umsetzung der Gleichbehandlungsrichtlinien und der Schließung des Sekretariats des Sonderministers für Integration gibt es keine nationale Stelle, die den Kampf gegen Diskriminierung koordiniert.

Die einzige Gruppe, die in gewissem Umfang durch Fördermaßnahmen unterstützt wird, sind Menschen mit Behinderungen. Es gibt gesetzlich geregelte finanzielle Anreize, mit denen Arbeitgeber bei der Beschäftigung behinderter Menschen unterstützt werden. Nirgendwo im lettischen Recht sind positive Maßnahmen vorgesehen.

2. Wichtigste Gesetze

Den Eckpfeiler des Diskriminierungsverbots in Lettland bildet Artikel 91 der lettischen Verfassung,⁷⁷ wonach unter anderem die Menschenrechte ohne jede Diskriminierung geschützt werden müssen. Das heißt, die Verfassung verbietet Diskriminierung, zählt jedoch nicht ausdrücklich die geschützten Diskriminierungsgründe auf. Die Verfassung ist direkt anwendbar und damit für alle öffentlichen Stellen verbindlich, sie hat jedoch keine horizontale Wirkung. Damit ist Diskriminierung zwar im öffentlichen Sektor auch ohne weitere gesetzliche Bestimmungen verboten, die daher nur benötigt werden, um Sanktionen und Rechtsmittel zur Durchsetzung des Gleichbehandlungsgrundsatzes zu regulieren. Im privaten Sektor ist jedoch eine spezielle Rechtsvorschrift erforderlich, die Diskriminierung verbietet. Das gleiche gilt auch für internationale Übereinkommen: Sie sind in Lettland nur für öffentliche Stellen verbindlich.

Neben dem 12. Protokoll der Europäischen Menschenrechtskonvention,⁷⁸ das Lettland unterzeichnet, aber noch nicht ratifiziert hat, ist das Land den meisten wichtigen internationalen Übereinkommen zum Kampf gegen Diskriminierung beigetreten, z. B. dem Internationalen Pakt über bürgerliche und politische Rechte,⁷⁹ dessen Fakultativprotokoll,⁸⁰ dem Pakt über wirtschaftliche, soziale und kulturelle Rechte,⁸¹ dem Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung,⁸² dem Rahmenübereinkommen zum Schutz nationaler Minderheiten,⁸³ dem Übereinkommen über die Rechte des Kindes⁸⁴ und, seit 2010, der UN-Behindertenrechtskonvention.⁸⁵ 2013 ratifizierte Lettland die revidierte Europäische Sozialcharta.⁸⁶ Allerdings erkennt die lettische Regierung die Zuständigkeit des UN-Ausschusses für die Beseitigung der Rassendiskriminierung nicht an. Die

⁷⁷ Lettland, Verfassung (*Satversme*), 15.02.1922.

⁷⁸ Europarat, *Konvention zum Schutz der Menschenrechte und Grundfreiheiten*, geändert durch die Protokolle Nr. 11 und 14, 04.11.1950, ETS 5.

⁷⁹ UN-Vollversammlung, *Internationaler Pakt über bürgerliche und politische Rechte*, 16.12.1966, Vertragssammlung der Vereinten Nationen, Band 999.

⁸⁰ UN-Vollversammlung, *Fakultativprotokoll zum Internationalen Pakt über bürgerliche und politische Rechte*, 19.12.1966, Vertragssammlung der Vereinten Nationen, Band 999.

⁸¹ UN-Vollversammlung, *Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte*, 16.12.1966, Vertragssammlung der Vereinten Nationen, Band 993.

⁸² UN-Vollversammlung, *Internationales Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung*, 21.12.1965, Vertragssammlung der Vereinten Nationen, Band 660.

⁸³ Europarat, *Rahmenübereinkommen zum Schutz nationaler Minderheiten*, 01.02.1995, ETS 157.

⁸⁴ UN-Vollversammlung, *Übereinkommen über die Rechte des Kindes*, 20. November 1989, Vertragssammlung der Vereinten Nationen, Band 1577.

⁸⁵ UN-Vollversammlung, *Übereinkommen über die Rechte von Menschen mit Behinderungen: Resolution / von der Vollversammlung verabschiedet*, 24.01.2007, A/RES/61/106.

⁸⁶ Europarat, *Europäische Sozialcharta (revidiert)*, 03.05.1996, ETS 163.

ratifizierten Übereinkommen wurden im *Lettischen Amtsblatt* bekannt gemacht, sie bilden damit einen Teil der nationalen Rechtsordnung und können von lettischen Gerichten direkt angewandt werden, sofern ihre Anwendung nicht die Verabschiedung eines Gesetzes voraussetzt.

Das lettische Antidiskriminierungsrecht ist fragmentiert, d. h. es gibt kein einzelnes umfassendes Antidiskriminierungsgesetz. Durch die Überarbeitung geltender Gesetze konnte der Geltungsbereich jedoch ausgeweitet werden. Die Vorrangstellung der Verfassung verbietet Diskriminierung im öffentlichen Sektor, nicht jedoch im privaten Sektor, wo ein solches Verbot durch Einzelgesetze eingeführt werden muss. Deshalb kompliziert das Fehlen eines allgemeinen Antidiskriminierungsgesetzes die Durchsetzung des Gleichbehandlungsgebots.

Das weitreichendste Verbot findet sich im 2001 verabschiedeten Arbeitsgesetz⁸⁷, das seitdem noch überarbeitet wurde, um bestehende Gesetzeslücken zu schließen. Das Gesetz verbietet Diskriminierung in allen Beschäftigungsverhältnissen, die unter das Gesetz fallen, und seit November 2006 wird dieses Diskriminierungsverbot auch auf Beschäftigungsverhältnisse der öffentlichen Hand angewandt.

Das Arbeitsgesetz und das Gesetz über das Verbot der Diskriminierung von natürlichen Personen als Wirtschaftsakteuren⁸⁸ sind die einzigen Gesetze, die sexuelle Ausrichtung als verbotenen Diskriminierungsgrund aufzählen. Behinderung als Diskriminierungsgrund wird nur in diesen beiden Gesetzen und im Gesetz über soziale Sicherheit⁸⁹ und dem Verbraucherschutzgesetz genannt. Das Verbraucherschutzgesetz (Zugang zu Gütern und Dienstleistungen) schränkt die verbotenen Diskriminierungsgründe auf Geschlecht, Rasse, ethnische Herkunft und Behinderung ein. Zu den sechs Gesetzen, die Alter als verbotenen Diskriminierungsgrund nennen, gehören unter anderem das Arbeitsgesetz, das Gesetz über das Verbot der Diskriminierung von natürlichen Personen als Wirtschaftsakteuren, das Gesetz über soziale Sicherheit und das Gesetz über Patientenrechte.

Auch einige andere Gesetze beinhalten Diskriminierungsverbote mit abgeschlossenen oder offenen Listen verbotener Diskriminierungsgründe, die jedoch nie alle Gründe umfassen, die unter die Richtlinien fallen. Selbst die nicht abgeschlossenen Aufzählungen, wie im Gesetz über soziale Sicherheit, decken nicht ausdrücklich alle von den Richtlinien vorgegebenen Gründe ab. Das Bildungsgesetz enthält eine abgeschlossene Aufzählung, in der „Vermögen und sozialer Status, Rasse, ethnische Zugehörigkeit, Geschlecht, religiöse oder politische Überzeugung, Gesundheitszustand, Beruf und Wohnort“ aufgeführt sind. Manche Gesetze enthalten überhaupt kein Diskriminierungsverbot, zum Beispiel das Gesetz über Wohnraum, wobei dieser Bereich teilweise im reformierten Verbraucherschutzgesetz geregelt ist.

Die Neufassung des Strafgesetzbuchs vom 25. September 2014 (in Kraft seit dem 29. Oktober 2014) dehnt das Verbot von Hassverbrechen bzw. Anstiftung zu Hass und damit das Verbot von rassistisch oder religiös motivierten Verbrechen auf die Gründe Geschlecht, Alter, Behinderung und sonstige Merkmale aus.⁹⁰ Die sexuelle Ausrichtung wird nicht ausdrücklich genannt.

Größtes Problem des lettischen Antidiskriminierungsrechts ist seine lückenhafte Struktur, aus der sich die meisten anderen Probleme ergeben. Prinzipiell sind alle vorgegebenen Bereiche abgedeckt, jedoch sind nicht in allen Bereichen alle geforderten Diskriminierungsgründe geschützt.

⁸⁷ Lettland, Arbeitsgesetz (*Darba likums*), 12.06.2001.

⁸⁸ Lettland, Gesetz über das Verbot der Diskriminierung von natürlichen Personen als Wirtschaftsakteuren (*Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums*), 19.12.2012.

⁸⁹ Lettland, Gesetz über soziale Sicherheit (*likums 'Par sociālo drošību'*), 07.09.1995.

⁹⁰ Lettland, Strafgesetzbuch (*Krimināllikums*), 17.06.1998.

3. Wichtigste Grundsätze und Begriffe

Das Arbeitsgesetz, das Gesetz über das Verbot der Diskriminierung von natürlichen Personen als Wirtschaftsakteuren, das Gesetz über soziale Sicherheit,⁹¹ das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden⁹² und das Verbraucherschutzgesetz⁹³ enthalten Definitionen von unmittelbarer und mittelbarer Diskriminierung und Belästigung, die den Richtlinien entsprechen; sie verbieten auch die Anweisung zur Diskriminierung. Schutz vor Viktimisierung bieten das Arbeitsgesetz, das Verbraucherschutzgesetz, das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden, das Gesetz über soziale Sicherheit, das Gesetz über das Verbot der Diskriminierung von natürlichen Personen als Wirtschaftsakteuren und das Bildungsgesetz;⁹⁴ außerdem gilt bei Beschwerden beim Büro des Ombudsmanns ebenfalls ein Schutz vor Viktimisierung.

Es gibt keine Bestimmungen über Diskriminierung aufgrund von Assoziierung oder von mutmaßlichen Gründen oder Eigenschaften; der Wortlaut des Diskriminierungsverbots in lettischen Gesetzen bezieht sich auf Rasse, religiöse Überzeugung usw. von Personen (d. h. der Personen, die sich auf das Verbot berufen), wodurch Diskriminierung aufgrund mutmaßlicher Eigenschaften wesentlich einfacher zu verfolgen ist als Diskriminierung aufgrund von Assoziierung. Da aber noch kein Fallrecht zu diesen Fragen vorliegt, lässt sich bisher nur mit Sicherheit sagen, dass diese Diskriminierungsformen im lettischen Recht nicht ausdrücklich verboten sind.

Die Diskriminierungsgründe werden weder im Arbeitsrecht noch anderswo definiert. Es steht zu befürchten, dass der Begriff „Behinderung“ enger gefasst ist als im Übereinkommen über die Rechte von Menschen mit Behinderungen der Vereinten Nationen und auf eine technische Definition reduziert wird, bei der nur eine formal bestätigte Minderung der Erwerbsfähigkeit anerkannt wird und nicht eine tatsächliche Behinderung.

Das Arbeitsgesetz ist das einzige Gesetz, das Ungleichbehandlung aus bestimmten Gründen wegen wesentlicher beruflicher Anforderungen zulässt.

Die Ausnahmebestimmungen in anderen Gesetzen („eine Ungleichbehandlung in Bezug auf einen der genannten Gründe ist nur zulässig, wenn sie durch einen rechtmäßigen Zweck sachlich gerechtfertigt ist und die gewählten Mittel zur Erreichung dieses Ziels verhältnismäßig sind“) wie dem Gesetz über soziale Sicherheit, dem Gesetz über das Verbot der Diskriminierung von natürlichen Personen als Wirtschaftsakteuren, dem Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden, dem Bildungsgesetz und dem Verbraucherschutzgesetz unterscheiden weder zwischen unmittelbarer und mittelbarer Diskriminierung, noch zwischen Gründen, die unter die Richtlinien fallen, und anderen Gründen für eine Ungleichbehandlung. Die Gesetze, die Diskriminierung (einschließlich von unmittelbarer Diskriminierung) verbieten, wurden im Rahmen der Umsetzung der Richtlinien in nationales Recht überarbeitet, allerdings in vielen Fällen nicht mit ausreichender Präzision. In diesen Fällen müssen die Gerichte sich am Wortlaut der Richtlinien orientieren. Außerdem enthält das Arbeitsgesetz eine Ausnahmebestimmung für religiöse Organisationen, die auf den ersten Blick weiter gefasst ist, als es die Richtlinien erlauben. Das Arbeitsgesetz verpflichtet Arbeitgeber, angemessene Vorkehrungen für Menschen mit Behinderungen zu treffen. Es gibt keine Bestimmungen über Mehrfachdiskriminierung.

⁹¹ Die alte Definition von mittelbarer Diskriminierung, die den Schutz auf vergleichbare Situationen einengt, ist weiterhin enthalten.

⁹² Lettland, Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden (*Bezdarbnieku un darba meklētāju atbalsta likums*), 09.05.2002.

⁹³ Lettland, Verbraucherschutzgesetz (*Patērētāju tiesību aizsardzības likums*), 18.03.1999.

⁹⁴ Lettland, Bildungsgesetz (*Izglītības likums*), 29.09.1998.

4. Sachlicher Anwendungsbereich

Das Arbeitsgesetz bietet in allen Aspekten von Beschäftigungsverhältnissen, sowohl im öffentlichen als auch im privaten Sektor, einschließlich des öffentlichen Dienstes (jedoch nicht beim Militärdienst) und bei Auftragsarbeiten, die durch selbständig Erwerbstätige ausgeführt werden, Schutz vor jeder Form der Diskriminierung (unmittelbare und mittelbare Diskriminierung, Belästigung, Anweisung zur Diskriminierung und Viktimisierung). Das Verbot gilt auch für die Einstellung von Arbeitnehmern und bezieht sich unter anderem auf die Gründe Geschlecht, Rasse, Alter, Behinderung, Religion und sexuelle Ausrichtung.⁹⁵

Der Zugang zur Berufsberatung und beruflichen Bildung und Fragen der Bildung im öffentlichen und privaten Sektor sind im Arbeitsgesetz geregelt, das sich auf die „berufliche Bildung“ bezieht, und im Bildungsgesetz,⁹⁶ das ebenfalls für den öffentlichen wie auch den privaten Sektor gilt. Allerdings enthält letzteres Gesetz eine abgeschlossene Aufzählung verbotener Diskriminierungsgründe, in der Alter, Behinderung und sexuelle Ausrichtung nicht enthalten sind (obwohl Behinderung möglicherweise unter den Begriff „Gesundheitszustand“ subsumiert werden kann). Auch das Verbraucherschutzgesetz ist möglicherweise für Fragen der allgemeinen und beruflichen Bildung relevant, dieses verbietet jedoch nur Diskriminierung aufgrund von Geschlecht, Rasse, ethnischer Herkunft und Behinderung. Das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden, das den Bereich der Fortbildung betrifft, verbietet Diskriminierung aufgrund von Geschlecht, Rasse und ethnischer Herkunft.

Die Gesetze über Mitgliedschaft und Mitwirkung in einer Arbeitnehmer- oder Arbeitgeberorganisation bzw. einer Berufsorganisation enthalten nicht in jedem Fall ein Diskriminierungsverbot. Die Bestimmungen des Arbeitsgesetzes gelten zwar für die ersten beiden, Berufsorganisationen bleiben aber ein Problem und sind nicht gesetzlich abgedeckt. Der Bereich Sozialschutz, einschließlich der sozialen Sicherheit und der Gesundheitsdienste, fällt unter das Gesetz über soziale Sicherheit, das Alter und Behinderung aufzählt,⁹⁷ jedoch sexuelle Ausrichtung nicht ausdrücklich als Diskriminierungsgrund nennt. Außerdem definiert dieses Gesetz soziale Leistungen als Leistungen des Staates oder der Kommunen, d. h. es gilt nicht für den privaten Sektor.

Der Zugang zu Gütern und Dienstleistungen ist durch das Verbraucherschutzgesetz abgedeckt. Die Liste der verbotenen Gründe ist auf Geschlecht, Rasse, ethnische Herkunft und Behinderung beschränkt, was an sich nicht gegen die Richtlinien verstößt.

5. Rechtsdurchsetzung

Opfer von Diskriminierung haben viele rechtliche Möglichkeiten:

- Klage vor einem ordentlichen Gericht;
- Verfassungsgericht – es wurde bereits zweimal gegen Rechtsvorschriften Beschwerde eingereicht, weil deren Bestimmungen eine mutmaßliche Altersdiskriminierung darstellen,
- Beschwerde bei der öffentlichen Stelle, die gegen den Gleichbehandlungsgrundsatz verstoßen hat, oder bei einer übergeordneten Stelle,

⁹⁵ Die vollständige Liste nennt „Rasse, Hautfarbe, Alter, Behinderung, religiöse, politische oder sonstige Überzeugung, nationale oder soziale Herkunft, Vermögens- oder Personenstand, sexuelle Ausrichtung oder sonstige Umstände“.

⁹⁶ Hier werden „Vermögen und sozialer Status, Rasse, ethnische Zugehörigkeit, Geschlecht, religiöse oder politische Überzeugungen, Gesundheitszustand, Beruf und Wohnort“ als verbotene Gründe aufgezählt.

⁹⁷ Die Liste der verbotenen Diskriminierungsgründe entspricht der des Arbeitsgesetzes mit Ausnahme der sexuellen Ausrichtung.

- Staatliche Arbeitsinspektion, wenn die Diskriminierung im Rahmen eines Arbeitsverhältnisses stattgefunden hat, die Inspektion kann Geldbußen verhängen,
- Büro des Ombudsmanns, der eine gütliche Einigung anstreben kann. Der Ombudsmann kann im öffentlichen Interesse Klage vor einem Verwaltungsgericht einreichen oder Fälle vor ein Zivilgericht bringen, wenn in einem Fall der Gleichbehandlungsgrundsatz verletzt wurde.

Der normale Rechtsweg wäre eine Klage vor einem ordentlichen Gericht. Seit 2005 ist ein Gesetz in Kraft, das eine staatlich finanzierte Prozesskostenhilfe in Zivilverfahren regelt,⁹⁸ seine Wirksamkeit in der Praxis ist aber noch kaum untersucht. NRO können im Namen natürlicher Personen, die Opfer von Diskriminierung geworden sind, eine Beschwerde einlegen oder klagen. Auch das Büro des Ombudsmanns kann Klagen einreichen. Allerdings ist die Beteiligung an Verfahren vor Berufungsgerichten, auch in Diskriminierungsfällen, seit einer Reform der Zivilprozessordnung im Dezember 2013 auf die Opfer und deren Rechtsanwälte beschränkt, was NRO, den Ombudsmann und andere rechtliche Vertreter ausschließt.

Das Arbeitsgesetz (Beschäftigung), das Verbraucherschutzgesetz und das Gesetz über das Verbot der Diskriminierung von natürlichen Personen als Wirtschaftsakteuren (die beide den Zugang zu Gütern und Dienstleistungen betreffen) sowie das Bildungsgesetz und das Gesetz über die Unterstützung von Arbeitslosen und Arbeitssuchenden sehen eine Umkehrung der Beweislast vor.

In mehreren Fällen hat der Oberste Gerichtshof untergeordnete Gerichte gerügt, weil sie die Beweislast nicht umgekehrt hatten.⁹⁹ Für Fälle, die unter die Verwaltungsverfahrensordnung fallen, gilt die Ausnahme für eine Untersuchung *von Amts wegen*.

Das lettische Recht enthält keine Bestimmungen über Situationstests und die Verwendung statistischer Beweise. Es liegen keine Daten zu deren Verwendung und kein Fallrecht vor.

Die in Diskriminierungsfällen zugesprochenen Schadenersatzbeträge sind im Schnitt relativ niedrig, daher ist es zweifelhaft, ob diese Sanktionen verhältnismäßig, wirksam und abschreckend sind. Zudem ist die Mehrzahl der Gerichtsurteile nicht öffentlich einsehbar. Die im Strafgesetzbuch vorgesehene Höchststrafe von bis zu zwei Jahren Haft wurde noch nie verhängt.

Die Mehrheit der vor Gericht verhandelten Diskriminierungsfälle betreffen den Bereich Beschäftigung und beziehen sich zum größten Teil auf Diskriminierung aufgrund des Geschlechts. Zwischen 2005 und Ende 2014 lagen die zugesprochenen Beträge in den bekannten Diskriminierungsfällen, in denen die Opfer Recht bekamen (es gab über ein Dutzend, von denen zwei Diskriminierung aufgrund des Geschlechts betrafen, zwei aufgrund von Behinderung,¹⁰⁰ einer aufgrund der ethnischen Zugehörigkeit,¹⁰¹ einer wegen des Alters¹⁰² und einer betraf Viktimisierung), lagen die zugesprochenen Beträge zwischen

⁹⁸ Die staatliche Prozesskostenhilfe in Verwaltungsverfahren wurde im Jahr 2009 abgeschafft.

⁹⁹ Lettland, Oberster Gerichtshof, Senat für Zivilsachen (*Augstākās tiesas Civillietu tiesu palāta*), R. S. gegen die neue evangelisch-lutherische Kirche St. Gertrude in Riga (R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze, Lettland, Oberster Gerichtshof, (*Latvijas Republikas Augstākās tiesa*) Rechtssache SKC-684/2012 (E.L. gegen die Staatliche Aktiengesellschaft „Internationaler Flughafen Riga“ [E.L. v Valsts akciju sabiedrība „Starptautiskā lidosta Rīga“])).

¹⁰⁰ Lettland, Oberster Gerichtshof, Senat für Zivilsachen (*Augstākās tiesas Civillietu tiesu palāta*), R. S. gegen die neue evangelisch-lutherische Kirche St. Gertrude in Riga (R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze), 11.04.2007, Lettland, Bezirksgericht Kurzeme (Kurzemes apgabaltiesas Civillietu tiesas kolēģija), Rechtssache C40066110 (V.Trusēvičs gegen SIA Bio-Venta [Bio-Venta Ltd]), 21.09.2011.

¹⁰¹ Lettland, Amtsgericht Jelgava (Jelgavas tiesa), S.Kozlovskā gegen SIA Palso, Rechtssache C15066406, 25.05.2006.

¹⁰² Lettland, Oberster Gerichtshof (Augstākās tiesas Senāts), Rechtssache C32276312 (SKC-1702/2013), 29.11.2013.

428 Euro (rund 300 LVL)¹⁰³ und 7142 Euro (5000 LVL). Der höchste Betrag wurde in einem Schlichtungsverfahren zugesprochen, das Schmerzensgeld lag im Schnitt bei 1500 Euro (1000 LVL).

Seit der Ratifizierung der BRK der Vereinten Nationen wurden im Bereich Sozialschutz¹⁰⁴ und beim Zugang zu öffentlichen Gebäuden des Gesundheitswesens mehrere Klagen eingereicht, weil keine angemessenen Vorkehrungen für Menschen mit Behinderungen getroffen worden waren.¹⁰⁵

Nach der Verwaltungsverfahrensordnung kann Personen, denen durch einen Verwaltungsakt oder die Handlungen einer staatlichen Institution finanzielle Verluste und persönliche, auch immaterielle, Schäden entstanden sind, eine Entschädigung zugesprochen werden. Das Gesetzbuch über Ordnungswidrigkeiten sieht für Verstöße gegen das Diskriminierungsverbot Geldbußen zwischen 140 Euro und 715 Euro vor. Die Staatliche Arbeitsinspektion hat bereits entsprechende Sanktionen verhängt, vorwiegend für Diskriminierung in Stellenanzeigen aufgrund von Geschlecht, Alter und ethnischer Zugehörigkeit. Diese Sanktionen reichten von Verwarnungen bis zu Geldbußen in Höhe von 70 bis 535 Euro, wobei diese geringen Beträge wohl kaum abschreckend wirken dürften. Der Oberste Gerichtshof hat, in Übereinstimmung mit dem Europäischen Gerichtshof, verdeutlicht, dass in Diskriminierungsfällen immaterielle Schäden nicht speziell nachgewiesen werden müssen, weil schon das Bestehen einer Diskriminierung im Beschäftigungsverhältnis einen ideellen Schaden glaubhaft macht.¹⁰⁶

6. Gleichbehandlungsstellen

Seit März 2007 übt das Büro des Ombudsmanns die Funktion der nationalen Gleichbehandlungsstelle aus. Zu seinen Aufgaben gehören der Schutz der Menschenrechte, einschließlich der Förderung des Gleichbehandlungsgrundsatzes, wobei keine speziellen Diskriminierungsgründe aufgezählt werden und damit alle Gründe abgedeckt sind. Außerdem muss das Büro individuelle Beschwerden wegen Menschenrechtsverletzungen untersuchen, gegebenenfalls auf eigene Initiative Untersuchungen einleiten, die Menschenrechtslage analysieren, Befragungen durchführen und Berichte erstellen. Das Büro ist befugt, Klagen von Einzelpersonen zu prüfen, die notwendigen Informationen anzufordern und ein Schlichtungsverfahren durchzuführen. Ist die Schlichtung nicht erfolgreich, kann das Büro den Parteien seine rechtliche Stellungnahme in Form von Empfehlungen mitteilen und Empfehlungen für die zuständige Behörde oder den zuständigen Amtsträger erstellen; diese Empfehlungen sind jedoch nicht bindend und das Büro kann auch keine Geldbußen verhängen. Es ist berechtigt, vor dem Verfassungsgericht zu klagen, wenn eine Rechtsvorschrift gegen eine höherrangige Rechtsnorm verstößt. Entsprechend kann das Büro bei einem Verwaltungsgericht Klage einreichen, wenn es dabei öffentliche Interessen verfolgt, oder bei einem Zivilgericht, wenn das Büro einen Verstoß gegen das Diskriminierungsverbot festgestellt hat. Außerdem bietet das Büro eine Rechtsberatung für Diskriminierungsoffer an und unterstützt sie bei der Vorbereitung ihrer Klage. Seit 2007 hat der Ombudsmann noch kein Diskriminierungsoffer vor Gericht vertreten, allerdings hat er zwei Schlichtungsverfahren erfolgreich durchgeführt.

Die Mittelkürzungen infolge der Wirtschaftskrise beeinträchtigen natürlich auch die Funktion der Gleichbehandlungsstelle. Im Jahr 2010 wurden die Mittel des Büros im

¹⁰³ Lettland hat zum 01.01.2014 die frühere Landeswährung, den *Lats*, durch den Euro ersetzt.

¹⁰⁴ Regionales Verwaltungsgericht (*Administratīvā apgabaltiesa*), Rechtssache A420528911B. gegen die staatliche Sozialversicherungsagentur (*B.V. pret Valsts Sociālās apdrošināšanas aģentūru*), 27.09.2013.

¹⁰⁵ Lettland, Bezirksverwaltungsgericht (*Administratīvā rajona tiesa*), Rechtssache A420571712, 02.12.2013 Lettland, Oberster Gerichtshof, Senat für Zivilsachen (*Augstākās tiesas Civillietu tiesu palāta*), R. S. gegen die neue evangelisch-lutherische Kirche St. Gertrude in Riga (R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze).

¹⁰⁶ Lettland, Oberster Gerichtshof (Augstākās tiesas Senāts), Rechtssache C32276312 (SKC – 1702/2013), 29.11.2013, unter <http://www.l2d.lv/v.php?i=82540>.

Vergleich zu 2008 um 57 % gekürzt. Dies führte zu personellen Einschnitten. Zeitweise sind nur ein bis drei Mitarbeiter des Büros auf Diskriminierungsfälle spezialisiert, was daran zweifeln lässt, ob das Büro die Anforderung der Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse (in Bezug auf die Gleichbehandlungsstelle) in der Praxis erfüllt. Das Budget für das Jahr 2014 wurde leicht auf 1 131 770 Euro erhöht¹⁰⁷ und die Abteilung für Rechtsgleichheit besteht nun aus drei Mitarbeitern.¹⁰⁸

7. Wichtige Punkte

Mit Ausnahme des Bereichs Beschäftigung beziehen sich nicht alle von den Richtlinien abgedeckten Bereiche auf sämtliche in den Richtlinien genannten Diskriminierungsgründe (insbesondere sexuelle Ausrichtung).

Die Bestimmung des Arbeitsgesetzes, die Ausnahmen für Organisationen mit religiösem Ethos vorsehen, sind weiter gefasst als in Richtlinie 2000/78 vorgegeben, allerdings liegt noch keine Rechtsprechung zur Auslegung dieser Bestimmungen vor.

Im September 2014 verabschiedete das Parlament eine Neufassung des Strafgesetzbuches, in der Hassverbrechen bzw. Hassrede „aufgrund von Geschlecht, Alter, Behinderung und sonstigen Umständen“ als Straftatbestand aufgenommen werden, wobei sexuelle Ausrichtung nicht ausdrücklich erwähnt wird. In diesem Zusammenhang erhöht sich möglicherweise die Bereitschaft des Staates, alle in den Richtlinien verbotenen Diskriminierungsgründe auch in anderen Bereichen außerhalb des Arbeitslebens zu schützen.

Es gibt weiterhin keine nationale Koordination von Antidiskriminierungsmaßnahmen. Seit 2004 gibt es nur ein äußerst begrenztes Fallrecht in Bezug auf die Diskriminierungsgründe Rasse und ethnische Herkunft (1), Behinderung (2), Alter (2), Religion (0) und sexuelle Ausrichtung (0).

Die überarbeitete Zivilprozessordnung macht es NRO unmöglich, Opfer von Diskriminierung in höheren Instanzen zu vertreten und fällt damit hinter das von den Gleichbehandlungsrichtlinien geforderte Schutzniveau zurück.

¹⁰⁷ Die Projektmittel lagen bei 1 157 884 Euro.

¹⁰⁸ Allerdings wurde diese Abteilung Anfang 2015 abgeschafft. Siehe: Ombudsmann (*LR Tiesībsargs*). Mitarbeiter, in lettischer Sprache verfügbar unter <http://www.tiesibsargs.lv/par-mums/darbinieki>.

INTRODUCTION

The national legal system

Latvia's legal system belongs to the continental (Romano-Germanic) law system. Latvia's law was significantly influenced by German (and subsequently, Roman) law, especially in areas of civil, administrative and constitutional law. The Constitution (*Satversme*), adopted in 1922, was drafted using the Weimar Constitution, the constitutions of German states, and the Constitution of France as primary models. The most important source of law in Latvia is legal acts, which can be divided into two categories: external and internal. External legal acts are universally binding. The main types of external legal acts are laws, regulations of the Cabinet of Ministers, and binding regulations of local municipalities. Internal legal acts bind only the issuing state institution. Examples of internal legal acts are statutes, instructions and recommendations.

The hierarchical system of legal acts in Latvia is the following: 1) the Constitution; 2) laws, 3) regulations of the Cabinet of Ministers; 4) binding regulations of local authorities. International and EU legal norms are applied in accordance with their ranking in the hierarchy of external regulatory enactments. In cases of conflicts between Latvian and international/EU statute of the same legal force, the international/EU law or provision must be applied.¹⁰⁹

Latvia is a multi-ethnic country, although the proportion of the different ethnic groups among its population has varied. In 2011, of a population of 2 067 887, 62.1 % were 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, and 1.3 % others.¹¹⁰ Latvian citizens number 1 732 880 or 83.8 % of the population; of these, ethnic Latvians constitute 71.42 %. 12.1 % or 262 030 inhabitants are non-citizens,¹¹¹ of which ethnic Russians are the largest group. Therefore, 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.

List of main legislation transposing and implementing the directives

Latvian anti-discrimination law remains scattered across many pieces of legislation. However, the main problem is that while most fields covered by the directives are covered in Latvia, the law often does not apply to all grounds – which results in incomplete protection. The older laws containing an equality clause never include all of the grounds required by the directives and not all of them leave the list of grounds open. Furthermore, the laws that are supposed to implement the directives leave some grounds uncovered.

The main anti-discrimination laws transposing the directives are:

- Labour Law – adopted 20.06.2001, in force 01.06.2002, latest amendments 23.10.2014, grounds: race, skin colour, age, disability, religious, political or other conviction, national and social origin, property and marital status, sexual orientation or other circumstances; covers employment relationships proper (civil service and specialised civil service excepted);
- State Civil Service Law – adopted 07.09.2000, in force: 01.01.2001, grounds: not specified, latest amendments: 29.05.2014, civil service relationships;

¹⁰⁹ Guide to Latvian Legal System and Legal Research (2012), available at: http://www.nyulawglobal.org/globalex/Latvia_Legal_Research.htm.

¹¹⁰ 2011 Population Census.

¹¹¹ Non-citizens are a special category of people - former USSR citizens who were resident in Latvia on 1.07.1991 and have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons. Data concerning citizenship are as of 1.01.2015.

- Law on Social Security – adopted: 07.09.1995, in force: 05.10.1995, latest amendments: 06.03.2008, grounds: race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances; covers social services (state, municipal);
- Consumer Rights Protection Law – adopted: 18.03.1999, in force: 15.04.1999, latest amendments: 18.09.2014, grounds: gender, race, ethnic origin, disability, access to goods and services;
- Law on the Prohibition of Discrimination of Natural Persons-Economic Operators – adopted: 19.12.2012, in force: 02.01.2013, grounds covered: gender, age, religious, political or other conviction, sexual orientation, disability, race and ethnic origin, access to self-employment; access to goods and services;
- Law on Education – adopted: 29.10.1998, in force: 01.06.1999, latest amendments: 17.12.2014; grounds: property and social status, race, ethnic origin, gender, religious and political belief, state of health, employment and place of residence; access to education;¹¹²
- Law on the Ombudsman – adopted 06.04.2006, in force: 01.01.2007, grounds: not specified, latest amendments: 25.09.2014, grounds covered: not specified, legal status, functions and tasks of the Ombudsman, as well as the procedures by which the Ombudsman shall perform the functions and tasks specified by the law;
- Law on Organisations and Foundations – adopted 30.10.2003, in force: 01.04.2004, latest amendments: 23.01.2014, grounds covered: not specified, principles of the activity, organisational structure, liquidation and re-organisation of associations and foundations.

¹¹² Latvia, Law on Education (*Izglītības likums*), 29.10.1998.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

Article 91 of the *Satversme* (the Latvian Constitution) deals with non-discrimination.

The principle of non-discrimination is enshrined in Article 91, which provides that 'All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind'. It refers to 'discrimination of any kind' without specifying the grounds and thus covers all possible grounds, including the grounds of the two directives – thus also discrimination based on sexual orientation in relation to fields other than employment. As the Constitution stands highest in the hierarchy of legal norms, this permits an argument that a non-exhaustive list of grounds also applies in the cases of laws that only contain an exhaustive list of grounds in their non-discrimination clauses,¹¹³ although in practice this would inevitably complicate matters by requiring weighty arguments to counter the inclusion of the 'one is the exclusion of another' argument.

In addition to the non-discrimination clause in Article 91, Article 89 of the Constitution states that 'the state shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia'.

While this recognises the binding force of international treaties without giving express indication as to the place of international treaties in the hierarchy of norms, the Constitutional Court has adopted the doctrine that the norms of the Constitution have to be interpreted in the light of the international human rights standards that are binding upon Latvia.¹¹⁴ The competence of the court to review the compatibility of international treaties signed or concluded by Latvia with the Constitution, as well as to review the compatibility of national legal provisions with those international treaties concluded by Latvia that do not contradict the Constitution, must be noted in particular.

This indicates the place of international treaties binding on Latvia in the hierarchy of norms: they are below the Constitution yet above the ordinary laws, and ordinary laws and all subordinate provisions must comply with these treaties.¹¹⁵

Moreover, in practice it has been accepted that international treaties can be relied upon, and applied directly – to the extent that direct application is possible and the treaties are self-executing – even in the absence of any implementing legislation. The European Convention on Human Rights and Fundamental Freedoms stands out as particularly important, as the Constitutional Court and administrative courts use international legal instruments, and courts of general jurisdiction rely on ECHR, or at least refer to it. Claimants in the Constitutional Court rely not only on the non-discrimination clause of the

¹¹³ For example, while Article 3 of the Education Law (*Izglītības likums*) only guarantees equal rights to receive education to citizens of Latvia, Latvian non-citizens and citizens of the EU states regardless of 'property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence', not mentioning, for example, sexual orientation or age, by referring to Article 91 of the Constitution it is possible to regard these grounds as non-exhaustive.

¹¹⁴ Latvia, Constitutional Court (*Satversmes Tiesa*) judgment in case No.2000-03-01, 30.08.2000, <http://www.satv.tiesa.gov.lv/upload/2000-03-01.rtf>.

¹¹⁵ While views differ as to why international treaties take place below the Constitution (*Satversme*) and above ordinary statutes (in fact, it has been argued that some international treaties, due to the subject they deal with, may even be at the same level as the Constitution. See Ineta Ziemele. International Law in Latvian Legal System. In: Ineta Ziemele, ed. Realization of Human Rights in Latvia: Courts and Administrative Procedure (in Latvian), Riga, 1998, pp.43-44) – for example, Mārtiņš Mits considers that the supremacy of international treaties is a general principle of law, even if it has not been included in a norm of constitutional rank (see, e.g., Mārtiņš Mits. The *Satversme* in the Context of European Human Rights Standards. Latvian Human Rights Quarterly # 7-10/1999, p.50) – this is not doubted anymore and has been well established and affirmed by practice.

Satversme, but also on the provisions of international treaties binding on Latvia – primarily the ECHR. In certain cases, the Constitutional Court has examined, inter alia, whether Article 14 of the ECHR has been violated.¹¹⁶ The reliance on the UN CRPD may increase in the future, as several cases where the courts have referred to it have emerged.¹¹⁷ Importantly, the Constitutional Court has held that, where the Constitution provides for a higher standard of protection than the one provided for by the international agreements binding on Latvia, the higher standard is applied.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional anti-discrimination provisions are directly applicable.

The Constitution is generally regarded as directly applicable. It was first in the 'compensation of losses' case¹¹⁸ that the Constitutional Court held that constitutional norms can be applied directly. While the petitioner argued that there had been discrimination because a change in the law failed to provide for the compensation of losses in his case, the Constitutional Court held that Article 92 of the Constitution could be applied directly and that the absence of an implementing law cannot serve as a ground for the court's refusal to accept the claim.

The constitutional equality clauses cannot be enforced against private actors (as opposed to the State). Specific laws and judicial interpretation are required.

The main problem is that the Constitution is generally not regarded as directly applicable to actions by private individuals, and thus lacks horizontal effect; hence, while it would be possible to argue the applicability of the principle of non-discrimination to the public sphere, even in the absence of any implementing legislation, in the private sphere such legislation is crucial. The case law suggests that international norms – and probably also constitutional norms, although the courts generally still seem to be reluctant to refer to them, or to do more than just refer to them, going into the substance of cases instead – can be of importance when interpreting the duties contained in ordinary legislation and thus, in the combination of the two, can be relied on to impose duties on private parties that may not be obvious from just looking at the legislation; however, one has to keep in mind the need to comply with the requirement that the law be sufficiently precise to enable the individual to foresee the consequences of his actions.

¹¹⁶ See, for example, the Constitutional Court (*Satversmes Tiesa*) judgments in cases 2000-03-01 and 2001-02-0106.

¹¹⁷ Administrative District Court [Administratīvā apgabaltiesa], Case Nr.A420528911 (B. v. State Social Insurance Agency (*B. pret Valsts Sociālās apdrošināšanas aģentūru*)), 27.09.2013, available at www.uzзина.lv/vuzn.php?vuzn_id=74769; Administrative District Court (*Administratīvā apgabaltiesa*), Case Nr. A420571712 (B. v. Health Inspection (*B. pret Veselības inspekciju*)), 2.12.2013, available at <http://www.l2d.lv/v.php?i=82686>.

¹¹⁸ Latvia, Constitutional Court (*Satversmes Tiesa*), decision in case No. 2001-07-0103, 5.12.2001, available at <http://www.satv.tiesa.gov.lv/upload/2001-07-0103.rtf>. In this particular case the petitioner complained of the unconstitutionality of the Law on the Compensation of Losses Suffered as the Result of Illegal or Unsubstantiated Actions of Bodies of Investigation, Prosecutor's Office or Court because the law, allegedly in contradiction with Article 92 of the Constitution providing that 'Everyone, where their rights are violated without basis, has a right to commensurate compensation', failed to provide for the compensation of losses in his case. While the law governed the compensation of losses to, inter alia, persons acquitted by the court, it did not apply to cases such as the petitioner's case when the person found guilty had spent a longer time in pre-trial detention than the period of deprivation of liberty imposed on him by the sentence. The Constitutional Court held that the above-mentioned law only regulates certain cases of compensation, without purporting to be exhaustive, providing for a simplified procedure in those listed cases, whereas in all other cases the person can turn to the court of general jurisdiction basing his claim directly on Article 92 of the Constitution, the court having the duty to adjudicate the case.

Thus, in the Steel case,¹¹⁹ where the notion of 'illegal attack on dignity and honour' contained in Article 2352 of the Civil Law was at issue, the court relied on, inter alia, Article 89 of the Constitution and the Convention on the Elimination of All Forms of Racial Discrimination to conclude that the respondent's actions had in fact been illegal.

This certainly creates the potential for horizontally applying at least some of the provisions of the Constitution; however, this would need to be confirmed by case law.

Similarly, in the Smagars case,¹²⁰ the discrimination, even if nowhere expressly prohibited, was found 'unacceptable in a democratic state based on the rule of law' and was also held to constitute an attack on dignity and honour. In the Sants case,¹²¹ the court referred to the constitutional non-discrimination clause – which contains no listing of grounds – to infer that the Labour Law prohibits differential treatment based on sexual orientation, even if at the time of the adjudication of the case at first instance this ground was not listed expressly.

¹¹⁹ Latvia, Latgale District Court of Riga (*Rīgas Latgales priekšpilsētas tiesa*), Case No 29240503 (George Ronney Steel v. Brīvības partija (the Liberty party) and SIA Latvijas Televīzija (Latvian Television Ltd)), 8.09.2003.

¹²⁰ Latvia, Riga regional court (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*) judgment in case No. C04386004, 11.07.2005.

¹²¹ Latvia, Riga city Ziemeļu district court (*Rīgas pilsētas Ziemeļu rajona tiesa*) judgment in case No. C32242904047505, 25.05.2005.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law.

The grounds commonly referred to in Latvian legislation are: race, ethnicity, national origin (in certain cases understood as ethnic origin, in certain cases as citizenship), gender, language, party membership, religious or political 'or other' opinions – which encompasses belief – non-religious, property or social status, position occupied and origin, and sometimes also health condition,¹²² place of residence and occupation.

The Labour Law, one of the laws transposing the directives and addressing the issue of discrimination systematically, lists 'race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances' (Article 7 (2)).¹²³

Article 78 of the Criminal Law protects against the instigation of national, ethnic, racial or religious hatred, and Article 150 protects against the instigation of social hatred based on a person's gender, age, disability or any other features. Article 149.¹ provides a more general protection, making punishable discrimination on the basis of ethnic, national, racial or religious origin, as well as violations of prohibition of discrimination provided for in other legal acts (thus depending on the existence of such legal acts).

Since 2013, the Electronic Mass Media Law has prohibited incitement to hatred and discrimination on the grounds of gender, age, religious, political and other belief, sexual orientation, disability, race or ethnic origin, nationality and other circumstances in audio and audio-visual commercial messages (Article 35).

The Constitution prohibits any kind of discrimination, but it does not mention specific grounds; moreover, it only applies directly in the public sector and generally does not have horizontal effect, which means that there is no prohibition of discrimination in the private sphere unless a specific law is in place. A number of other laws contain the principle of non-discrimination, but only the Labour Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators specifically mention all of the grounds covered by the two directives; moreover, some of these laws cover only specified grounds without leaving the list open.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

Latvian anti-discrimination law does not contain any definitions of the grounds of discrimination covered by the directives, except for disability, and they have not been at issue in any of the court cases decided so far.

Disability is included in the Labour Law, the Law on Social Security, the Consumer Rights Protection Law, the Law on Patients' Rights, and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (the Latvian term being *invaliditāte*).

This is defined in the Disability Law; it is a long-term or non-transitional very severe, severe or moderate level of limited functioning, which affects a person's mental or physical abilities, ability to work, self-care and integration into society.¹²⁴ It is divided into three

¹²² Latvia, Law on Education (*Izglītības likums*), 29.10.1998; Law on Protection of the rights of the child (*Bērnu tiesību aizsardzības likums*), 19.06.1998.

¹²³ On 25.05.2005, the Ziemeļu district court judgment in case C32242904047505 indicated that, at least so far, sexual orientation had been considered to come under such 'other circumstances'.

¹²⁴ Latvia, Article 5(1) of the Disability Law (*Invaliditātes likums*) 25.05.2010.

possible degrees of disability, in accordance with the provisions of the law, depending on the gravity of the impairment. The law specifies moderate disability as the loss of 25-59 % of the capacity to work, severe disability as the loss of 60-79 % of the capacity to work, and very severe disability as the loss of 80-100 % of the capacity to work. The amendments specifying loss of capacity came into force on 1 January 2013. The definition in Latvian law (Article 5(1) of the Disability Law) is narrower than the concept of disability in *Skouboe Werge and Ring*¹²⁵ (based on Article 1 of the UN CRPD), as it refers only to those persons who have been conferred one of the three degrees of disability by the State Medical Commission for the Assessment of Health Condition and Working Ability. The issue may arise whether the term covers any de facto disability, and the UN CRPD's broader definition of 'disability' may provide guidance if a potential case reaches a court.

'Race' would be interpreted using the definition contained in the Convention on the Elimination of All Forms of Racial Discrimination, and one may well imagine that, when applying the non-discrimination provision of the Labour Law, the courts might in certain circumstances have difficulties deciding whether the discrimination was based on a person's race or skin colour, since this law contains a reference to both.

In the Criminal Law (Article 78 on instigation of racial, ethnic and national hatred), the Latvian legislator has introduced an autonomous division and explanation of terms by separating the terms 'race', 'national origin' and 'ethnic origin', instead of an encompassing definition of 'race' provided by sources of international law, e.g. CERD. However, the scope of protected groups in the Criminal Law and in the convention remains the same, and the Criminal Law provides for a more detailed enumeration of protected groups. Until 2007, the law included the terms 'race' and 'national origin.' In court practice, the term 'race' is most often equated with a person's skin colour, while in the case of 'ethnic' and 'national origin', the use of the terms is not consistent. They may be used as synonyms, or 'national origin' may be understood to refer to nationality.¹²⁶

2.1.2 Multiple discrimination

In Latvia, the prohibition of multiple discrimination is not included in the law.

In Latvia, the following case law deals with multiple discrimination:

In the only case of multiple discrimination – the Stūriņa case¹²⁷ – this was found at the court's own initiative, and the line of reasoning was not well developed.

In the Stūriņa case, decided by the Cēsu district court on 05 July 2005, in which the court held that the claimant, who from 1997 to 2004 had regularly been employed by the municipality for the winter season at the heating plant, had been discriminated against on the basis of her gender and property status by not being employed again in the 2005 season, multiple discrimination was found at the court's own initiative. The claimant had only argued gender discrimination, not property status-based discrimination. The municipality had, instead of employing the claimant, employed another person who had not even responded to the call for applications and was already employed by the municipality, the municipality arguing that 'the remuneration of the employees of the municipality is low', thus supposedly taking into account their low income ('property status'). However, this line of reasoning is not well developed, and it would be speculative to make any general conclusions about how the courts would handle multiple discrimination cases. In this particular case, although multiple discrimination was established, the court

¹²⁵ CJEU, joined cases C-335/11 and C-337/11, judgment of 11.04.2013.

¹²⁶ Latvia, Supreme Court (2012). Court Practice in Criminal Cases Concerning Incitement to National Ethnic and National Hatred, in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

¹²⁷ Latvia, Cēsu district court (*Cēsu rajona tiesa*), judgment in case No. C11019405 (*Anga Stūriņa v. Straupe municipal council*), 5.07.2005.

did not specifically mention that it had an impact on the amount of moral or material damages awarded.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Latvia, national law does not explicitly prohibit discrimination based on perception or assumption of what a person is.

There is no case law concerning discrimination by assumption.

b) Discrimination by association

In Latvia, national law (including case law) does not expressly prohibit discrimination based on association with persons with particular characteristics.

However, it might possibly be argued that protection against discrimination exists 'based on other circumstances' where the list of the grounds is left open. National law does not explicitly prohibit discrimination by association, with the exception of Article 3 of the Law on the Rights of the Child, which refers to the race etc. not only of the child, but also of their parents, guardians and family members, thus protecting against discrimination by association, although to a limited extent only.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Latvia, direct discrimination is prohibited in national law. It is defined.

Article 29(5) of the Labour Law states that 'Direct discrimination exists if in a comparable situation the person, based on her gender, is, was or may be treated less favourably than another person'. Article 29(9) applies the protection against discrimination, including this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances. This definition (instead of the reference to gender only in the main clause directly listing the same grounds, with the exception of sexual orientation in an open-ended provision) is also used in the amended Law on Social Security. The same definition is used in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4 (2)) in relation to grounds of gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin.

The Consumer Rights Protection Law (Article 3.¹(6)) limits the same definition to the grounds of gender, race, ethnic origin and disability, while the Law on Support to Unemployed Persons and Job Seekers limits it to gender, race and ethnic origin. The Law on Education (property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence) refers to the definitions used in the Consumer Rights Protection Law.

While technically the Labour Law applies only to employment relationships¹²⁸ (including pre-contractual relationships, as indicated by both the reference in Article 29(1) to 'establishing employment relationship' and Article 34, dealing with the consequences of violating the prohibition of differential treatment when establishing an employment

¹²⁸ It must be noted that, after the 02.11.2006 amendments to the State Civil Service Law, the provisions of the Labour Law concerning prohibition of differential treatment apply to civil service relationships, including specialised civil service relationships; the latter includes police, border guards, individuals in diplomatic or consular service and certain other institutions.

relationship) and to employment-related claims, thus by definition excluding self-employment and related claims, which are regulated in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, it is not inconceivable and, indeed, it is very likely, at least as long as there is no general anti-discrimination law or definitions in other laws apart from the Law on Social Security and the Consumer Rights Protection Law, that this definition could be used in other cases when the issue of direct discrimination is raised, especially since it would also follow from the international treaties that are binding on Latvia.

The Criminal Law does not contain a definition of discrimination, but instead refers, in Article 149.¹, to 'race or ethnic discrimination or the violation of the prohibition of discrimination provided for in other legal acts' – thus de facto referring back to the Labour Law definitions.

b) Justification of direct discrimination

According to Article 29(2) of the Labour Law, justification for differential treatment is possible 'only in cases where a particular gender [and, by virtue of Article 29(9), other grounds] is an objective and substantiated precondition, which is proportionate to the goal sought to be achieved, for performance of the relevant work or the relevant employment'.

Article 2.¹(1) of the Law on Social Security refers to the non-exhaustive list of grounds of differential treatment (race, ethnicity, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, or other circumstances) without distinguishing those grounds covered by the directives. Article 2(6) provides that 'differential treatment (excluding harassment) associated with any of the grounds shall only be acceptable in such cases if such treatment is objectively justified with a legitimate purpose, for the achievement of which the selected means are proportionate'.

The provision does not distinguish between direct and indirect discrimination, nor between the grounds covered by the directives and other grounds for differential treatment. The amendments to the laws concerning discrimination (including direct discrimination) have been adopted with the purpose of transposing the directives into national law, but in separate instances they lack sufficient precision. In such cases, it remains for the courts to consult the text of the directives.

It would appear that Latvian legislation provides for a wider range of exceptions for direct race discrimination than the Race Equality Directive, extending beyond a general occupational requirement. The same provisions (an exception being the list of specific grounds) are reiterated in the Education Law (Article 3.¹(1-2) – 11 grounds, closed list), in the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(1-2) on race, ethnic origin and gender), in the Consumer Rights Protection Law (Article 3.¹(1-2) on race, ethnic origin, gender and disability), and in the Law on the Prohibition of Discrimination of Physical Persons-Economic Operators (Article 3(1)1,2 – no reference to genuine occupational requirement). The differential treatment of economic operators who are persons with disability is permissible in cases of an unreasonable burden for the other party, and similarly in the context of goods and services (Article 3.1(2)).

2.2.1 Situation testing

a) Legal framework

In Latvia, situation testing is not clearly permitted in national law.

In Latvia, national law is silent on the issue of situation testing, thus neither expressly permitting nor prohibiting it, and there is no case law on it.

To some extent it might be considered that in the Smagars case¹²⁹ the claimant himself did the situation testing, as after the first instance of being refused admittance to the nightclub he returned with a TV team for 'testing', yet this does not reveal anything of how the courts would react to a test carried out by a person other than the victim of discrimination himself. The crucial issue would be whether the court would consider situation testing as being of relevance to the case at hand, since, according to Article 94 of the Civil Procedure Law, the court can only accept evidence which is of relevance to the case, and the defendant might conceivably argue that the situation tested is distinct from the case under consideration. In the absence of relevant case law, it is not possible to predict how the courts would treat such testing, and the extent of the willingness of the courts to consider it as evidence based on the argument of experience of other countries would probably depend on each particular court, although it is undeniable that developments in other countries would certainly influence the Latvian courts and statute law. Thus, the means of proof in this case would be the testimonies of the witnesses, and the general rules concerning such testimonies (such as the prohibition of hearsay, rules on privileged witnesses etc.) would apply.

b) Practice

In Latvia, situation testing is rarely used in practice.

The Latvian Centre for Human Rights (LCHR), for the first time in Latvia, conducted situation testing at nightclubs during the night of 5-6 March 2011.¹³⁰ The aim of this was to promote situation testing as a method for collecting information on the treatment of different groups, as well as to highlight the risks of racial and ethnic discrimination. In five nightclubs in Riga, no discrimination of this sort was identified. However, the event led to media reporting and to awareness raising about situation testing as a method of proving discrimination. This situation testing was conducted within a European-wide initiative, 'the first Europe-wide testing night against racial discrimination', coordinated by the European Grassroots Antiracist Movement (EGAM).¹³¹ The activists tested nightlife venues in the main cities of 14 European countries; 35 venues in 15 cities were found to be carrying out discriminatory practices.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Latvia, indirect discrimination is prohibited in national law. It is defined.

The Labour Law contains a definition of indirect discrimination that complies with the definition used by the directives. Article 29(6) of this law provides that: 'Indirect discrimination exists if an apparently neutral provision, criterion or practice causes adverse consequences for persons belonging to one gender, except in cases where such provision, criterion or practice is objectively justified by a legitimate aim, the means for attaining which are proportionate.' Again, Article 29(9) applies the protection against discrimination, including under this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances. The same definition is in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(2)) on gender, age, religious, political or other conviction, sexual orientation, disability, race

¹²⁹ Latvia, Riga regional court (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*) judgment in case No. C04386004, 11.07.2005.

¹³⁰ Latvian Centre for Human Rights, *Situācijas testēšanas eksperiments cīņā pret rasu diskrimināciju*, <http://cilvektiesibas.org.lv/lv/media-materials/situacijas-testesanas-eksperiments-cina-pret-rasu/>.

¹³¹ Information about the first Europe-wide testing night is available in English at (accessed on 22.08.2011): <http://www.scribd.com/doc/55608978/First-European-Testing-Night-EGAM-Report>.

or ethnic origin). This definition is also found in the Consumer Rights Protection Law (Article 3.¹(6) in relation to four grounds – gender, race, ethnic origin and disability) and in the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(4)).

The Education Law (Article 3.¹(8)),¹³² refers to definitions used in the Consumer Rights Protection Law.¹³³ It is very likely that this definition would be used for interpreting the notion of indirect discrimination in other laws that contain no definition of it. The Law on Social Security (Article 2.¹(4)), however, retains the old definition: 'indirect discrimination exists if in a comparable situation an apparently neutral provision, criterion or practice causes or may cause adverse consequences to persons in connection with grounds of race, ethnicity, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, or other circumstances.'

b) Justification test for indirect discrimination

According to Article 29(2) of the Labour Law, justification for differential treatment is possible 'only in cases where a particular gender [and, by virtue of Article 29(9), other grounds] is an objective and substantiated precondition, which is proportionate to the goal sought to be achieved, for performance of the relevant work or the relevant employment.'

Article 2.¹(1) of the Law on Social Security refers to the non-exhaustive list of grounds of differential treatment (race, ethnicity, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, or other circumstances) without distinguishing those grounds covered by the directives. Article 2(6) provides that 'differential treatment (excluding harassment) associated with any of the grounds shall only be acceptable in such cases if such treatment is objectively justified with a legitimate purpose, for the achievement of which the selected means are proportionate'.

The same provisions (an exception being the list of specific grounds) are reiterated in the Education Law (Article 3.¹(1-2) – 11 grounds, closed list), in the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(1-2) on race, ethnic origin and gender), in the Consumer Rights Protection Law (Article 3.¹(1-2) on race, gender and disability), and in the Law on the Prohibition of Discrimination of Physical Persons-Economic Operators (Article 3(1)1,2 – no reference to genuine occupational requirement).

Thus, the provisions do not distinguish between direct and indirect discrimination, nor between the grounds covered by the directives and other grounds for differential treatment. The test for justification is the same one as for direct discrimination: legitimate aim and proportionate means ('where such provision, criterion or practice is objectively justified by a legitimate aim the means for attaining which are proportionate').

c) Comparison in relation to age discrimination

There are no specific provisions specifying a comparison concerning the ground of age, and there is no case law either.

2.3.1 Statistical evidence

a) Legal framework

In Latvia, there are national rules permitting data collection.

¹³² Latvia, Law on Education (*Izglītības likums*), 29.10.1998.

¹³³ Latvia, Law on Support to Unemployed Persons and Job Seekers (*Bezdarbnieku un darba meklētāju atbalsta likums*), 9.05.2001.

The main law regulating data collection is the Law on the Protection of Data of Natural Persons,¹³⁴ which defines as sensitive data the data on a person's race, ethnic origin, religious, philosophical or political conviction or trade union membership, as well as data which provide information on a person's health (which would cover disability) or sexual life (apparently, even if not expressly, covering sexual orientation). Article 11 in principle prohibits the processing of sensitive data, but it contains a range of exceptions, among which, in addition to the written agreement of the data subject that their data may be processed, are: when the legal norms governing an employment relationship provide for data processing without the agreement of the data subject; when the processing of data is necessary for the purposes of medical treatment; when processing the data is necessary for the provision of social aid and is performed by the aid providers; or when the processing of data is needed for statistical studies performed by the Central Statistical Bureau. All data processing systems need to be registered with the State Data Inspectorate, which may refuse registration if the law is not complied with.

Thus, in principle, employers are prohibited from keeping records in respect of ethnic or racial origin, disability, religion or belief or sexual orientation. However, there are obviously exceptions in professions that involve work with people where a medical certificate is needed, and in cases of disability in so far as special accommodation is required. Theoretically, it might also be possible to keep a record of an employee's religious affiliation in case the employer wanted to enable them to observe their particular religious holidays; however, this is not the practice in Latvia.

In Latvia, national law is silent on the issue of the use of statistical evidence in order to establish indirect discrimination.

The gathering of evidence for the purposes of civil proceedings is governed by the Civil Procedure Law, Articles 110-112 of which determine what written evidence encompasses information on facts of relevance to the case, including data showing a prima facie case of discrimination in any form. Article 111 enables a party to request to the court, by means of a motivated request, that certain evidence be provided, describing it and explaining why they think that this evidence is in the possession of the person concerned. Article 112 provides for the right of the judge, at the request of one of the parties, to require that public entities or other legal or natural persons – which thus includes the respondents, even if this is not expressly mentioned – provide the necessary evidence. If the person concerned does not provide the required evidence, while not denying that it is in her possession, the court may hold that the fact for which this evidence was required as proof has been proved. However, if it is impossible for the person to provide this evidence, they must notify the court explaining the reasons why it is impossible.

Since these provisions have not so far been used in the context of discrimination cases by the courts of general jurisdiction, it is difficult to predict what the difficulties might be in relation to such requests, for instance how specific the courts would require the description of the sought evidence to be, and how much extra effort might be required from the respondent to prepare evidence for the presentation. However, the legal framework for requiring that certain data be provided certainly exists.

It must also be noted that one court that regularly makes use of statistical data is the Constitutional Court. Both in a case where there was a challenge regarding the age limit for occupying the post of university professor,¹³⁵ and in another case where the age limit for holding a position in the civil service¹³⁶ was challenged, the statistical evidence was important for the decision reached. In one case, it showed the inappropriate character of the limitation, namely the inability to attain the aim sought, and in the other case, it demonstrated the lack of impact of the provision challenged. Hence also for the courts of

¹³⁴ Latvia, Personal Data Protection Law (*Fizisko personu datu aizsardzības likums*), 23.03.2000.

¹³⁵ Latvia, Constitutional Court (*Satversmes tiesa*), Case No. 2002.21.01.

¹³⁶ Latvia, Constitutional Court (*Satversmes tiesa*), Case No. 2003-12-01.

general jurisdiction, the idea of using statistical evidence would not be a complete novelty, and the reference to the experience of other countries might play some role as well.

b) Practice

In Latvia, statistical evidence in order to establish indirect discrimination is not used in practice.

The general lack of case law precludes discussion of any reluctance to use statistical data concerning the Constitutional Court; see under a).

There is no case law in this area.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Latvia, harassment is prohibited in national law. It is defined.

The Labour Law defines harassment as the 'subjection of a person to such conduct unwanted by this person, including conduct of sexual character, which is related to the gender of the person, if the purpose or effect of this conduct is violating the dignity of the person or creating an intimidating, hostile, degrading or offensive environment' (Article 29(7)). Again, Article 29(9) applies protection against discrimination, including under this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances. This definition (with reference to prohibited grounds, which in the case of the Law on Social Security do not expressly include sexual orientation) is further used in the Law on Social Security (Article 2.¹(5)), the Consumer Rights Protection Law (Article 3.¹(8) on gender, race and ethnic origin and disability), the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(6) on race, ethnicity and gender), and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(4)).

In Latvia, harassment explicitly constitutes a form of discrimination.

Article 29(4) of the Labour Law specifically provides that harassment shall be considered as discrimination. Article 2.¹(5) of the Law on Social Security, Article 3.¹(7) of the Consumer Rights Protection Law, Article 2.¹(5) of the Law on Support to Unemployed Persons and Job Seekers and Article 4(3) of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators list harassment as one form of differential treatment (discrimination).

So far, the Labour Law, the Law on Social Security, the Consumer Rights Protection Law, the Law on Support to Unemployed Persons and Job Seekers and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators are the only laws to contain both a definition of, and reference to, 'harassment'. One may argue that, because harassment is qualified by these laws as a form of discrimination, the prohibition of harassment can be regarded as implied in those anti-discrimination provisions contained in other laws that do not expressly refer to harassment, yet, in the absence of any harassment-related case law, this remains only a theoretical possibility.

One may also argue that the gravest cases of harassment are also covered by Article 156 of the Criminal Law, which provides for the punishment of intentional violations of a person's dignity or honour orally, in writing or by conduct, which could be applied to cases when the person's dignity is offended by reason of membership of some group or particular

characteristic, for example sexual orientation or gender. However, there is no case law confirming such an interpretation, and this thus remains only a theoretical possibility.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee in Latvia, the employee is liable. Liability of the employer would require judicial interpretation.

In cases of harassment, by relying on the definition of harassment as provided by the Labour Law, it could be argued that 'subjection to unwanted conduct' can also be carried out by the employer by failure to oppose such conduct by his employees, yet this is only a suggestion; it is not stated expressly in the law, nor is there any case law confirming the readiness of the courts to accept such an interpretation.

In the case of employers, Article 1782 of the Civil Law could additionally be applied, stating that the employer has to exercise due care when selecting his employees and must verify their ability to fulfil their duties, otherwise they may be held liable for the damages caused by them; in cases where the employer is the state, municipality or some other public legal person covered by the provisions of the Administrative Procedure Law, compensation for losses and for moral damages can be requested from the employer. The responsibility of the employer was at issue in the Smagars case,¹³⁷ where the respondent argued that the employer can only be held responsible for pecuniary damages caused by its employees, not for moral damages; however, the court held that the anti-defamation provision of the Civil Law did not exclude legal persons from its scope.

A co-worker or a client can be held liable according to the anti-defamation provision under Article 1635 of the Civil Law.

However, this would not apply to trade/professional associations, nor can employers be held responsible for the actions of third parties – there are no provisions to this effect in national law, nor is there any case law.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Latvia, instructions to discriminate are prohibited in national law. Instructions are not defined.

In Latvia, instructions constitute a form of discrimination.

Article 29(4) of the Labour Law expressly states that 'instruction to discriminate shall also be considered discrimination'. Therefore, the relevant provisions on prohibition of discrimination are also applicable to instruction to discriminate.

This position is adhered to in the Consumer Rights Protection Law (Article 3.¹(7)) and the Law on Social Security (Article 4(3)), as well as in the amendments to the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(5)), in the Law on Patients' Rights (Article 3.¹(8)), in the Education Law (in Article 3.¹(8)), reference is made to the definition of discrimination and forms of discrimination in the Consumer Rights Protection Law), and in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4 (2)). While there is no comparable provision in any other law in force, due to the fact that instruction to discriminate is considered under the Labour Law to be discrimination, one may argue that the position could also be applied to other laws

¹³⁷ Latvia, Riga regional court (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*) judgment in case No. C04386004, 11.07.2005.

containing anti-discrimination provisions but without express reference to instructions to discriminate.

Additionally, Article 149¹ of the Criminal Law refers to 'violation of the prohibition of discrimination provided for in other legal acts'. Thus, by using the Labour Law definition, it could be argued that the instruction to discriminate is also covered.

b) Scope of liability for instructions to discriminate

In Latvia, the instructor and the discriminator are liable.

Since the Labour Law (Article 29(4)) as well as the Law on Social Security (Article 2.¹(2)), the Consumer Rights Protection Law (Article 3.¹(7)), the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(5)), and the Law on the Prohibition of Discrimination of Natural Persons–Economic Operators (Article 2.¹(5)) provide for instruction to discriminate as a separate form of discrimination, it can be argued that, in such cases, both the instructor and the direct perpetrator would probably be held liable for two separate offences. However, there is no case law to confirm this interpretation. Similarly, in the cases that might come under the Criminal Law provisions, there would be two offences of discrimination and of incitement.

However, this would not apply to trade/professional associations, nor can employers be held responsible for the actions of third parties – there are no provisions to this effect in national law, nor is there any case law.

There are no specific provisions regarding the liability of legal persons for instructions to discriminate.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation in the field of employment

In Latvia, the duty to provide reasonable accommodation is included in the law. It is not defined.

Article 7(3) of the Labour Law provides that 'To ensure implementation of the principle of equal rights in relation to persons with disabilities it is the duty of the employer to take measures required by the circumstances in order to adapt the working environment, promote the possibilities of persons with disabilities to establish labour relationships, fulfil work duties, be promoted or undergo professional training to the extent that such measures do not create a disproportionate burden for the employer.'

In 2010 Latvia ratified the UN Convention on the Rights of Persons with Disabilities, which has a wider applicability as, in its context, the concept of reasonable accommodation applies to 'all human rights and fundamental freedoms'. Given that it can be relied upon directly in the Latvian courts, the convention has potentially far-reaching consequences – perhaps less so in the context of labour relationships, as it is felt that EU legal acts are 'closer', more 'user-friendly' and more easily enforceable, but in other contexts it can definitely be invaluable.

b) Practice

There are no further detailed provisions permitting assessment of the disproportionality of the burden. However, according to Cabinet of Ministers regulations No.75, the costs of providing reasonable accommodation:

- for employers hiring unemployed persons with disabilities can be reimbursed up to EUR 711;
- a contribution (of at least the amount of the official minimum salary) may be made to the salary of disabled person for up to 12 months;
- and provision may be made to cover the services of a sign language interpreter (EUR 10.50 per hour, in proportion to the hours worked by the person with disability, but for no more than 40 hours per week), occupational therapists or other specialists whose services are provided to facilitate the employment of the disabled person, thus helping to alleviate the burden on the employer.¹³⁸

In 2011 a court ruled that the employer had breached the equality principle (under Article 7(3) of the Labour Law) by failing to fulfil the obligation to provide for reasonable accommodation (in the specific case, adjustment of the workplace and the provision of parking space closer to the workplace could not be considered a disproportionate burden to the employer).¹³⁹

c) Definition of disability and non-discrimination protection

The very concept of disability may be problematic, since Latvian law requires official recognition of disability, and hence the issue may arise whether it covers only those disabilities that have received official qualification and as the result of which the person's status as disabled has been officially recognised, or whether it covers any de facto disability. This can be problematic and can amount to insufficient implementation unless the courts, when confronted with this issue, interpret the notion of disability in a compatible way.

The definition issue, of course, would have an impact on the issue of reasonable accommodation. Thus far, one court case on dismissal on grounds of disability,¹⁴⁰ where it was established that the employer had breached the equality principle by failing to provide for reasonable accommodation, concerned an employee who had been officially conferred the status of a disabled person.

d) Duties to provide reasonable accommodation outside the field of employment

In Latvia, there is no duty to provide reasonable accommodation for people with disabilities outside the employment field.

The Law on Education, however, does mention special education adapted to the needs of persons with special needs or health problems (Article 42).

Regulations No.710¹⁴¹ on the Provision of General Basic Education and General Secondary Education Institutions According to Special Needs¹⁴² state the necessary provisions of general education institutions concerning the integration of students with special needs in mainstream schools. All provisions are divided into institutional facilities (i.e. additional

¹³⁸ Latvia, Cabinet of Ministers Regulations No. 75 on the procedure for the organisation and financing of active employment measures and preventive activities reducing unemployment and the selection principles of implementers of measures (*Ministru kabineta noteikumi Nr.75 Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem*), 25.01.2011, available in Latvian at <http://likumi.lv/ta/id/225425>.

¹³⁹ Latvia, Kurzeme Regional Court (Kurzemes apgabaltiesas Civillietu tiesas kolēģija), case No. C40066110 (V.Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd]), 21.09.2011.

¹⁴⁰ Latvia, Kurzeme Regional Court (Kurzemes apgabaltiesas Civillietu tiesas kolēģija), case No. C40066110 (V.Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd]), 21.09.2011.

¹⁴¹ Latvia, Cabinet of Ministers Regulations No.710 on the Provision of General Basic Education and General Secondary Education Institutions According to Special Needs (*Ministru kabineta noteikumi Nr.710 Noteikumi par vispārējās pamatizglītības un vispārējās vidējās izglītības iestāžu nodrošinājumu atbilstoši izglītojamo speciālajām vajadzībām*), 16.10.2012, available in Latvian at <http://likumi.lv/doc.php?id=252163>.

¹⁴² 'Special needs' is used in respect to education and, apart from children with disabilities, also covers some children who do not have a disability as defined by the Law on Disability.

rehabilitation measures, provision of teaching assistants, additional pedagogical staff and educational programmes) and utilities of premises (accessible environment etc.). However, no concepts of reasonable accommodation or disproportionate burden are used.

The Administrative District Court ruled on a case where it highlighted reasonable accommodation in the matter of a mentally disabled person in relation to pensions. The mentally disabled person was prohibited from receiving the old-age pension (*vecuma pensija*) due to the late submission of documents. The court insisted that reasonable accommodation should be provided in the form of additional time for submitting the required documents, otherwise the limitation on the social guarantees of the disabled person would not be proportional and would amount to discrimination on the grounds of disability. The court referred to Article 28 of UN CRPD, requiring Member States to recognise the rights of disabled people without discrimination, including through reasonable accommodation and the duty of states to facilitate access to such rights.¹⁴³ (See 12.2).

e) Failure to meet the duty of reasonable accommodation

In Latvia, failure to meet the duty of reasonable accommodation does not count as discrimination.

The Labour Law does not specifically provide for a shift in the burden of proof in relation to reasonable accommodation. While the issue of equal rights that is dealt with in Article 7, which contains reasonable accommodation, and the prohibition of differential treatment dealt with in Article 29 (in which the provision on the shift in the burden of proof is included) are undeniably related, it is not immediately obvious that a shift in the burden of proof would also apply to claims of reasonable accommodation. One might wish for this to be stated expressly in the law, and the lack of case law does not allow for a prediction of how the courts would treat such cases and this procedural issue in the absence of such express provision.

f) Duties to provide reasonable accommodation in respect of other grounds

In Latvia, there is no duty to provide reasonable accommodation in respect of other grounds in the public and private sectors.

It is not common practice to provide for reasonable accommodation on grounds other than disability in the public or private sectors.

g) Accessibility of services, buildings and infrastructure

In Latvia, national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way.

While Latvian law (Construction Law Article 4(6))¹⁴⁴ does require that buildings and infrastructures meant for public use be designed in a way that facilitates the access of persons with disabilities, this has never been viewed in the context of the directive. The law also authorises the Cabinet of Ministers to issue construction standards to provide technical requirements for the environmental accessibility of structures (Article 2(1)3).

¹⁴³ Administrative Regional Court (*Administratīvā apgabaltiesa*), Case No A420528911B. v. State Social Insurance Agency (*B.V. pret Valsts Sociālās apdrošināšanas aģentūru*), 27.09.2013,

¹⁴⁴ Latvia, Construction Law (*Būvniecības likums*), 9.07.2013, available at <http://likumi.lv/doc.php?id=258572>; the principle of environmental accessibility is defined as one of the construction principles, according to which an environment is created during the construction process in which any person may move with comfort and use the structure according to its purpose of use.

This includes access to healthcare facilities.¹⁴⁵ For some reason, this requirement is often disregarded or observed only in a formal way; it may be because of a problem with the formulation of the law that it does not make it sufficiently clear that this is a compulsory requirement. However, awareness of disability-related issues is rising. Nevertheless, access to public buildings, including courts, often remains difficult.

There is no monitoring mechanism for compliance with requirements concerning access to public buildings in issuing construction permits and putting buildings into service. Local authorities have been tasked with the issuance of construction permits and approving buildings as they are put into service.

Article 1(3) of the Medical Treatment Law stipulates that medical treatment institutions may provide medical treatment only if they conform to the specific mandatory accessibility requirements as determined by the Cabinet of Ministers.¹⁴⁶ Various deadlines to meet these requirements were fixed, the final coming into force in 2014. However, difficulties were encountered in meeting them (technical difficulties, issues with historical buildings).

Amendments to the Cabinet of Ministers Regulations No.60, on 'Mandatory Requirements for Medical Treatment Institutions and their Structural Units',¹⁴⁷ entered into force on 1 January 2014. The general requirement is that the healthcare institution shall be placed in a suitable building, providing accessibility for persons with functional disabilities. The amendments also provide that those institutions that are already registered at the Register of Medical Treatment Institutions and that do not yet fully comply with the accessibility requirements for persons with functional disabilities shall ensure that it is possible for persons with functional disabilities to receive healthcare services (Paragraph 4.1), as well as providing brief and clear information about how healthcare services are provided for persons with functional disabilities at the institution (Paragraph 4.2). Healthcare centres and hospitals (i.e. large institutions) are required to ensure that persons with functional disabilities have independent access into the institution. Healthcare institutions are required to publish information about available healthcare services and accessibility on their webpage (Paragraph 4.1).

There have been several cases concerning physical access to healthcare facilities where courts have referred to domestic legislation and the UN CRPD.

A claimant – a physically disabled person in a wheelchair with a new-born baby – complained to the Health Inspectorate (HI) about her inability to physically access several health institutions over a certain period of time. She asked the HI to impose a duty on the institutions to ensure access to these premises in accordance with the laws in force at the time. In most cases, the HI did not establish that there had been a violation of Construction Law by the health institutions. She challenged the decisions before the Administrative District Court, and also asked for moral compensation amounting to LVL 1 000 (~EUR 1 742). The court referred to Article 111 of the Constitution of Latvia and to the UN CRPD so as to establish a duty on the part of the state to ensure and supervise access to medical care by persons with disabilities, ensuring that access to healthcare implies providing as much personal freedom as possible to persons with disabilities. Ensuring

¹⁴⁵ Detailed standards concerning accessibility of public buildings were adopted on 30.06.2015, Ministru kabineta noteikumi Nr. 331 Noteikumi par Latvijas būvnormatīvu LBN 208-15 'Publiskas būves' (Cabinet of Ministers Regulation No. 331 on Latvian construction standard LBN 208-15, 'Public Buildings'), available in Latvian at <https://www.vestnesis.lv/ta/id/274995-noteikumi-par-latvijas-buvnormativu-lbn-208-15-publiskas-buves->.

¹⁴⁶ Latvia, Medical Treatment Law (*Ārstniecības likums*), Article 55, 12.06.1997, available in Latvian at: <http://likumi.lv/ta/id/44108>.

¹⁴⁷ Latvia, Cabinet of Ministers Regulations No. 1463, Amendments to Cabinet of Ministers 20.01.2009 Regulations No. 60, Mandatory Requirements for Medical Treatment Institutions and their Structural Units (*Ministru kabineta noteikumi Nr.1463 Grozījumi Ministru kabineta 2009.gada 20.janvāra noteikumos Nr.60 "Noteikumi par obligātajām prasībām ārstniecības iestādēm un to struktūrvienībām"*), 10.12.2013, available in Latvian at: <http://likumi.lv/doc.php?id=263208>.

physical access to healthcare institutions is a matter of non-discrimination based on disability, including reasonable accommodation at health service premises. The claim was satisfied in part. The omission of the HI was established on some occasions, as the institution approached its duty to supervise the access of premises by a disabled person in a very formal way. The claimant was awarded moral compensation for humiliation, suffering and a feeling of helplessness, amounting to LVL 300 (EUR 427). The court imposed an obligation on the HI to issue a written apology to the claimant, along with an administrative act to oblige the health service provider to ensure access to persons with disabilities on the premises. The case dealt with a violation of domestic law; nevertheless, in order to interpret the domestic law, principles of the UN CRPD such as the reasonable accommodation principle were used as interpretative guidelines and rationale for domestic law requirements on physical access to premises by disabled persons.¹⁴⁸

In 2012, the Ombudsman's Office conducted a survey of 26 banks about access to client service halls for disabled persons in wheelchairs with a visual or hearing impairment and about the availability of special services for persons with disabilities according to their needs. Most banks have entrances to premises or client service centres, with ATMs inside banks accessible to people in wheelchairs, whereas ATMs outside banks are generally not accessible to wheelchair users. Banks reported varying practices. Rented premises which cannot be rebuilt (because of their technical, historical or architectural characteristics) were cited as the main reason why some client service centres are not accessible for people in wheelchairs.

The office also conducted a survey about the accessibility of healthcare institutions for persons with long-term physical, mental, intellectual or sensory disabilities in Riga. It received written responses from 86 institutions included in the Registry of Healthcare Institutions.¹⁴⁹ According to the survey, the premises of 79 out of 86 healthcare institutions (92 %) are accessible according to the accessibility requirements of persons with long-term physical, mental, intellectual or sensory disabilities, while seven of them acknowledged accessibility problems due to specific features of their buildings. 87 % of the surveyed institutions made some improvements after the entry into force of the UN Disability Convention.

In Latvia, national law does not contain a general duty to provide accessibility by anticipation for persons with disabilities.

h) Accessibility of public documents

National law does not require public services to translate some or all of their documents into Braille, although the guidelines developed by the Liepaja Society of the Blind in cooperation with the Ministry of Welfare through an EU-funded project encourage the increased use of Braille.¹⁵⁰

¹⁴⁸ Latvia, Administrative District Court (*Administratīvā rajona tiesa*), Case No A420571712, 2.12.2013.

¹⁴⁹ Ombudsman's Office, Accessibility of healthcare institutions, summary of 2012 survey (*Tiesībsargs, Ārstniecības iestāžu pieejamība, 2012.gadā veiktās aptaujas apkopojums*) www.lns.lv/files/text/arstniecibas_iestazu_pieejamiba_apkopojums.pdf.

¹⁵⁰ Liepājas Nerēdzīgo biedrība (2012). Vides pieejamības vadlīnijas personām ar funkcionāliem traucējumiem, in Latvian at <http://redzigaismu.lv/files/VIDES%20PIEEJAMIBA%20Liepaja%20Gala%20Produkts%202012-33.pdf>.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

In Latvia, there are no residency or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

Since the main law transposing the directives - the Labour Law - does not refer to citizenship requirements, it can generally be said that the protection against discrimination applies to all persons regardless of their citizenship.

However, there are some laws where citizenship or status in Latvia is a precondition for the guarantee of equal rights or access to certain services, notably the Education Law, which restricts its protection to citizens and non-citizens of the Republic of Latvia as well as to different categories of persons to whom residence permits have been issued. In the case of illegal migrants, the right to education exists during the period for voluntary repatriation, as well as during detention. Access to social security is limited to Latvian citizens, non-citizens, third-country nationals and stateless persons to whom a personal ID number has been issued; persons in possession of temporary residence permits only (Article 3 of the Law on Social Services and Social Assistance) are excepted. A similar provision on the possession of a permanent residence permit as a precondition for acquiring the status of an unemployed person was invalidated by the Constitutional Court in relation to the spouses of Latvian citizens, who can only obtain a permanent residence permit after a certain number of years, when the intention of the spouses is clearly to stay permanently, which thus differs from the cases of other persons who receive a temporary residence permit.¹⁵¹ The Law on the Ombudsman provides that a person with dual nationality cannot be appointed as ombudsman; the same prohibition applies to the President of the State.

3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)

a) Natural and legal persons

In Latvia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.

In Latvia, the personal scope of anti-discrimination law covers natural or legal persons for the purpose of liability for discrimination.

The Latvian laws dealing with discrimination do not specifically distinguish between natural and legal persons as far as protection and liability are concerned.

b) Private and public sector including public bodies

In Latvia, the personal scope of national legislation covers the private sector (to different degrees) and the public sector, including public bodies for the purpose of protection against discrimination.

In Latvia, the personal scope of anti-discrimination law covers the private sector (to different degrees) and the public sector, including public bodies for the purpose of liability for discrimination.

¹⁵¹ Latvia, Constitutional Court (*Satversmes Tiesa*), judgment in case No 2001-11-0106, 25.02.2002, available at <http://www.satv.tiesa.gov.lv/upload/2001-11-0106.rtf>.

National law covers the public sector and the private sector to different degrees, depending on the field. The Labour Law (on access to employment) applies to both the public and private sectors. The guarantees in the Law on Social Security cover social protection in the public sphere, but not services provided in the private sphere (e.g. the private medical sphere). Social advantages, for example those provided by private foundations outside the framework of an employment relationship, are not explicitly covered, although they are covered by the Consumer Rights Protection Law, to the extent that they can be considered a service that is publicly offered. The Law on Education applies to both the public and private spheres.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Latvia, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work and holding statutory office, for the five grounds. This legislation does not apply to military service.

All aspects of access to employment are governed by the Labour Law, which regulates employment relationships, including access to employment, trial periods, working conditions, pay, promotion and dismissals. The law prohibits differential treatment, providing protection against it, as required by the directives, and covering all fields mentioned therein. It applies to both the public and private sectors, including – by virtue of Article 2(4) of the State Civil Service Law¹⁵² – the state civil service and specialised civil service, but excluding military service and contract work by self-employed persons, as self-employment does not qualify as an employment relationship and is based on the provisions of the Civil Law. The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators applies to discrimination on the basis of race, ethnic origin, gender, disability, age, religion and sexual orientation in relation to access to self-employment.

Article 2(4) of the State Civil Service Law provides that, in the state civil service, those provisions that regulate employment relationships with regard to, inter alia, the principle of equal rights, the prohibition of differential treatment and the prohibition against causing adverse consequences (prohibition of victimisation) apply.

National legislation applies to holding statutory office in line with Court of Justice of the European Union jurisprudence in the case of D Danosa, whereby the concept of 'worker' for the purposes of Directive 92/85 may not be interpreted differently according to each national law and must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration.¹⁵³

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Latvia, national legislation includes conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.

¹⁵² Latvia, State Civil Service Law (*Valsts civildienesta likums*) 7.09.2000.

¹⁵³ Dita Danosa v. LKB Līzings SIA, Judgment of the Court (Second Chamber) of 11.11.2010 Case C-232/09.

The anti-discrimination provision in Article 29(1) of the Labour Law specifically mentions establishing an employment relationship and promotion. Article 29(9) explicitly protects against differential treatment based on the grounds of race, age, religious conviction, disability and sexual orientation. The Labour Law - and hence its guarantees - applies to both the public and private sectors, including the state civil service and specialised civil service. An equality guarantee also applies in relation to access to self-employment or contract work on the grounds of race or ethnic origin, gender, religious conviction, age, disability or sexual orientation, as provided for by Article 4(4) of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators.

There is no explicit equality guarantee, other than the general constitutional equality clause, related to any of the grounds concerning access to employment and promotion in the military service.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Latvia, national legislation covers working conditions, including pay and dismissals, for all five grounds and for both private and public employment, but excluding self-employment.

Article 29(1) of the Labour Law specifically mentions working conditions, remuneration, and giving notice of termination of an employment contract. The protection against differential treatment based on grounds of race, age, religious conviction, sexual orientation or disability is explicit, the list being left open by mention of 'other circumstances', and it also applies to civil service relationships (including for the specialised civil service). No explicit guarantee concerning working conditions, pay or dismissals - to the extent that they apply to a particular sphere - exists within the sphere of military service. The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators applies to discrimination on the basis of race, ethnic origin, gender, disability, age, religious conviction and sexual orientation, and does not cover working conditions or pay.

- Occupational pensions constituting part of pay

Occupational pension schemes are a new phenomenon in Latvia, and a very limited one; hence, occupational pension schemes have never been an issue and there is also no information available on their arrangements. Article 11(3) of the Law on Private Pension Funds¹⁵⁴ prohibits the employer - once it has decided to contribute to a pension plan - from discriminating on the basis of an exhaustive listing of grounds including origin, property status, racial or ethnic origin, gender or attitude towards religion (this being the traditional Latvian wording regarding religion or belief). The list does not include disability or sexual orientation, which may be a breach of the Employment Directive. Additionally, the references to working conditions and remuneration in Article 29(1) of the Labour Law could be interpreted as also covering occupational pensions, which would thus be in line with the Court of Justice of the European Union judgment in the Maruko case, and therefore also grounds not covered by the Law on Private Pension Funds.

However, it may be noted that the Law on Private Pension Funds is a *lex specialis* in relation to the Labour Law. Furthermore, the situation is somewhat complicated by the reference in the provisions to a prohibition of differential treatment in 'establishing the employment relationship, as well as *during the period of existence of employment relationship*' (emphasis added). This might be a problem, and possibly a breach of the directive, if a person attempted to challenge a discriminatory arrangement in the pension scheme after the end of the employment relationship - even if one could argue that the differential

¹⁵⁴ Latvia, Law on Private Pension Funds (*Likums par privātajiem pensiju fondiem*), 05.06.1997.

treatment was already present during the existence of the labour relationship. It remains to be seen whether the courts will interpret the relevant provisions in a way that is compatible with the requirements of the directives – as they ought to.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Latvia, national legislation does not clearly apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

Access to vocational guidance and training in both the public and private sectors (with the exception of military service as described above) in the context of employment relationships is covered by Article 29(1) of the Labour Law with reference to 'occupational training'. Race, age, religious conviction, disability and sexual orientation are explicitly covered.

No explicit guarantee concerning access to vocational guidance, vocational training or education exists specifically within the spheres of military service, self-employment¹⁵⁵ or contract work; however, to the extent that the Law on Education applies – and it applies also to vocational training, which is regarded as a form of education – it applies to both the public and private sectors, and also to vocational training provided by, for example, technical schools and universities. The problem, however, is that this law contains a closed list of grounds which does not include age, disability or sexual orientation, but only 'property and social status, race, ethnicity, gender, religious or political opinions, health condition,¹⁵⁶ occupation and place of residence.' To some extent, however, it could be argued that the protection against disability-based discrimination can be subsumed under the heading of 'health condition'.

As far as the application of the Education Law in the public sector is concerned, a reference to Article 91 of the Constitution can resolve the deficiency of the lack of reference to particular grounds, even if this is somewhat complicated, especially since, in cases where the particular ground for discrimination is not expressly mentioned, the burden of proof which rests on the claimant is clearly even more significant, as they must also argue against the 'inclusion of the one is the exclusion of another' principle. There is nothing to make up for these missing grounds in the private sphere. Moreover, this means there is no implementation mechanism in this law and, naturally, no shared burden of proof. Similarly, amendments to the Law on Support to Unemployed Persons and Job Seekers covering access to vocational retraining apply to only three grounds, gender, race and ethnic origin, completely ignoring Directive 2000/78.

The conclusion, therefore, is that, in relation to vocational training outside employment relationships, differential treatment is not adequately prohibited.

¹⁵⁵ There is no explicit reference to vocational guidance and training for self-employed persons under the 2012 Law on the Prohibition of Discrimination of Natural Persons-Economic Operators.

¹⁵⁶ In the autumn of 2002 there was a case in which a teacher, following the instructions of her superior, did not let an HIV-positive pupil enter a class. The case was well-publicised, raising, inter alia, the issue of the protection of sensitive data, and disciplinary action was taken against the teacher.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Latvia, national legislation includes membership of, and involvement in, workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

A new Law on Trade Unions was adopted on 6 March 2014, which emphasises the non-discrimination aspect: the right of anyone to establish and join a trade union without any discrimination, trade union membership and the wish to join or not to join a trade union may not serve as a basis for restricting a person's rights (Article 4).¹⁵⁷

Article 2(2) of the Law on Organisations of Employers and their Associations¹⁵⁸ provides that a natural or legal person who employs at least one person on the basis of a contract can become a member of an employers' organisation, but it does not contain any non-discrimination clause.

Article 8(1) of the Labour Law reiterates the right of employees and employers to freely create and join organisations to protect their interests and specifically provides for these rights 'without any direct or indirect discrimination related to any of the grounds referred to in Article 7(2) of this law'. Article 7(2), among others, refers to race, religious conviction, age, disability and sexual orientation, as well as to 'other circumstances'.

As regards professional organisations, the Law on the Bar¹⁵⁹ does not contain any equality clause at all, but Latvian citizenship is a condition for access to the Bar.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Latvia, national legislation includes social protection, including social security and healthcare as formulated in the Racial Equality Directive.

In addition to constitutional guarantees of equality, Article 109 of the Constitution provides that everyone has the right to social security in old age, for work disability, for unemployment and in other cases provided for by law, while Article 111 states that the state shall protect human health and guarantee a basic level of medical care for everyone. Article 2 of the Law on Social Security¹⁶⁰ refers to 'prohibition of differential treatment' as one of the principles of the provision of social services, and Article 2.¹ specifies that, in the provision of social services, differential treatment based on a person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances is prohibited. Sexual orientation is not specified as a prohibited ground in this law, but it could be argued that it comes under 'other circumstances'. The law states: 'Social services in the meaning of this law are measures ensured by state or municipality as monetary or material support or other services to promote the full realisation of a person's social rights' (Article 13).

Article 16 of the Medical Care Law¹⁶¹ provides that everyone has the right to receive urgent medical care as provided for by the Cabinet of Ministers, while Article 17 of that law states that the right to medical care guaranteed by the state is enjoyed by Latvian citizens, non-

¹⁵⁷ Latvia, Law on Trade Unions (*Arodbiedrību likums*), 6.03.2014.

¹⁵⁸ Latvia, Law on Organisations of Employers and their Associations (*Darba devēju organizāciju un to apvienību likums*), 29.04.1999.

¹⁵⁹ Latvia, Law on the Bar (*Advokatūras likums*), 27.04.1993.

¹⁶⁰ Latvia, Law on Social Security (*Par sociālo drošību*), 07.09.1995.

¹⁶¹ Latvia, Medical Treatment Law (*Ārstniecības likums*), 12.06.1997.

citizens, foreign citizens and stateless persons who are registered in the population register and have received a personal ID number, as well as by imprisoned and detained persons. There is no express guarantee of equality. However, given the definition of social services, it appears that the equality guarantee contained in the Law on Social Security applies also in the sphere covered by this law.

Thus, it can be observed that, while in some cases the explicit guarantee of equality is missing in particular laws, and in other cases it might not encompass all grounds, the guarantee contained in the Law on Social Security, which is not limited to racial or ethnic origin, but extends to other grounds in an open-ended way, covers the whole field of social protection as long as it relates to the public sphere. However, the services provided by the private sector (private medical care, for example) are not covered by the wording of the Law on Social Security, nor does the constitutional guarantee apply to it.

- Article 3.3 exception

There is no Article 3.3 exception in Latvian national legislation.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Latvia, national legislation includes social advantages as formulated in the Racial Equality Directive.

In addition to the constitutional guarantee of equality, Article 3 of the Law on Social Services and Social Assistance¹⁶² provides that Latvian citizens, non-citizens, foreign citizens and stateless persons who have received a personal ID number, except persons who have received temporary residence permits, but including persons with subsidiary status, have the right to social services and social security.

Article 2.¹ of the Law on Social Security provides that social services – broadly defined as ‘measures ensured by state or municipality as monetary or material support or other services to promote the full realisation of a person’s social rights’ – shall be provided without discrimination on the basis of a person’s race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances, as long as they are provided by state or municipal institutions.

In addition, to the extent that provision of such services and security is a public function, the constitutional guarantee of equality applies. What falls outside social security and social services and is provided by private actors, perhaps with the exception of employers, seems more problematic; it could be argued that the broad equality guarantee contained in Article 29(1) of the Labour Law prohibiting differential treatment generally ‘during the period of existence of legal employment relationships’ applies also to any social advantages provided by the employer. Those social advantages provided, for example, by private foundations outside the framework of an employment relationship are not explicitly covered, although, to the extent that they can be considered a service that is publicly offered, they are covered by the Consumer Rights Protection Law in relation to race, ethnic origin, gender and disability (Article 3.¹(1))

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Latvia, national legislation covers education as formulated in the Racial Equality Directive.

¹⁶² Latvia, Law on Social Services and Social Assistance (*Sociālo pakalpojumu un sociālās palīdzības likums*), 31.10.2002.

The Law on Education applies to both the public and private spheres and contains a closed-list non-discrimination clause, which does not include all the grounds listed by the directives.¹⁶³ In particular, it excludes age, disability and sexual orientation. Disability, however, may be subsumed under 'health condition', although this would require judicial interpretation. In reality, the access of disabled children and adults to education remains a problem.

- Pupils with disabilities

In Latvia, the general approach to education for pupils with disabilities gives rise to problems.

Many schools and university buildings remain inadequately accessible for a person in a wheelchair, so, in many cases, physically disabled children may be offered instruction at home instead of integration in mainstream education, despite the official theoretical preference for integration. The same applies to people with learning disabilities in cases where specialised education and instruction at home is, de facto, the clear preference. In 2011, 13.7 % of children and young people with mental health development disorders had never been in a school.¹⁶⁴

According to the statistical data provided by the State Centre for Special Education (Valsts speciālās izglītības centrs), in the academic year 2011-12, of the total number of 198 394 pupils, 6 974 or 3.5 % were attending special schools. The proportion of compulsory school-age children with special needs in Latvia increased from 3 % in 2000 to 5 % in 2011. 76 % of those children were enrolled in special educational institutions and in special classes in regular schools, 2 % were enrolled in general education programmes at mainstream schools and 22 % in special education programmes at mainstream schools; some children are home schooled.¹⁶⁵ The decision about which school to attend theoretically rests with the parents, who are given recommendations from state and municipal pedagogical-medical commissions. In practice, it is difficult to fight their recommendations. Parents can appeal the municipal commission's recommendations to the state commission, but the possibilities of obtaining a different outcome are slim.

The funding to support integration in mainstream education is the responsibility of the local authorities. Theoretically, parents can apply for such funding, but even in the more prosperous municipalities it is difficult to obtain.

- Trends and patterns regarding Roma pupils

In Latvia, there are no specific patterns in the education of Roma pupils such as segregation at class level. However, the rate of Roma enrolment in special education programmes is disproportionately higher than the national average.

Since 2003-04, the number of specialised Roma classes has reduced from seven educational institutions to one school in 2013-14, although the municipality concerned

¹⁶³ Article 3 of the Law on Education provides: 'Every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by Latvia, or person to whom a permanent residence permit has been issued, as well as citizens of the European Union states to whom temporary residence permits have been issued and their children have equal rights to receive education independently from property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence.'

¹⁶⁴ Latvian Movement for Independent Living (2010), Children and Young Persons with Intellectual Disabilities in Latvia, p.11.

¹⁶⁵ Centre for Education Initiatives (2014). Funding and Governance of Education for Children with Special Needs in Latvia: Focus on Equity, Efficiency, and Effectiveness, p.19, at <http://www.iic.lv/wp-content/uploads/2014/07/Funding-and-Governance-of-Education-for-Children-with-Special-Needs-in-Latvia-Focus-on-Equity-Efficiency-and-Effectiveness%E2%80%93IIC-2013.pdf>.

maintains that children of different ethnic backgrounds are enrolled in the evening school.¹⁶⁶ The precise reasons for the closure of 'Roma classes' are not known, although, according to the Centre for Education Initiatives, an NGO, Roma classes have been closed allegedly due to a shortage of students – most children have emigrated with their parents, and the Roma community favours sending children to general education schools.¹⁶⁷

According to the Ministry of Education, in 2013-14 69 % of Roma children were enrolled in general educational establishments and 26 % were involved in special education programmes, while 250 were enrolled in classes not corresponding to their age.¹⁶⁸ The share of Roma with special education needs is disproportionately higher – eight times higher – than the national share. In 2012-13 the drop-out rate of Roma children from schools was 15.9 %.¹⁶⁹ There is no information available as to the number of Roma children of mandatory school age who are not attending school.

Data from the Population Census 2011 shows that only 9.3 % of Roma have secondary education, and only 0.8 % or 40 Roma have university education. Among 4 888 Roma over the age of 15, 31.7 % had primary education and 23.3 % had elementary education (four years of school), while 18.5 % had less than elementary-level (four years of school) education.¹⁷⁰

There are no complete data on illiteracy in the Roma community.

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

In Latvia, national legislation includes access to and supply of goods and services as formulated in the Racial Equality Directive.

Consumer Rights Protection Law prohibits discrimination in relation to access to and supply of goods and services based on a person's gender, race or ethnic origin or disability. Although, on 19 June 2012, the Government approved amendments to the law adding age, religious conviction and sexual orientation to the prohibited discrimination grounds, the amendments were stalled in the Parliament (Article 3.¹(1)). However, as far as consumer rights protection is concerned, reference to Article 91 of the Constitution¹⁷¹ can resolve the deficiency of the lack of reference to specific grounds.

Article 2.¹ of the Law on Social Security specifies that, in the provision of social services [by State and municipal services], differential treatment based on a person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances is prohibited. Sexual orientation is not specified as a prohibited ground in this law, but it could be argued that it comes under 'other circumstances'.

The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators prohibits discrimination in the public and private spheres in relation to the supply of goods and services necessary for the performance of self-employed activities on the basis of a

¹⁶⁶ Information provided by the Ministry of Education and Science and Centre for Educational Initiatives on 21.03.2012.

¹⁶⁷ Latvian Centre for Human Rights (2012). FRANET National Focal Point. Social thematic study. The Situation of Roma, p.11, at <http://fra.europa.eu/sites/default/files/situation-of-roma-2012-lv.pdf>.

¹⁶⁸ Ministry of Culture (2014) Informative Report on the Implementation of Roma Integration Policy Measures (Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā), 12. lpp, at http://www.km.gov.lv/lv/doc/ministrija/saliedeta_sabiedriba/Romi/KM_230315_romi.pdf.

¹⁶⁹ Ministry of Education and Science (2014). Izglītības un zinātnes ministrijas sadarbībā ar novadu un pilsētu izglītības pārvaldēm veiktais romu skolēnu izglītības kvalitātes monitorings 2013./2014.mācību gadā.

¹⁷⁰ Letter from the Central Statistical Bureau to the Latvian Centre for Human Rights (Nr 0708-10/222, 10.02.2012.

¹⁷¹ Latvia. (1996). *Latvijas Republikas satversme*. [Rīga, Latvia]: Latvijas Vēstnesis.

person's gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin (Article 2.¹(1))

- Distinction between goods and services available publicly or privately

In Latvia, national law does not distinguish between goods and services available to the public (e.g. in shops, restaurants and banks) and those only available privately (e.g. those limited to members of a private association).

The law does not distinguish between the goods and services available to the public and those available privately, thus it should apply to both categories. There is as yet no case law in this regard.

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Latvia, national legislation includes housing, as formulated in the Racial Equality Directive.

The Law on Housing does not contain a non-discrimination clause, but this sphere is covered by the Consumer Rights Protection Law, which prohibits discrimination in access to and the supply of goods and services, but only in relation to the grounds of race, ethnic origin, gender and disability (Article 3.¹).

In addition to that, it can be argued that the amended Law on Social Security (Article 2.¹, see under 3.2.6.), which contains a more extensive and open-ended list of grounds (i.e. race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances) for social services that are provided by state or municipal institutions and that are intended to promote the enjoyment of social rights, also covers access to housing, even if it does not refer to it expressly. Access to private housing is thus covered only to the extent that it comes under the Consumer Rights Protection Law. This law does not specifically promote or require housing that is accessible to people with disabilities and to older people.

- Trends and patterns regarding housing segregation for Roma

In Latvia, there are no patterns of housing segregation or discrimination against the Roma.

There is no information about housing discrimination against Roma.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Latvia, national legislation provides for an exception for genuine and determining occupational requirements.

The only statute that refers to occupational requirements is the Labour Law. Article 29(2) provides that 'differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition for performance of the relevant work or for the relevant employment'. Article 29(9) applies this also to differential treatment based on a person's race, colour, age, disability, religious, political or other opinions, national or social origin, property or family status, sexual orientation and other circumstances. There is no further explanation of such preconditions. In the only case – the case of *Kozlovskā v. SIA 'Palso'*¹⁷² – where the court does refer to an 'objective precondition', there is no real discussion of it, since the employer claimed that he had indicated that the person's 'accent' determined the refusal to employ at the request of the claimant, and that the real reasons behind this had been a lack of required secondary education and an appearance that was unsuitable for the available position. Thus, the employer did not actually argue that the absence of a certain accent was an objective and substantiated precondition. The court concluded that there was no dispute as to the claimant's knowledge of the Latvian language – which would have been an objective precondition – and that the respondent had not shown that the absence of an accent was such a precondition.

The current solution, permitting individual tailoring depending on the tasks of the particular position, is preferable. However, the way in which the courts will interpret 'objective and substantiated requirements' in cases of dispute is critical.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

- Exception for employers with an ethos based on religion or belief

In Latvia, national legislation provides for an exception for employers with an ethos based on religion or belief.

The Labour Law includes a provision stating that 'in a religious organisation differential treatment based on a person's religious belief is admissible where, taking into account the ethos of the organisation, a particular religious belief is an objective and substantiated precondition for the work or activity in question' (Article 29 (10)). According to the wording of the law, this only applies to a religious organisation, thus excluding other beliefs, and the measures seem to create a broader exception than the one provided for in Article 4(2) of Directive 2000/78, yet it remains to be seen how this will be interpreted by the courts. This provision is a counterpart of Article 14(1) of the Law on Religious Organisations, which 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. In other aspects of employment, the Labour Law applies.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

¹⁷² Latvia, Jelgava court (*Jelgavas tiesa*) judgment in case No.15066406, 25.05.2006.

There are no specific provisions on conflicts between the rights of organisations and other rights to non-discrimination, and there is no case law on exemptions based on religion or belief. In 2002 a Lutheran minister¹⁷³ was dismissed by the archbishop for being a practising homosexual; however, while the case received considerable publicity, the minister chose not to pursue a legal case against the church.

- Religious institutions affecting employment in state-funded entities

The religious institutions nominate religious education teachers for work at schools – although they all have to be approved by the Education Inspectorate. According to the regulations adopted by the Cabinet of Ministers,¹⁷⁴ they also nominate chaplains for the armed forces, detention institutions, hospitals, etc. However, it is always for the relevant administration (in the case of the armed forces, the commander of the armed forces) to appoint and dismiss them. The law does not explicitly regulate cases of conflict or cases where the nominating religious institution wants to recall its nominee, and there have been no known cases of such conflicts.

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Latvia, national legislation does not explicitly provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78). However, it does maintain age and capability requirements.

Article 12(2) of the Military Service Law,¹⁷⁵ which concerns the right of the military to work, states that legislative provisions governing legal labour relations are not applicable in the case of the military, except for those measures that prohibit differential treatment and rights being accorded to pregnant women, women breast-feeding a child and women during a post-natal period of up to one year, in so far as they do not contravene the law. Persons who do not comply with health requirements cannot be recruited and employed in the military service. (Article 16(2)5).

The Military Service Law¹⁷⁶ provides for age limits of 27, 35 or 40 years, depending on seniority, for admission to military education establishments. The maximum age limits for professional military service range from 36 to 60 years, depending on seniority in active service, and from 55 to 65 in the case of reserves (limited extensions are possible), whereas a person can be admitted to professional military service if they are able to serve at least five years before reaching the prescribed age limit.

None of the laws regulating employment in the police, prisons or the emergency services contains an equality guarantee, and hence this provides for no exceptions.

On the State Civil Service Law, the equality guarantees contained in the Labour Law apply also to the civil service and specialised civil service. Access to all of these occupations is restricted to Latvian citizens. Article 28 of the Law on Fire Safety and Fire-fighting¹⁷⁷ provides that only persons aged 18-40 are accepted into the state fire safety and fire-fighting service. A person may perform their service until the age of 50, although this can be extended until the age of 60 if the person so wishes, and following an evaluation of their physical and professional abilities. The law also requires that the applicant's physical condition and state of health meet the requirements of the service. The Law on the Police

¹⁷³ The same minister that later sued the Riga Cultures secondary school for discrimination based on sexual orientation.

¹⁷⁴ Latvia, Cabinet of Ministers Regulations No. 134 on Chaplains' Service (*Ministru kabineta noteikumi Nr.134 Noteikumi par kapelānu dienestu*) 15.02.2011, at <http://likumi.lv/doc.php?id=226332>.

¹⁷⁵ Latvia, Military Service Law (*Militārā dienesta likums*), 30.05.2002, available in Latvian at <http://likumi.lv/doc.php?id=155885>.

¹⁷⁶ Latvia, Military Service Law (*Militārā dienesta likums*), 30.05.2002.

¹⁷⁷ Latvia, Fire Safety and Fire-fighting Law (*Ugunsdrošības un ugunsdzēsības likums*) 24.10.2002.

sets 50 years as the maximum age for service in the police and allows unlimited extensions for the higher echelons, as well as limiting the age range for entering police service to between 18 and 35. The physical and health requirements allowing persons to fulfil police duties are also contained in the law.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Latvia, national law does not include exceptions relating to difference of treatment based on nationality.

There are no provisions in national laws that would rely specifically on the exception contained in Article 3(2) of the directives yet, in a number of cases, nationality – usually in relation to the person's status in Latvia and the requirement that persons be issued an ID number, which sometimes excludes persons in possession only of a temporary residence permit – is a condition for access to certain professions or benefits. Thus, all employment in the civil service and specialised civil service, as well as in military service, is restricted to Latvian citizens. Furthermore, the Law on the Bar restricts access to practice in the legal profession to Latvian citizens and – since 2004 – to EU nationals who have been admitted to the bar in other EU member states. In some cases, however, a difference of treatment exists which may be hard to justify. Thus, Article 1 of the transition provisions of the Law on State Pensions provides for different calculations of pensions for Latvian citizens and Latvian non-citizens, as well as for foreigners and stateless persons who worked outside Latvia before 1991: for citizens, the years worked are taken into account when calculating their pensions, but this is not the case for persons in other categories. This issue is particularly important for Latvian non-citizens, yet, unfortunately, when this provision was challenged in the Constitutional Court,¹⁷⁸ the court, based on the fact that non-citizens were not mentioned in this provision, which only expressly deals with citizens, foreigners and stateless persons, considered it as a legislative omission that it could not decide upon. The issue was later addressed through the ECtHR case *Andrejeva v. Latvia*, which concluded that the differential treatment of a specific non-citizen compared with citizens was discrimination by nationality.¹⁷⁹ On 17 February 2011, the Constitutional Court of the Republic of Latvia adopted a judgment dismissing the claim of five non-citizens regarding their complaint about the allegedly discriminatory old-age state pension system of Latvia.¹⁸⁰ The case concerned a provision in the amended Law on State Pensions, dating from 2008, concerning the working period and length of obligatory military service accrued outside the territory of Latvia before 31 December 1990 not having been included into the length of insurance, which has had a considerable effect on the amount of people's pensions.

The court pointed out, first, that the state enjoys a wide margin of discretion when establishing its social security system, including the pension system. It concluded that the context of state continuity is the determining factor and serves as a crucial aspect when dealing with differences in the procedure for calculating the pensions of citizens and non-citizens. Finally, the court drew attention to the fact that, when solving the problem of cross-border pensions, bilateral international agreements regarding cooperation must be used. The court thus regarded the differential treatment as proportional and in compliance with Article 14 of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1, as well as with Article 91 of the Latvian Constitution.

¹⁷⁸ Latvia, Constitutional Court (*Satversmes Tiesa*) judgment in case No. 2001-02-0106, 26.06.2001, available electronically at <http://www.satv.tiesa.gov.lv/upload/2001-02-0106.rtf>.

¹⁷⁹ European Court of Human Rights. *Andrejeva v. Latvia*, Application No 55707/00, 18.02.2009, at <http://hudoc.echr.coe.int/eng?i=001-91388>.

¹⁸⁰ Latvia, Constitutional Court of the Republic of Latvia (*Satversmes tiesa*), Case No. 2010-20-0106, available in English at http://www.satv.tiesa.gov.lv/upload/judg_2010_20_0106.htm.

In Latvia, nationality (as citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law. It may be subsumed under 'other circumstances' in various laws that leave an open-ended list of prohibited discrimination grounds, but this would require judicial interpretation.

b) Relationship between nationality and 'race or ethnic origin'

Given the ethnic composition of Latvia, there may be cases of overlapping nationality and ethnic discrimination.

In 2008, the Ombudsman addressed Ryanair concerning the impossibility, at that point, for persons who were not EU/EEA citizens to register for flights online, thus entailing an additional fee for registering at the airport. The Ombudsman considered it to be indirect ethnic discrimination, as the requirement affected Latvia's non-citizens, who formed a significant part of the population and were predominantly representatives of ethnic minorities. The Ombudsman referred to EU directive 2000/43 and to the Consumer Rights Protection Law, which prohibit indirect discrimination on the ground of ethnicity in access to goods and services. Later, the Ombudsman's Office announced it had terminated the investigation, because Ryanair admitted that its services violated the principle of equal treatment and informed the office about undertaking measures to ensure non-discrimination in the immediate future.¹⁸¹

The use of the terms 'nationality', 'ethnic origin' and 'national origin' is not always consistent. In court practice, 'ethnic' and 'national origin' have been used as synonyms in criminal cases, with 'national origin' being understood as referring to nationality.¹⁸² Given the widespread Soviet practice of using 'nationality' in identity documents,¹⁸³ the term may also sometimes be equated with 'ethnic origin.'

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Latvia, it would probably constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married, but judicial interpretation may be required.

Latvian law provides for no family-related benefits, hence there is neither exclusion nor inclusion of non-married couples. On the other hand, the broad equality guarantee contained in Article 29(1) of the Labour Law, prohibiting differential treatment generally 'during the period of existence of employment legal relationships', would presumably also apply to work-related family benefits provided by the employer.

Furthermore, Article 29 of the Labour Law provides for family status (*ģimenes stāvoklis*) as one of the prohibited grounds for differential treatment, which presumably might prohibit the provision of any benefits to married couples only as opposed to unmarried couples.

At the same time, Latvia does not recognise any type of partnership for heterosexual couples other than marriage. This has led to contradictory court judgments concerning the recognition of unmarried partnerships in cases of the loss of a common-law spouse while

¹⁸¹ The opinion of the Ombudsman is available at http://www.tiesibsargi.lv/lat/petijumi_un_viedokli/viedokli/?doc=426 (in Latvian).

¹⁸² Latvia, Supreme Court (2012). Court Practice in Criminal Cases Concerning Incitement to Ethnic and National Hatred, in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

¹⁸³ A fifth line in Soviet passports was 'natsionalnost'. In: Between Minority Rights and Civil Liberties: Russia's Discourse Over 'Nationality' Registration and the Internal Passport, *Nationalities Papers* 33(2): 211–229 (2005), at <https://www.prio.org/Publications/Publication/?x=3202>.

a person has been on professional duty as a member of the emergency services. In a case decided in 2014, the civil wife could not claim part of the state benefit after the death of her partner, a fire-fighter, as their co-habitation had not been registered as marriage. On 4 November 2014, Latgale District Court dismissed the request of I.W. to recognise a civil marriage with fire-fighter E.F., who was killed during rescue operations following a supermarket collapse, which killed 54 persons. In a separate case concerning the common-law wife of a police officer, the partnership was recognised, and she was able to claim the relevant state benefit.¹⁸⁴

b) Benefits for employees with opposite-sex partners

In Latvia, it would probably not constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners.

The situation seems to be more complicated as far as same-sex partnerships are concerned. Although the phrase '*ģimenes stāvoklis*' literally means 'family status', in practice it is taken to mean 'marital status', as evidenced by various administrative forms. The possibility of interpreting it as 'family status' has been essential after the constitutional amendment of 15 December 2005 (adopted on the same day as amendments to the Labour Law explicitly prohibiting discrimination on the ground of sexual orientation in employment relations), which explicitly provides that marriage is a union of a man and a woman (Article 110). Thus, reading '*ģimenes stāvoklis*' as 'marital status' would exclude same-sex partnerships from the express protection accorded by the Labour Law, even if one might still refer to sexual orientation as a prohibited ground for differential treatment.

However, this can only be tested by case law, which currently does not exist, so at this point it can only be said that the law does not explicitly protect same-sex relationships, nor does it explicitly limit work-related family benefits to opposite-sex partners.

The law does not forbid employers from providing benefits in a way that is limited to employees with opposite-sex partners only, although one could refer to sexual orientation as a prohibited ground for differential treatment.

4.6 Health and safety (Article 7(2) Directive 2000/78)

a) Exceptions in relation to disability and health/safety

In Latvia, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78). There is no case law in this regard.

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Latvia, national law probably provides a limited exception for direct discrimination on age.

- Justification of direct discrimination on the ground of age

In Latvia, it is probably possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age.

¹⁸⁴ LSM.LV (2014). Court turns down the request of a spouse of an emergency worker to recognise their civil marriage (*Tiesa noraida Zolitūdē bojāgājušā glābēja dzīvesbiedres lūgumu atzīt civillaulību*), 4.11.2014, at <https://www.lsm.lv/lv/raksts/latvija/zinas/tiesa-noraida-zolitude-bojagajusha-qlabeja-dziivesbiedres-lugumu.a105058/>.

There is no special test in Latvian legislation for the justification of age-based discrimination; the general 'objective and substantiated precondition' test contained in Article 29(2) of the Labour Law applies also to age-based differential treatment in employment relationships covered by this law. Article 37 of the Labour Law sets out restrictions on work by minors, while Article 32(3) prohibits the indication of age limitations in a job advertisement, except in cases where, in accordance with the law, persons of a certain age may not perform the particular job. However, there is no relevant case law yet, and thus there has been no interpretation of the 'objective and substantiated precondition' test by the courts.

a) Permitted differences of treatment based on age

In Latvia, national law does permit some differences of treatment based on age for any activities within the material scope of Directive 2000/78.

Age-based restrictions apply to access to certain professions including the military or police service (age restricted to between 18-35 years; see under 4.7.3 below), to membership of the judiciary (30 years), and to membership of the bar (25 years). On retirement ages and Constitutional Court cases where age limits were challenged, see under 4.7.4 below.

Similarly, age restrictions apply to certain training programmes, for example military and police training programmes. However, generally, there is no evidence of discrimination in access to training.

b) Occupational pension schemes' fixed ages for admission or entitlements

In Latvia, national law does not allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

Article 11.(3) of the Law on Private Pension Funds prohibits employers – once they have decided to contribute to a pension plan – from discriminating on the basis of origin, property status, racial or ethnic origin, gender or attitude towards religion. Age is not listed among these criteria, nor are disability and sexual orientation; however, during the employment relationship, this deficiency might be remedied by reference to Article 29 of the Labour Law (see under 3.2.3 b). The beneficiary can accede to the benefits of the pension plan after reaching the age provided for by the plan; however, that age cannot be under 55 years, with the exception of certain professions as decided by the Cabinet of Ministers.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Latvia, there are certain special conditions set by law for older or younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

There are no special conditions for the integration of such persons or their protection, with the exception provided in Article 108 of the Labour Law: in cases of redundancies, one of the groups of persons who are prioritised to remain employed includes those raising a child up to the age of 14 or a disabled child up to the age of 16, or those with at least two dependant persons. Another such group is persons for whom less than five years remain until reaching the age of retirement.

4.7.3 Minimum and maximum age requirements

In Latvia, there are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training.

In certain training programmes, for example military or police training programmes, age restrictions apply. The Military Service Law¹⁸⁵ provides for age limits of 27, 35 or 40 years, depending on seniority, for admission to military education establishments; the maximum age limits for professional military service range from 36 to 60 years, depending on seniority, in active service, and from 55 to 65 in the case of reserves (limited extensions are possible), whereas a person can be admitted to professional military service if they are able to serve at least five years before reaching the prescribed age limit.

The Law on the Police sets the age range as 18 to 35 for serving in the police. The State Civil Service Law does not provide for a minimum age, although it contains an equivalent higher education requirement. The maximum age for the civil service is the retirement age – see under 4.7.4. ('Retirement') below. The Law on the Judiciary sets a minimum age of 30 years, while the law regulating the advocates profession sets a minimum age of 25 years for access to this profession. The Law on the Public Prosecutor's Office sets the minimum age at 25.

Generally, however, there is no indication of age limitations in access to training, and there has been no discussion as to whether these age limits comply with the requirements of the directive.

4.7.4 Retirement

a) State pension age

In Latvia, there is no state pension age at which individuals must begin to collect their state pensions.

According to Article 11 of the Law on State Pensions,¹⁸⁶ the right to a state pension applies when a person has reached 62 years of age. From 1 January 2014, the pension age is gradually being raised to 65, to be completed by 2025. In certain professions, for example in the military or in certain services of the Ministry of the Interior, depending on the term of service, the right to a pension begins earlier. However, it is not mandatory for a worker who has reached the state pension age to receive the pension. Indeed, the person can both work and receive the full amount of the state pension,¹⁸⁷ so there is no reason not to collect the pension.

b) Occupational pension schemes

In Latvia, there is no normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

Occupational pension schemes are a new and still rather limited phenomenon in Latvia, hence occupational pension schemes have never been an issue and there is no information available on the arrangements governing them. Article 11(5) of the Law on Private Pension Funds provides that the beneficiary can accede to the benefits of the pension plan after

¹⁸⁵ Latvia, Military Service Law (*Militārā dienesta likums*), 30.05.2002.

¹⁸⁶ Latvia, Law on State Pensions (*Par valsts pensijām*), 02.11.1995.

¹⁸⁷ Prior to the judgment of the Constitutional Court invalidating the relevant norm the person who continued to work could only receive part (around EUR 100 at that time) of her pension. A second similar case No. 2009-43-01 was decided by the Constitutional Court on 21.12.2009, invalidating - albeit not on the basis of the anti-discrimination article of the constitution - the provision of the 'crisis law' providing that persons who continued to work could only receive 30 % of the amount of the state pension; the judgment is available electronically at http://www.satv.tiesa.gov.lv/upload/spriedums_2009_43_01.htm.

reaching the age provided for by the plan; however, that age cannot be under 55 years, with the exception of certain professions as decided by the Cabinet of Ministers. After reaching the required age, the person has to choose whether to receive the pension or to continue membership in the plan. According to the formulation of the law, these two possibilities seem to be mutually exclusive.

c) State-imposed mandatory retirement ages

In Latvia, there are some state-imposed mandatory retirement age(s), mainly in the civil service.

While there are generally no mandatory retirement ages requiring a person to retire upon reaching the pension age, access to certain positions, for example in the civil service, is conditional upon the person not having reached the pension age; upon reaching the pension age the person must retire from the civil service unless their superior decides otherwise (Article 41(1) paragraph f of the State Civil Service Law).

These provisions of the State Civil Service Law were challenged in the Constitutional Court. The court held, however, that they did not violate the prohibition of differential treatment.¹⁸⁸ Since this seems to be established practice in other member states, no significant further debate on the compatibility of this arrangement with the directives has followed. In a case in 2014, where a civil servant was dismissed upon reaching the civil service retirement age, the Supreme Court Senate again reiterated the conclusions of a 2003 Constitutional Court decision, which established that the relevant article of the law has a legitimate aim – to facilitate access to the civil service by young people (such a legitimate aim being supported by Court of Justice of the European Union jurisprudence). The court also referred to recital 25 of the preamble to Directive 2007/78/EC and to Article 6 of the directive, establishing a distinction between differences in treatment and prohibited discrimination on grounds of age.¹⁸⁹

The age limit of 65 for occupying the post of university professor or associated professor, as well as the highest administrative positions in universities and scientific institutions, was invalidated as discriminatory by the Constitutional Court's decision¹⁹⁰ of 20 May 2003 although, even in this case, the prohibition upon occupying the posts concerned was not absolute: the Law on Higher Educational Establishments provided for the possibility of continuing to work on the basis of an individual contract, to be concluded at the discretion of the university rector, or to receive the status of professor emeritus. Following the Constitutional Court decision, the age limit thus does not apply any more.

A similar provision establishing a retirement age of 50, which can be extended to 60, is contained in Article 35 of the Law on Fire Safety and Fire-fighting.

d) Retirement ages imposed by employers

In Latvia, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

The setting of retirement ages by an employer has never been an issue either. Since there is generally no state-imposed retirement age, it seems safe to argue that the guarantee

¹⁸⁸ Latvia, Constitutional Court (*Satversmes tiesa*). Case No. 2003-12-01, 18.12.2003, available electronically at <http://www.satv.tiesa.gov.lv/upload/2003-12-01.rtf>.

¹⁸⁹ Supreme Court of Latvia Administrative Case Department (*Augstākās tiesas Administratīvo lietu departaments*), *B. v. State Revenue Service (B. pret Valsts ieņēmumu dienestu)*, Case No A420322813, 27.08.2014.

¹⁹⁰ Constitutional Court (*Satversmes tiesa*). Case No 2002-21-01, 20.05.2003, available at: <http://www.satv.tiesa.gov.lv/upload/2002-21-01.rtf>.

contained in Article 6 of the Labour Law stating that 'provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments [that is, laws or secondary legislation], erode the legal status of an employee, are void and can be declared as such by courts of general jurisdiction' would apply to any retirement age or age when the termination of the employment contract becomes possible, as set out by contract or collective bargaining or unilaterally by the employer.

e) Employment rights applicable to all workers irrespective of age

The Labour Law does not provide for the right of the employer to give notice to the person who has reached retirement age. Hence, the protection against age-based differential treatment and against dismissal is not limited to pre-retirement age, but continues after its attainment and indeed applies independently of age, although in practice there is a widespread feeling that those persons who have reached retirement age would be the first targets for dismissal based on considerations of social justice.

f) Compliance of national law with CJEU case law

In Latvia, national legislation is in line with the CJEU case law on age regarding compulsory retirement.

As there is no state-imposed retirement age, national legislation would seem to be compliant with the CJEU case law. Although some laws fix maximum age limits for certain professions, e.g. prosecutors and judges, this would require the domestic courts to decide whether such provisions are justified or not.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Latvia, national law does not permit age or seniority to be taken into account in selecting workers for redundancy.

The Labour Law does not provide for an order of preference for selecting persons for redundancy, and Article 108 of this law only sets the criteria for priority for staying in employment in cases of selection for redundancy, thus tipping the balance in their favour. These criteria, in cases where performance, results and qualifications do not substantially differ, include seniority (employees who have worked for the relevant employer for a longer time, such that seniority is an asset) and employees for whom less than five years remain until reaching the age of retirement. All in all, there are 10 such grounds for priority, and none of them has automatic priority over the others.

b) Age taken into account for redundancy compensation

In Latvia, national legislation provides compensation for redundancy. This is not affected by the age of the worker.

Compensation for redundancy ranges from one to four months' salary, depending on the person's length of employment by the particular employer, so, in the context of compensation, seniority matters but age does not – although, admittedly, the two can be related.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Latvia, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In Latvia, no other exceptions to the prohibition of discrimination (on any ground) are provided for in national law.

As there is no comprehensive prohibition of discrimination in national law, there are no other exceptions.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Latvia, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is not provided for in national law.

Positive action has so far been largely foreign to the Latvian legal system, and there are no specific measures aimed at ensuring or promoting full equality or to compensate for disadvantages linked with religion or belief or sexual orientation.

b) Main positive action measures in place on national level

There is no indication that the Government might be considering adopting such measures; in fact, in the absence of any reference in national legislation to the possibility of positive action, it is also highly doubtful that such measures, if adopted by a particular employer, would be considered legal.

Broad social policy measures

However, the State Employment Service runs a project on active employment measures for certain groups of unemployed persons. Among the eligible categories are persons aged over 50 years and persons belonging to ethnic minorities, who need to consolidate their knowledge of the state language, professional knowledge or professional experience in order to increase their chances of obtaining a permanent job. Within the framework of the project, 50 % (up to the official minimum salary) of the salary of the person is paid by the state for up to 12 months. Similarly, there is a traineeship project for unemployed young people aged 18-24, with a monthly wage contributed for up to six months and a monthly subsidy of 50 % of the official minimum salary paid to the supervisor of five unemployed youths.

There is also a project run by the State Employment Service aimed at the creation of subsidised work placements specifically for persons with disabilities.

According to Cabinet of Ministers regulations No.75, employers hiring unemployed persons with disabilities can be reimbursed:

- by up to EUR 711;
- through a contribution (at least of the amount of the official minimum salary) to the salary of a disabled person for up to 12 months;
- to cover the services of a sign language interpreter (EUR 10.50 per hour, proportionate to the hours worked by the person with disability, but for no more than 40 hours per week);
- through occupational therapists or other specialists being provided for the employment of the disabled person;
- through a monthly subsidy of 50 % of the official minimum salary, paid to the supervisor of the disabled employee, thus helping to alleviate the burden on the employer.¹⁹¹

There are no quotas for access by disabled persons to the labour market, and no relevant case law.

¹⁹¹ Latvia, Cabinet of Ministers Regulations No. 75 on the procedure for the organisation and financing of active employment measures and preventive activities reducing unemployment and the selection principles of implementers of measures (*Ministru kabineta noteikumi Nr.75 Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem*), 25.01.2011, available in Latvian at <http://likumi.lv/ta/id/225425>.

The Government report 'Information on Roma integration policy measures in Latvia' (hereafter – 'the report'), produced by the Ministry of Culture in 2011, describes a series of national Roma integration tasks and measures, which have been included in the policy planning document 'National Identity, Civil Society and Integration Policy Guidelines 2012-2018', as approved by the Cabinet of Ministers on 20 October 2011. The report describes the current situation of Roma in Latvia and identifies challenges to the socio-economic integration of Roma in education, employment, housing and healthcare, as well as their general enjoyment of human rights, civic participation and tolerance. Some of the measures could be considered as 'positive action' measures. However, the report does not use the notion of 'positive action' and uses the wording of 'targeted approach' instead, applying it to a broader range of activities.

In accordance with the EU framework on national Roma integration strategies, Latvia has developed a set of national Roma integration policy measures for 2012 to 2018, which have been included in the above guidelines.

Implementation of the measures is foreseen from 2012-2017, but this remains dependant on funding, which has been seriously reduced in the last five years.

There is no narrowly tailored preferential treatment in Latvia.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Latvia, the procedures that exist for enforcing the principle of equal treatment include judicial and administrative measures, as well as forms of alternative dispute resolution such as mediation (conciliation).

A number of remedies are available to persons who consider themselves wronged by differential treatment; however, none of them is specifically aimed at ensuring equal treatment. All procedures are binding, except for those of the Ombudsman, who can issue non-binding recommendations. The institutions to which such persons can turn are:

- In cases of discriminatory practices by public institutions - the same public institution that has treated the person differently, or a higher institution, administrative court or public prosecutor's office

Article 76(2) of the Administrative Procedure Law allows an administrative act or factual action to be challenged – including discriminatory acts and behaviour in civil service relationships in the public sector – before a higher institution, and then, if no such higher institution exists or if it fails to notify the applicant of the outcome of their submission directly, before the administrative court.

The Administrative Procedure Law sets out the principle of objective investigation by the court and the possibility to opt for a written procedure if both parties agree. All three instances of administrative courts are located in Riga, however first-instance administrative courts also operate in four other regions.

According to Article 38 of this law, any person, not only a lawyer, may be a representative in an administrative procedure. Article 16 of the Law on the Public Prosecutor's Office provides for the prosecutor's involvement in the protection of the rights and lawful interests of disabled persons, minors and other persons who have limited possibilities to protect their own rights. The result of the prosecutor's involvement is not limited to a warning to the culprit or to the opening of a criminal case, but it may also lead to initiating a civil case.

- Courts of general jurisdiction

The provisions of Article 92 of the Constitution, which state that 'Everyone has the right to defend their rights and lawful interests in an impartial court', have been further elaborated by the Judicial Powers Law. Article 5 provides that, in civil cases, the court shall hear cases related to the protection of civil rights, labour rights, family rights, and other rights and lawful interests of individuals and legal entities. The procedure for adjudicating non-administrative cases, which includes cases arising from labour relationships in the private sector and in the public sector outside the civil service, is determined by the Civil Procedure Law.

The payment of court expenses, as well as of the state levy, is waived in cases based on an employment relationship and in cases that have been initiated by the prosecutor (Article 43(1), paragraphs 1 and 5 of the Civil Procedure Law, Article 218 of the Labour Law). This does not include lawyers' fees, however, as, since the adoption of the law on legal aid provided for by the state¹⁹² in 2005, a mechanism exists whereby persons in need can be granted free legal assistance in criminal and civil cases. Cabinet of Ministers Regulations

¹⁹² Latvia, State-insured Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), 17.03.2005.

No 558 set out conditions for receiving legal aid, according to which the person's particular situation, property status and income level do not suffice for partial or full protection of their rights. Free legal aid is to be provided to persons whose status is defined as low-income or indigent, and a person who seeks such aid is required to submit documents attesting to their income level, property status and special situation.

The Ombudsman's Office may, upon termination of an investigation procedure and upon establishment of a violation, decide to defend the rights and interests of a private individual in an administrative court, if necessary for the public interest, as well as bringing a civil claim in cases of a violation of the prohibition of differential treatment.

- State Labour Inspectorate

The State Labour Inspectorate was established by the Law reinstating the legal force of the statute of 28 April 1939 'On Labour Inspection',¹⁹³ and its work is regulated by the new State Labour Inspectorate Law.¹⁹⁴ Among its functions is the monitoring of compliance with legislation regulating the sphere of employment and the observance of the rights of employees. Employees can turn to the inspectorate with their complaints, which the inspectorate investigates. The SLI is mandated to investigate administrative offences in employment relations, as envisaged by Article 204.¹⁷ (Violation of Prohibition of Discrimination in the Code of Administrative Offences), and can impose fines from EUR 142 to EUR 714 (LVL 100 to LVL 500). Thus, employers who discriminate against a person on the grounds of that person's race, ethnic origin, gender, age, disability, sexual orientation or religion or belief in refusing to conclude a labour contract, in dismissing the person or during the term of the person's contract can be punished according to this article.

In addition to these ordinary avenues for addressing discrimination, two 'extraordinary' institutions need to be noted.

- Ombudsman (the Ombudsman's Office)

In March 2007, the Ombudsman's Office replaced its predecessor, the National Human Rights Office, which had been established in 1995. The office is an independent institution entrusted with the task of promoting the observance of human rights and the principle of good governance. It can, inter alia, examine and review complaints concerning human rights violations, and can respond to such violations.

The Ombudsman then has to attempt to resolve conflicts through conciliation. If this fails, the Ombudsman advises the parties of his opinion and proposals in the form of recommendations, and also presents his suggestions and recommendations for the prevention of human rights violations to the relevant institution or official; however, the Ombudsman's Office cannot enforce its recommendations,¹⁹⁵ nor can it apply any fines. After the examination of the complaint it can bring a case in an administrative court if this is in the public interest. Given its mandate, it could be presumed that resolving any cases of discrimination would be in the public interest – or subject to a civil case – only in cases where differential treatment is at issue.

The Ombudsman also has the authority to initiate an abstract review case in the Constitutional Court concerning the conformity of legal provisions with norms of higher force and the conformity of national legal provisions with the international treaties that are

¹⁹³ Latvia, On the restoration of the force of the Republic of Latvia 28.04.1939 Law on Labour Inspection (*Par Latvijas Republikas 1939. gada 28. aprīļa likuma «Par darba inspekciju» spēka atjaunošanu*), 04.05.1993.

¹⁹⁴ Latvia, State Labour Inspection Law (*Valsts darba inspekcijas likums*) 13.12.2001.

¹⁹⁵ This was amply demonstrated by a 1997 case, in which a person was forced to leave the police service because of their sexual orientation. Although the National Human Rights Office was of the opinion that discrimination based on sexual orientation had occurred, the matter was not resolved, as the authorities involved disagreed with the findings of the office.

binding on Latvia; it has no authority to bring concrete review cases where the rights of a specific individual have been violated. For more information, see under Section 7 (Specialised bodies).

- The Constitutional Court

The Constitutional Court was established in 1996. It examines the compliance of laws and other legal norms with the Constitution, as well as considering other cases under its jurisdiction. It has the right to declare provisions that are found not to be in compliance with a higher legal norm to be null and void.

According to Article 17 of the Constitutional Court Law, the following have the legal standing to apply to the Constitutional Court regarding the compliance of laws and international treaties signed or ratified by Latvia with the Constitution, the compliance of other legal acts with legal norms (acts) of higher legal force, as well as the compliance of Latvian national legal norms with the international agreements that have been entered into by Latvia: the President; the Parliament; not less than 20 members of the *Saeima*; the Cabinet of Ministers; the Prosecutor General; the Council of State Control; the council of a municipality; the National Human Rights Office; a court, when reviewing an administrative, civil or criminal case; a judge of the Land Registry when entering real estate - or thus confirming property rights on it - in the Land Book; and an individual whose fundamental rights as established by the Constitution have been violated. Constitutional complaints and judicial referral mechanisms were established by the amendments adopted in 2000. A constitutional complaint can be submitted by a person who considers that their basic rights have been violated by a legal norm that contradicts a higher norm. The complaint may be submitted only after all other remedies have been exhausted (in exceptional cases the court may decide to accept the complaint even if this has not been done) and within six months of the final decision in the case.

Constitutional complaints remain widely used, but there have been few discrimination cases. There have been no complaints of discrimination on the grounds of gender, racial or ethnic origin, sexual orientation or disability, in two cases age discrimination has been alleged and in one case discrimination on grounds of nationality. In the first case, the provisions of the Law on Higher Educational Establishments and of the Law on Scientific Activity, which set an age limit for occupying administrative positions in scientific institutions, higher educational establishments and higher academic positions, were successfully challenged, although the court did not decide the case based on a discrimination argument,¹⁹⁶ while in the second case a similar challenge to the age limit in the civil service failed.¹⁹⁷

b) Barriers and other deterrents faced by litigants seeking redress

The payment of court expenses and the state levy are waived in cases that are based on an employment relationship and in those that have been initiated by the prosecutor (Article 43(1), paragraphs 1 and 5 of the Civil Procedure Law, Article 218 of the Labour Law). However, this does not include lawyers' fees because, under the law on legal aid provided for by the state¹⁹⁸ that was adopted in 2005, a mechanism has existed whereby persons in need can be granted free legal assistance in criminal and civil cases. Cabinet of Ministers Regulations No. 558 set conditions for receiving legal aid, according to which the person's particular situation, property status and income level do not suffice for partial or full protection of their rights. Free legal aid is to be provided to persons whose status is defined as low-income or indigent, and the person who seeks such aid is required to submit documents attesting to their income level, property status and special situation. However,

¹⁹⁶ Constitutional Court (*Satversmes tiesa*). Case No 2002-21-01, 20.05.2003, available at: <http://www.satv.tiesa.gov.lv/upload/2002-21-01.rtf>.

¹⁹⁷ Constitutional Court (*Satversmes tiesa*). Case No 2003-12-23, 18.12.2003.

¹⁹⁸ Latvia, State-insured Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), 17.03.2005.

the wide gap between those who can claim state legal aid and those who can afford to pay private lawyer's fees may be one of the key reasons why few cases are brought to the court, and those that are heard are brought predominantly by NGOs and selected legal professionals.

An issue that needs to be addressed is that of disability-related accessibility to these remedies. The absolute majority of central and local government institutions remain physically inaccessible.¹⁹⁹ Although those buildings that have been built recently have had to address the accessibility issue, 'accessibility' often stops at getting into the building, with movement within the building remaining a problem. There are no rules on the provision of information in Braille, and the only context within which sign language interpretation must be provided by the state is that of court proceedings.

c) Number of discrimination cases brought to justice

In Latvia, there are no available statistics on the number of cases related to discrimination brought to justice.

d) Registration of discrimination cases by national courts

In Latvia, discrimination cases are not registered as such by the national courts.

The exception is the Supreme Court database on case law concerning the Labour Law, which includes discrimination cases. These are not classified by ground.²⁰⁰

There were several cases before the Supreme Court on gender discrimination in 2012,²⁰¹ and on gender discrimination and age discrimination in 2013.²⁰²

Between 2010 and 2014, there were six known discrimination cases against the State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*), on gender and the calculation of unemployment benefits, and a gender discrimination case, on employment and dismissal, was brought before the administrative courts. There have been no prosecutions based on the anti-discrimination aspect of Article 149.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Standing to act on behalf of victims of discrimination (representing them)

In Latvia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

According to Article 10(3) of the Law on Associations and Foundations, those organisations and foundations whose aims are the protection of human rights and individual rights have

¹⁹⁹ According to the 2010 Report of the Ombudsman's Office, local authorities indicated that their services were accessible to persons with disability in only 26 % of cases. – Tiesībsarga 2010. gada ziņojums, available for downloading at http://www.tiesibsargs.lv/files/content/Tiesibsarga%20gada%20zinojums_2010.pdf, p. 74.

²⁰⁰ Augstākās Tiesas Judikatūra <http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/tezes-darba-lietas-2003-2012/3darba-likums/>.

²⁰¹ Latvia, Supreme Court Senate, (*Latvijas Republikas Augstākās tiesa*) Case Nr. SKC-684/2012 (E.L. v. State Joint Stock Company International Airport Rīga [E.L. v. Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”]. Supreme Court Senate, [Latvijas Republikas Augstākās tiesa], Case Nr. SKC-684/2012), at <http://at.gov.lv/files/uploads/files/archive/departments1/2012/684-sk-2012.doc>.

²⁰² Latvia, Supreme Court Senate, (Augstākās tiesas Senāts), Case Nr. SKC-2504/2013, 06.12.2013.

the right to bring a case before state institutions and courts on behalf of a victim (with their consent) in matters related to discrimination.²⁰³

Until early 2014 associations were entitled to represent a victim or victims of discrimination before all three court instances.

However, according to the amendments to the Civil Procedure Law (in force since 4 January 2014),²⁰⁴ the right to legal representation at the instance of cassation is reserved to the person participating in the case or to their advocate (defence counsel). This excludes the possibility of legal representation by other persons with a law degree (e.g. NGO staff), who are not participants in the case and do not have the status of an advocate. This will exclude the participation of NGOs and legal practitioners who are not advocates in civil claims relating to discrimination cases. The amendments were adopted allegedly to strengthen the role of advocates in civil cases to ensure the quality of claims. This, though, may impact on access to justice for certain vulnerable groups, including victims of discrimination, as cases of discrimination have predominantly been brought before the courts by NGOs or legal practitioners. These amendments contravene the non-regression clauses of the equality directives.

This contravenes an earlier Constitutional Court judgment. In 2003 the court evaluated a similar provision in case No. 2003-04-01,²⁰⁵ which was initiated regarding the compliance of part five of Section 82 and part two of Section 453 of the Civil Procedure Law with the Articles 91 and 92 of the Constitution. Part five of Section 82 of the Civil Procedure Law stipulates that, at the instance of cassation, natural and legal persons participate in cases through representation by an advocate. Part five of Section 82 and part two of Section 453 of the Civil Procedure Law stipulate that a cassation appeal shall be signed by an advocate. A cassation appeal shall be supplemented with a document which certifies the authorisation of the advocate. The applicant to the Constitutional Court claimed that the contested provisions violated the applicant's rights because she, like the majority of people, could not afford to pay for the services of an advocate. The Constitutional Court recognised that the contested provisions did not comply with the principle of proportionality and were unlawful, as well as contradicting Article 92 of the Constitution. The court ruled that the contested provision had been null and void since 1 January 2003. The Constitutional Court agreed with the argument of the applicant that, aside from advocates, there were other persons with sufficient skills to provide qualified legal representation, such as judges and prosecutors (in the cases determined by law), holders of a PhD in Law, specialist NGOs providing legal assistance, and state-funded institutions providing legal assistance free of charge, as well as persons with a university education in law who have passed the examinations for the relevant knowledge and skills, etc. Thus, the court believed that there were other, more lenient means for achieving the legitimate aim, especially in the provision of qualified legal representation in the cassation court. The court believed that the measures envisioned by the Advocacy Law and the Regulations of the Cabinet of Ministers on recognition of a person as needy were insufficient to provide legal assistance to those who need it free of charge.

According to Article 12(4) of the Law on Trade Unions, trade unions have the right 'within their competence to represent and protect the rights and interests of their members without specific authorisation.'

²⁰³ Latvia, Law on Associations and Foundations (*Biedrību un nodibinājumu likums*), 30.10.2003, Article 10(3), available at: <http://likumi.lv/doc.php?id=81050>.

²⁰⁴ Latvia, Amendments to the Civil Procedure Law (*Grozījumi Civilprocesa likumā*), 19.12.2013, available in Latvian at: <http://likumi.lv/doc.php?id=263490>, published in Latvian Herald (*Latvijas Vēstnesis*) 2(5061), 03.01.2014, available in Latvian at: www.vestnesis.lv/?menu=doc&id=263490.

²⁰⁵ Latvia, Decision of Constitutional Court of the Republic of Latvia in Case No. 2003-04-01 on 27.06.2003, available in Latvian at: <http://www.satv.tiesa.gov.lv/?lang=1&mid=19>.

b) Standing to act in support of victims of discrimination

In Latvia, associations, organisations and trade unions are entitled to act in support of victims of discrimination, by providing opinions.

Article 183 of the Administrative Procedure Law provides for *amicus curiae* (Views of Associations of Persons): an association of persons which is considered a recognised representative of interests in some sectors and from which expert opinions may be expected, which may petition the court in writing to permit it to submit its opinion regarding the facts or rights in the relevant sector. If the court considers that the opinion of the relevant association of persons may assist the court in taking an objective decision in the matter, it shall determine questions regarding which the association of persons may submit its opinion. Such questions must relate to the matter to be adjudicated. The association of persons may not give a factual or legal assessment in the specific administrative matter.²⁰⁶

c) Actio popularis

In Latvia, national law does not allow associations / organisations / trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

The law is silent on this issue, and currently it does not seem possible that an attempt to bring an *actio popularis* would be accepted.

d) Class action

In Latvia, national law does not allow associations / organisations / trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

While there is nothing to prevent engagement on behalf of several complaints, there is also nothing to specifically authorise them, thus the law is silent on this issue and the issue of possible class actions remains unresolved; since class actions have so far been foreign to the Latvian legal system, it seems safe to state that, in the absence of legislative action, they remain impossible.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Latvia, national legislation requires a shift of the burden of proof from the complainant to the respondent.

Article 29(3) of the Labour Law provides for a shift (or sharing) of the burden of proof in cases of all types of discrimination related to an employment relationship covered by this law. It reads as follows: 'if in the case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for the performance of the relevant work or the relevant employment', thus complying with the requirements of the respective articles of the two directives and Directive 97/80/EC in so far as employment relationships are concerned. It must be remembered that paragraph (9) provides that the provisions of this article (thus including those on the burden of proof) also apply to the prohibition of differential treatment based on the race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual

²⁰⁶ Latvia, Administrative Procedure Law (*Administratīvā procesa likums*), 25.10.2001, at <http://likumi.lv/doc.php?id=55567>.

orientation or other circumstances of an employee. Article 9 specifically applies the shared burden of proof to victimisation cases, while harassment and instructions to discriminate come under Article 29. So far, the provision has been applied in a number of cases involving access to employment and coming under the terms of the Labour Law – in three gender-based discrimination cases, one race-based discrimination case and one case on sexual orientation.

In practice it is not infrequent that in, a court hearing, claimants must themselves prove that they have been discriminated against, in accordance with the general procedure of adversarial argumentation. This is evidenced by Supreme Court judgements where lower courts have been criticised for failing to shift the burden of proof in discrimination cases (2007 - employment, disability;²⁰⁷ 2012 – employment, gender).²⁰⁸ There have also been cases where the court has formally referred to the provision on the burden of proof, yet the claimant was still required to prove the claim.

The shift of the burden of proof is also provided for by the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(1)) in relation to gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin (regarding access to self-employment and access to goods and services by self-employed persons); by the Consumer Rights Protection Law (Article 3.¹(5)) in the sphere of access to goods and services in relation to gender, race, ethnic origin and disability; by the Law on Education (regarding access to education); and by the Law on Support to Unemployed Persons and Job Seekers (regarding access to active employment measures and measures to reduce unemployment). However, the provisions in the Law on Support to Unemployed Persons and Job Seekers only apply to gender, race and ethnic origin – thus leaving the other Directive 2000/78 grounds without protection, and the Law on Education's list of grounds does not include age, disability (which may be interpreted as coming under health condition) or sexual orientation, so that this law remains an incomplete transposition of the Employment Equality Directive.

The Administrative Procedure Law, which has been in force since 1 February 2004, introduces the principle of 'objective examination' in an administrative procedure. Article 103(2) provides that 'within the course of administrative proceedings, while performing its duties, a court shall itself (ex officio) objectively determine the facts of the case and provide a legal assessment of these, adjudicating the matter within a reasonable time', thus corresponding to the exception from the requirement of a shift in the burden of proof contained in Article 8(5) of the Racial Equality Directive and Article 10(5) of the Employment Equality Directive.

Additionally, Article 150, on the burden of proof, provides that the institution has to prove the facts on which it is relying as the grounds for its objections, that the claimant, to the extent possible, shall participate in the collecting of evidence, and that, if the evidence submitted by the parties is not sufficient, the court shall collect it on its own initiative. Five discrimination cases (on gender and the calculation of unemployment benefits) have been brought under this law. The law also applies in those civil service cases to which the Labour Law does not apply.

The shift in the burden of proof does not apply in any other sphere. The Civil Procedure Law requires that each party prove the facts that he or she is referring to. The Criminal Procedure Law (Article 19.1) provides that the burden of proof is on the prosecution and that any doubts are interpreted to the benefit of the accused. The Constitutional Court Law

²⁰⁷ Latvia, Supreme Court Civil Case Department (*Augstākās tiesas Civillietu tiesu palāta*), R. S. v. Rīga New St Gertrude Evangelical Lutheran Church (R.S. v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze), 11.04.2007.

²⁰⁸ Latvia, Supreme Court Senate, (*Latvijas Republikas Augstākās tiesa*) Case Nr. SKC-684/2012 (E.L. v. State Joint Stock Company International Airport Riga [E.L. v. Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”]).

does not make any exception from the requirement that both parties substantiate their views, nor does it permit the court to make its own assessment in cases where discrimination is alleged. It is true that, in one such case – a case on the requirement on persons wishing to acquire the status of unemployed to possess a permanent residence permit – the Constitutional Court, while refusing to satisfy the complaint as it was, nevertheless distinguished a particular category of persons (spouses of Latvian citizens whose presence in Latvia may be presumed not to be intended to be temporary) and found that such a requirement was unconstitutional in relation to them. It should be noted that the claimant had not referred separately to this category of persons, and this had only been referred to by the respondent. This shows that, to some extent, the court might act on its own initiative, but it cannot be required or relied upon to do so, and there is certainly no provision on a shift in the burden of proof in cases alleging discrimination.

It can be concluded that the requirements of the two directives concerning the burden of proof are currently complied with in relation to all grounds in cases related to employment relationships, including civil service relationships, access to goods and services and education, and are generally complied with in administrative cases, which would include state-provided social security cases, however, how effective the principle of 'objective investigation' is in discrimination cases will only become apparent with case law.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Latvia, there are legal measures of protection against victimisation.

Article 9 of the Labour Law provides for protection against victimisation: 'Infliction of a punishment on an employee as well as creation of direct or indirect unfavourable consequences to the employee, due to the fact that the employee within the framework of a labour relationship avails himself of his rights in a permissible manner, shall be prohibited.'

This would include cases of victimisation on the grounds of a person's complaints about the violation of the principle of equal treatment. Since the 5 July 2004 amendments, part 2 of this Article has applied the sharing of the burden of proof to victimisation cases.

Even if Article 9(2) does not expressly mention discrimination or differential treatment, only the 'adverse consequences', the Abramova case described below gives grounds to think that the courts might be prepared to view victimisation in the context of discrimination, and the provision of Article 29(8) of the Labour Law establishing the right to compensation refers both to differential treatment and to the creation of adverse consequences.

Protection against victimisation is contained in Article 34(2) of the Law on Social Security, which provides that:

'Infliction of a punishment on a person as well as the creation directly or indirectly of adverse consequences to him/her because of the fact that the person avails himself or herself, in a permissible manner, of the protection of his/her rights in relation to the prohibition of differential treatment shall be prohibited'.

Such protection is also contained in Article 3.¹(10) of the Consumer Rights Protection Law.

It must be noted that, both under the Labour Law and under the amendments to the Law on Social Security, the wording of the victimisation clause, by referring to 'his (or her) rights', seems to confine the prohibition against discrimination to the actual victim of the discrimination, with witnesses and other persons assisting the complainant thus being excluded. Similarly, victimisation is prohibited by the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 6), the Consumer Rights

Protection Law (Article 3.¹(10)), the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(8)), the Education Law (Article 3.1(4)), and the Law on Patients' Rights (Article 3(4)).

Another instance of protection against victimisation is that provided by the Law on the Ombudsman: Article 23(3) of this law provides that 'the applicant may not be punished and no direct or indirect adverse consequences may be caused to him because of submitting an application, complaint or proposal to the Ombudsman's Office or for cooperating with the Office'; this, however, obviously applies only to cases that are being investigated by the office.

All other cases – with the exception of the already mentioned ones – remain unprotected, even if, with regard to the public sphere, one could refer to Article 92 of the Constitution, which provides for 'the right to commensurate compensation to persons whose rights have been infringed without a basis'. Even in those protected cases, victimisation is covered only by a prohibition, and not by accompanying sanctions.

There is one leading court case on victimisation, although it was decided before the new Labour Law entered into force.

The claimant, Dagmara Abramova, who had been dismissed as a result of a reduction of the number of employees, was reinstated to her position by a court decision. She brought another court case when she learned that she was the only employee whose salary was not linked to the work performed and her salary remained constantly low, arguing that she had been discriminated against due to her activities in the trade union. Abramova received a positive decision in the court of first instance, but her claim was rejected in the court of appeal. The Latgale Regional Court found a violation of the principle of equality as guaranteed by Article 1 of the Labour Code, and of the principle of equal pay for equal work, referring to Article 23 of the Universal Declaration of Human Rights. Interestingly, the discrimination was found to be on the grounds of victimisation due to the fact of defence of her rights, even if this ground was not listed in the exhaustive list of grounds prohibiting discrimination in Article 1 of the old Labour Code. This shows that the Latvian courts might be prepared to view victimisation in the context of discrimination and could perhaps protect against victimisation even in the absence of a specific prohibition.²⁰⁹

Another case on victimisation, R.K. vs. Valsts Mežu dienests, was decided in 2005 (at 1st and 2nd instance) and in 2006 (by the Supreme Court Senate). The claimant had been subjected to various disciplinary measures, all of which were repealed by the State Civil Service Office or by a court. Since, unlike his colleagues performing the same job, R.K. was not paid the regular premiums, he considered he had been victimised because of defending his rights. The court held for the claimant, and awarded him moral damages.

It can be concluded that a prohibition of victimisation exists only in the framework of employment relationships, including civil service relationships, coming under the terms of the Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators covering self-employment, the Law on Support to Unemployed Persons and Job Seekers, the Law on Social Security, the Consumer Rights Protection Law, the Law on Education and the Law on Patients' Rights, and in relation to a complaint to the Ombudsman's Office, within the respective spheres of application and in relation to the grounds covered – which are incomplete; thus, the requirements of the directives are only partially complied with.

²⁰⁹ Latvia, Latgale Regional court (*Latgales Apgabaltiesa*), case No.2-268 A/01.11.2000 (Abramova v. 'Latgales druka'), 01.11.2000.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

Speaking specifically about anti-discrimination law, mention may be made of specific sanctions contained in the Labour Law, the Consumer Rights Protection Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Education, the Criminal Law and the Administrative Offences Code.

Criminal sanctions

On 25 September 2014, the Parliament amended the Criminal Law.

Section 48, which lists aggravating circumstances of a criminal offence, was amended to include 'national, ethnic or religious' in addition to 'racist' motivation (Paragraph 1, Clause 14).

Section 78, which envisages criminal liability for 'incitement of national, ethnic and racial hatred' was amended to include 'religious' hatred or enmity and to exclude the notion of 'intentional' as a qualifying circumstance. The amendments also introduced greater differentiation of the severity of offences, with relevant sanctions. Paragraph 1 of Article 78 of the Criminal Law deals exclusively with 'incitement' (i.e. no violence and no group or institutional aspect).

The previous version of Paragraph 2 covered the offence of incitement 'associated with violence or threats, or committed by a group of persons, a state official or a responsible employee of a company or an organisation', and provided for a punishment of deprivation of liberty for up to 10 years and, with or without probationary supervision, for up to three years. The amendments divided the previous Paragraph 2 into two parts. The new version of Paragraph 2 covers acts committed by 'a group of persons, or a state official or a responsible employee of a company or an organisation' or using an 'automated data processing system' (i.e. – the internet), and provides for a punishment of deprivation of liberty for up to five years, community service or a fine. The amendments introduced Paragraph 3, which covers the same crime of incitement if it is 'associated with violence or threats' or if it is committed by an 'organised group'. This paragraph provides the heaviest punishment – up to 10 years' imprisonment, with or without probationary supervision for a term of up to three years.

Amendments to Article 78 of the Criminal Law²¹⁰ excluded the word 'knowingly', so the prosecutor will not have to prove the direct intent of the perpetrator.

Section 149.¹ was also amended and provides:

- 1) for acts of racial, national, ethnic or religious discrimination or the violation of another type of discrimination, if considerable harm has been caused or if they are associated with violence, fraud or threats, or where they are committed by a group of persons, a state official or a responsible employee of an undertaking (company) or organisation, or if they have been committed by using an automated system of data processing, the applicable sentence is deprivation of liberty for a term not exceeding one year, short-term custody, community service or a fine;
- 2) for the same activities, if committed by a state official or a responsible employee of a company or an organisation or 'a group of persons', or using an 'automated data processing system' (i.e. – the internet), the applicable sentence is deprivation of

²¹⁰ Latvia, Amendments to the Criminal Law (*Grozījumi Krimināllikumā*) 17.06.1998. available at: <http://likumi.lv/doc.php?id=88966>.

liberty for a term not exceeding three years, short-term custody, community service or a fine.

The wording of Article 150 of the Criminal Law, which previously criminalised incitement of religious hatred, was replaced by 'Incitement of social hatred and enmity':

- (1) acts aimed to incite hatred or enmity on the grounds of a person's gender, age, disability or any other feature, if substantial harm was caused by such act, shall be punished with short-term imprisonment, community service or a fine;
- (2) the same acts, if committed by a state official, or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if they are committed using automated data processing systems, shall be punished with imprisonment of up to three years, short-term imprisonment, community service or a fine;
- (3) the same acts, if associated with violence or threats, or if committed by an organised group, shall be punished with imprisonment of up to four years, short-term imprisonment, community service or a fine.

Administrative sanctions

Various specialised public bodies with powers in relation to labour or consumer protection can impose administrative sanctions, such as fines. The State Labour Inspectorate can impose fines from EUR 124 to EUR 714 for violations of the prohibition of discrimination in employment relationships (Article 204.¹⁷ of the Administrative Offences Code). The outcome of the proceedings can also result in a halt to the discrimination and the restoration of equality.

According to the Administrative Offences Code (Article 166.¹³), the Centre for Consumer Rights Protection can impose fines for the violation of the Advertising Law, which prohibits discriminatory advertising on grounds of race, skin colour, gender, age, religious, political or other convictions, national or social origin, financial status or other circumstances (Article 4(2)1).

Civil remedies

Article 29(8) of the Labour Law provides that:

'If the prohibition of differential treatment and prohibition to cause adverse consequences is violated, the employee, in addition to other rights provided for by this law, has the right to request compensation for damages and compensation for moral damages. In the case of a dispute the amount of compensation for moral damages shall be determined by the court at its discretion'.

The possibility to claim moral damages is also expressly provided for in the Consumer Rights Protection Law (Article 3.¹(11)), the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 5) and the Law on Education (Article 3.1(6))

Similarly, Article 92 of the Administrative Procedure Code provides that 'Everyone is entitled to claim compensation for financial loss or personal harm, including moral harm, which has been caused to him or her by an administrative act or an actual action of an institution'. The amount of compensation for financial loss caused by an administrative act of an institution is set out in the Law on Reparation of Damages caused by State Administrative Institutions.²¹¹

²¹¹ Latvia, Law on Reparation of Damages caused by State Administrative Institutions (*Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums*), 02.06.2005.

Generally, non-pecuniary damages is a field under development in Latvian law; until the adoption of the Law on Reparation of Damages caused by State Administrative Institutions, the only case when Latvian law allowed for non-pecuniary damages was that provided for in Articles 2349, 2352, 2352.a and 2353 of the Civil Law in cases of mutilation, unlawful deprivation of liberty, defamation²¹² and rape, and it appears that only the defamation provision has been used so far to award moral damages.

Individuals may seek a halt to the discriminatory practices (of either a representative of the public authorities or a private person) before the court, as well as restoration of violated rights or status, etc.

Individuals may also complain to the Ombudsman's Office in cases where the outcome can be a friendly settlement.

As far as disciplinary liability of civil servants is concerned, there are no provisions specifically relating to cases of discrimination. For discriminatory activities, a civil servant may be punished on the basis of general provisions, e.g. Article 17 of the Cabinet of Ministers Regulations on Disciplinary Punishments of Civil Servants provides for liability for unreasonably failing in the obligations of a civil servant.

If this has caused substantial detriment to the civil service or to an individual, the civil servant may be punished by dismissal from the civil service.

Another article related to cases of discrimination is Article 30, allowing for the punishment of a civil servant for impolite or intolerant attitudes towards individuals or colleagues. However, the disciplinary punishment in this case can be a reprimand. Thus, the punishment of a civil servant for acts of discrimination is subject to the interpretation of the respective disciplinary provisions and, in order to apply them effectively, the awareness of civil servants, including those who can impose punishments, must be raised.

All in all, the addition of express reference to moral damages in the Labour Law, the Consumer Rights Protection Law and the Law on Reparation of Damages caused by State Administrative Institutions is a positive development. However, as not all spheres that are subject to the directives are covered by Latvian legislation, there are inevitably gaps relating to sanctions in these uncovered fields – although admittedly, the last of the laws listed above would cover most of the public sphere.

b) Ceiling and amount of compensation

There is no maximum amount for damages under the Civil Law, yet Article 14 of the Law on Reparation of Damages caused by State Administrative Institutions sets the maximum amount of non-pecuniary damages for personal harm at EUR 8 000 (LVL 5 000) or EUR 10 000 (LVL 7 000) in cases of grave personal harm, and EUR 24 000 (LVL 20 000) if harm has been caused to life or grave harm has been caused to health. The maximum amount of damages for moral harm is set at EUR 4 800 (LVL 3 000) or EUR 8 000 (LVL 5 000) in cases of grave moral harm and EUR 24 000 (LVL 20 000) if harm has been caused to life or grave harm has been caused to health.

It is difficult to predict, in the absence of any case law, whether, in cases of discrimination by the state institutions at final instance, the courts would be ready to award damages for both personal harm and moral harm. The definitions of personal harm and moral harm in

²¹² In the Muhina case (Annex 3, Latvia, Supreme Court Senate (*Augstākās tiesas Senāts*) case No.SKC-297, Muhina v. Central Prison, 08.02.2002), the court was not prepared to award moral damages to Muhina based on Article 2352.a (defamation), as the provisions of the Labour Code then in force, in the opinion of the Senate, were *lex specialis* in the field of equal treatment in labour relationships, and the refusal to employ Muhina could not be regarded as an injury to her honour or dignity, as Article 2352.a only applies to cases where untrue information has been disseminated.

the law allow cases of discrimination to come under the terms of both of them, and the law itself permits applications for several kinds of damages at the same time. It has to be noted that Latvian law does not provide for punitive damages.

In the two defamation cases brought under the Civil Law and related to defamation and incitement to racial discrimination, the damages awarded were EUR 4 800 (LVL 3 000) to each of the claimants in the Los Amigos case,²¹³ and a symbolic EUR 50 (LVL 30) in the Steel case.²¹⁴ In the Smagars case,²¹⁵ on disability-based discrimination in providing access to a public place, the amount of damages awarded was around EUR 4 800 (LVL 3 000).

Between 2005 and 2014, there were over a dozen known discrimination cases before the courts which have resulted in a favourable outcome for the victim (11 concerning discrimination on the ground of gender, two on the ground of disability, one on age and one on race discrimination). The overwhelming majority of those cases have related to the realm of employment. In 2005 (on employment, gender and property status), the court awarded EUR 1 500 (LVL 1 000).²¹⁶ Three of the cases were conciliation agreements confirmed by the courts. In 2008, the claimants were awarded EUR 7 142 (LVL 5 000) (relating to gender (pregnancy, dismissal)), and EUR 1 142 (LVL 800) (on gender in relation to a job interview). In one case in 2007, the claimant was awarded EUR 4 285 (LVL 3 000) (on disability and dismissal). In 2010, a claimant was awarded EUR 428 (LVL 300) (on gender and recruitment). In 2011, one claimant was awarded EUR 1 428 (LVL 1 000) (on employment and disability) as compensation for non-material damages by the appeal court. Five cases in 2010-2011 (on gender) concerned a recalculation of unemployment benefits, and were tried by administrative courts. Although the courts established indirect discrimination, leading to recalculation of unemployment benefits, it is not known whether the claimants also sought moral compensation. In 2013, in a gender discrimination case, the court awarded compensation for non-material damages of EUR 2 845 (LVL 2 000).²¹⁷ In 2014, also in a gender discrimination case, the appeal court awarded the claimant EUR 1 000 (LVL 702.65).²¹⁸

There have been several court cases where, upon the establishment of the fact of discrimination, the court has nevertheless required proof of damages by the claimant to seek moral damages. In 2013, the Supreme Court Senate, referring to Court of Justice of the European Union jurisprudence, underlined that there is no need to specifically prove the existence of moral damage in cases of age discrimination, as moral damage is presumed from the very fact of age discrimination in the employment relationship.²¹⁹

c) Assessment of the sanctions

The number of court cases concerning discrimination on grounds of ethnicity, religion, disability, age or sexual orientation resulting in compensation for the victim remains limited. The majority of cases concern gender discrimination in the sphere of employment. The average moral compensation awarded in known discrimination cases is EUR 1 428 (LVL 1 000). The highest compensation awarded through a conciliation agreement was EUR 7 142, in 2008. Such a small amount of compensation can hardly be considered effective, proportionate and dissuasive. Cases of forward-looking remedies, e.g. ordering

²¹³ Latvia, Supreme Court (*Augstākās tiesas Civillietu tiesu palāta*) judgment in the case PAC-244, 09.04.2003.

²¹⁴ Latvia, Latgale District Court of Riga (*Rīgas Latgales priekšpilsētas tiesa*), judgment in case C29240503, 08.09.2003.

²¹⁵ Latvia, Riga regional court (*Rīgas apgabaltiesas Civillietu tiesas kolēģija*) judgment in case C04386004, 11.07.2005.

²¹⁶ Latvia, Cēsu district court (*Cēsu rajona tiesa*), Case no C11019405, A.S. v. Straupe Parish Council (Straupes pagasta padome), 05.07.2005.

²¹⁷ Latvia, Supreme Court Senate (*Augstākās tiesas Senāts*), Decision in case Nr. SKC-2846-13, 18.12.2013.

²¹⁸ Latvia, Latgale Regional Court (*Latgales apgabaltiesas Civillietu tiesas kolēģija*), Case No. C12102213 (archive No. CA-0121-1), 30.04.2014.

²¹⁹ Latvia, Supreme Court Senate (*Augstākās tiesas Senāts*), Case No. C32276312 (SKC – 1702/2013), 29.11.2013, at <http://www.l2d.lv/v.php?i=82540>.

the Health Inspectorate to issue an administrative act to order certain health service providers to ensure access to persons with disabilities to the premises, remain few.

To date, there has been no case when Article 149.¹ of the Criminal Law has been applied.

In the case of administrative sanctions, the State Labour Inspectorate has imposed fines mostly in cases of discriminatory job ads indicating preferences for a specific gender or age. One advertisement specifically indicated a preference for a certain ethnicity. The sanctions imposed have ranged from a warning to a fine of EUR 70 to EUR 535. However, the majority of fines range from EUR 200 to EUR 300, which cannot be considered dissuasive. The Consumer Rights Protection Centre has imposed fines for discriminatory advertising (relating to race/ethnic origin and sexual orientation) in several cases – of EUR 2 250,²²⁰ EUR 8 000²²¹ and EUR 2 278.

²²⁰ Latvia, Consumer Rights Protection Centre, (*Patērētāju tiesību aizsardzības centrs*), Decision No. E04-DAU-154, 14.08.2007.

²²¹ Latvia, Consumer Rights Protection Centre (*Patērētāju tiesību aizsardzības centrs*), Decision No. E03-RIG 132, 17.04.2007.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The Ombudsman (*Tiesībsargs*) is the body designated for the promotion of equal treatment according to Article 13 of the Race Equality Directive. The mandate of the office is more general: the protection of human rights and ensuring that the principle of good governance is observed, thus the promotion of equal treatment is only one of its tasks. According to Article 11(2) of the Law on the Ombudsman, the Ombudsman promotes the observance of the principle of equal treatment and the elimination of all kinds of discrimination, without specifying the grounds.

- b) Status of the designated body/bodies – general independence

The Ombudsman is appointed by the *Saeima* (the Parliament) for a period of five years following a proposition by five MPs. They can be dismissed from office following a conviction or – by a vote of the Parliament – for acts incompatible with the status of an ombudsman or for failing to carry out their duties. The work of the office is financed from the state budget, and it has to report to the Parliament and the President of the State about its activities once a year. The ombudsman is independent in their activities, and is governed only by law.

The general financial crisis from 2009 to 2012 and the office's weakness due to internal conflict inevitably affected the Ombudsman's Office and its effectiveness. Its budget has been significantly cut from LVL 1 257 384 (EUR 1 797 626) in 2008 to EUR 1 157 884 in 2014.²²² The number of employees went down from 51 at the end of 2008 to 35 in 2012. At the end of 2014, the number of employees was 42, and there were three members of staff working in the Legal Equality Department, one of whom was a consultant on Roma issues, specifically issues of discrimination. In early 2015, the Legal Equality Department was closed down, and the staff were assigned to other departments,²²³ which raises the issue whether the Ombudsman's Office now fulfils the minimum race equality requirements in practice.

- c) Grounds covered by the designated body/bodies

According to Article 11(2) of the Law on the Ombudsman, the Ombudsman promotes observance of the principle of equal treatment and the elimination of all kinds of discrimination, without specifying the grounds. The grounds covered in practice include the six grounds in the anti-discrimination directives as well as a range of other grounds, e.g. language, political belief, family status, property status, etc.

- d) Competences of the designated body/bodies – and their independent exercise

The remit of the Ombudsman includes promoting the protection of the rights and lawful interests of individuals; promoting compliance with the principles of equal treatment and the prevention of any kind of discrimination, including in the private sphere; evaluating and promoting compliance with the principles of good administration in the state administration; detecting deficiencies in the legislation and its application regarding issues related to the observance of human rights and the principle of good administration, as well as promoting the rectification of such deficiencies; and promoting public awareness and

²²² Latvia, Ministry of Finance (2014). Law on State Budget, Explanatory Report (Likuma "Par valsts budžetu 2014.gadam" paskaidrojumi), p. 164, available in Latvian at: http://www.fm.gov.lv/files/valstsbudzets/budzetapaskaidrojumi/FMPask_L_270114_bud2014_lab.pdf.

²²³ LR Tiesībsargs (2015). Staff, at <http://www.tiesibsargs.lv/en/about-us/darbinieki>.

understanding of human rights (Article 11(5)), of the mechanisms for the protection of such rights and of the activities of the Ombudsman.

Independent assistance to victims of discrimination

According to Article 12 of the Law on the Ombudsman, the Ombudsman shall:

- 1) accept and examine the submissions, complaints and proposals of private individuals;
- 2) initiate a verification procedure for the clarification of circumstances;
- 3) request that institutions, within the scope of their competence and within the time limits provided for by the law, clarify the necessary circumstances of the matter and inform the Ombudsman thereof;
- 4) upon examination of the verification procedure or after the termination thereof, provide the institution with (non-binding) recommendations and opinions regarding the lawfulness and effectiveness of their activities, as well as compliance with the principle of good administration;
- 5) in accordance with the procedures specified by this Law, resolve disputes between private individuals and institutions, as well as disputes in respect of human rights between private individuals;
- 6) facilitate conciliation between the parties to the dispute;
- 7) in resolving disputes in respect of human rights issues, provide opinions and recommendations to private individuals regarding the prevention of human rights violations; and
- 8) provide persons with consultations regarding human rights issues.

In particular, the Ombudsman may, upon termination of a verification procedure and upon establishment of a violation, defend the rights and interests of a private individual in an administrative court, if this is necessary for the public interest (Article 13(9)). Furthermore – and of direct relevance to discrimination cases – the Ombudsman may, upon termination of a verification procedure and the establishment of a violation, apply to a court in such civil cases where the nature of the action is related to a violation of the prohibition of differential treatment (Article 13(10)). It has to be noted that the Ombudsman can initiate a verification procedure – not only in response to a complaint submitted to him, but also on his own initiative.

Independent surveys

According to Article 12(10) of the law, the Ombudsman shall conduct research and analyse the situation in the field of human rights, as well as providing opinions regarding human rights issues. In his activities, the Ombudsman is independent and is governed only by law.

From 2007 to 2010, there were no surveys organised by the Ombudsman even in the initial period when the allocated budget was significant. The Ombudsman conducted a survey on the prevalence of discrimination in employment in October 2011, a survey on public awareness of fundamental rights in 2012, and a study of perceptions of discrimination as part of a wider survey on awareness of human rights and healthcare in 2013.

Independent reports

According to Article 12(10), the Ombudsman shall conduct research and analyse the situation in the field of human rights, as well as providing opinions regarding topical human rights issues. In his activities, the Ombudsman is independent and is governed only by law.

There have been very few reports on issues of non-discrimination in recent years. In 2012, the Ombudsman published research on the observance of the prohibition of discrimination towards young mothers in employment.²²⁴

e) Legal standing of the designated body/bodies

In Latvia, the Ombudsman has legal authority to bring discrimination complaints (on behalf of identified victim(s)) or to intervene in legal cases concerning discrimination).

According to Article 12 of the Law on the Ombudsman, the Ombudsman may, upon termination of a verification procedure and upon establishment of a violation, defend the rights and interests of a private individual in an administrative court, if this is necessary for the public interest. Upon termination of a verification procedure and the establishment of a violation, the Ombudsman may also apply to a court in civil cases where the nature of the action is related to a violation of the prohibition of differential treatment. The Ombudsman has not brought any discrimination cases before the court, although it has facilitated conciliation in two gender discrimination cases. The only discrimination case brought before the court was by its predecessor, the National Human Rights Office, in 2006.

f) Quasi-judicial competences

In Latvia, the Ombudsman is not a quasi-judicial institution.

The functioning of the Ombudsman is based on the idea of authority and persuasion, not enforcement. Its decisions are only recommendations; it cannot impose any sanctions. The law provides for no appeal concerning the decisions of the Ombudsman on their merits, and the 2007 judgment of the Administrative Affairs Department of the Supreme Court Senate confirmed that the actions of the Ombudsman cannot be appealed in court.

There are no data concerning the extent to which the Ombudsman's recommendations are followed, but the first Ombudsman himself publicly admitted that 'local authorities, ministries and other institutions tend to ignore the opinion of the Ombudsman.'²²⁵

Turning to the Ombudsman does not preclude a person from subsequently – or simultaneously – bringing a court case. There is no law to preclude this, although it is difficult to imagine it, as the Ombudsman is perceived more as an alternative to the court, and is used by people who cannot afford to bring a court case.

Although it would normally mean that the time limits for bringing the case would be missed, in the Kozlovska case²²⁶ the court held that, in cases where a person first turned to the former National Human Rights Office, and the time limit has been missed for this reason, the time limit provision has to be interpreted broadly so as not to deny the person the protection of their rights. The finding of the Ombudsman is not binding on the court, so the court is free to follow or not follow it, if any of the parties brings it to the court's notice.

g) Registration by the body/bodies of complaints and decisions

In Latvia, the Ombudsman's Office registers the number of complaints and decisions (initiated investigation cases, refusals to initiate an investigation case, closed/completed

²²⁴ Tiesībsargs (2012). Diskriminācijas aizlieguma ievērošana darba tiesiskajās attiecībās pret jaunajām māmiņām, available in Latvian at http://www.tiesibsargs.lv/img/content/maminas_petijuma_rezultati_apkopojuums_2013.pdf.

²²⁵ Luckāns, Uldis. Apsītis: Pašvaldības un ministrijas mēdz ignorēt tiesībsarga viedokli [Apsītis: Local Governments and Ministries Tend to Ignore Opinion of the Ombudsman]. *Leta*, 27.05.2009, at <http://www.apollo.lv/portal/news/articles/168321>.

²²⁶ Latvia, Jelgava Court (Jelgavas tiesa), Case no C 15066406, S.Kozlovska v. SIA Palso, 25.05.2006, available in Latvian at http://cilvektiesibas.org.lv/media/attachments/29/01/2013/sk_palso.pdf.

cases, and consultations). The numbers of initiated investigation cases by ground of discrimination are available only upon request. Except for selected cases, discrimination complaints by field, type of discrimination, etc. are not available to the public.

h) Roma and Travellers

In May 2011, a person was hired by the Ombudsman's Office to specialise on Roma issues. The individual was tasked with the promotion of Roma integration, organising the office's activities in the realm of non-discrimination and consulting Roma on various issues, including facilitating Roma access to law enforcement institutions.²²⁷ The Roma Integration Policy Implementation Advisory Council (*Romu integrācijas politikas īstenošanas konsultatīvā padome*), working with the Ministry of Culture (*Kultūras Ministrija*) was established in 2012.²²⁸ The goal of the council is to facilitate the integration of Latvia's Roma, to evaluate this process and to strengthen the Roma community and the cooperation of state administration institutions, as well as stimulating civic participation among the Roma community. The council consists of representatives of state institutions, education institutions, NGOs working for the protection of the interests of Roma, Roma NGOs and communities. It also involves experts in the field of Roma integration.

The statutes²²⁹ of the council set out four functions: to review and evaluate Roma integration policy measures; to provide consultations and recommendations to the ministry; to facilitate cooperation between the state administration and the Roma community; to support the ministry in the development and implementation of Roma integration policy, as well as in the preparation of necessary information for the European Commission. The statutes also cover five tasks: to coordinate Latvia's Roma integration policy development and implementation, involving the state institutions, municipalities, social partners, NGOs and experts; to evaluate the impact of Roma integration measures and participate in the preparation of an annual review of measures; to participate in an analysis of the situation and to propose solutions for Roma integration policy, especially in education, employment, healthcare and housing, taking into consideration EU documents; to evaluate opportunities arising from the effective usage of EU funding; and to listen to the views and proposals of representatives of the Roma community and NGOs about the development and implementation of Latvia's Roma integration policy.

The meetings of the council are closed, and there is limited public information about its activities.

From 1 January to 1 August 2011, the Ombudsman's Office conducted research on the portrayal of Roma in Latvia's highest-circulating newspapers. The research concluded that racism and prejudice were widespread in comments to articles, which included open hostility and calls for physical violence against the Roma, but that this was not perpetrated by the mass media. Information about several comments was forwarded to the Security Police.²³⁰

In 2012, the Ombudsman criticised the national authorities on the basis that EU funding and funding from the state budget that had been allocated for the improvement of the situation of the Roma minority and their integration from 2007 to 2012 had not been spent 'purposefully and effectively'.²³¹ The Ombudsman made recommendations to 1) create an effective control mechanism concerning the allocation of funding, 2) appoint a responsible

²²⁷ Information provided by the consultant on Roma issues at the Ombudsman's Office on 08.08.2011.

²²⁸ The Ministry of Culture, Roma (*Romi*) www.km.gov.lv/lv/ministrija/romi.html.

²²⁹ The Ministry of Culture, Statute of the Roma Integration Policy Implementation Advisory Council (*Romu integrācijas politikas īstenošanas konsultatīvā padomes nolikums*), 06.07.2012, available in Latvian at: www.km.gov.lv/lv/doc/ministrija/saliedeta_sabiedriba/Romi/17_KMnolik_060712_romi.pdf.

²³⁰ Letter from the Ombudsman's Office to the Latvian centre for Human Rights (No 1-5/2162012, 20.08.2012).

²³¹ Tiesībsarga vēstule par Eiropas Savienības finanšu instrumentu un valsts budžeta līdzekļu izlietojumu romu integrācijai (30.08.2012). Available in Latvian: http://www.tiesibsargs.lv/files/romi_es_lidzekli_romu_kopienai_vestule_saeimai_mk_.pdf.

institution that would evaluate and harmonise the compliance of each project with the aims of EU and national policy planning documents, and 3) provide information to the Ombudsman about the planned projects for the purposes of monitoring. The Ombudsman also recommends engaging Roma in project design and implementation.

At the same time, the Advisory Committee of the Council of Europe noted in its Second Opinion in 2014 that, despite expressing his concern about the situation of Roma in Latvia who continue to face discrimination in many spheres of life, the Ombudsman is considered to have made only limited concrete contributions to promoting their full and effective equality in society.²³²

²³² Advisory Committee on the Framework Convention for the Protection of National Minorities (2014). Second Opinion on Latvia, adopted on 18.06.2013, paragraph 35, p.12. ACFC/OP/II(2013)001, https://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Latvia_en.pdf.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Dissemination of information about legal protection against discrimination

The Ombudsman's Office and the former Secretariat for the Minister with Special Assignments for the Integration of Society (SMSAIS), and then, after subsequent reorganisations, a department in the Ministry of Culture and the Ministry of Welfare have been the bodies that have taken measures specifically directed at disseminating information on anti-discrimination legislation to the public at large and to representatives of the authorities. In 2007, the Ombudsman's Office produced and disseminated an information booklet specifically dealing with differential treatment and avenues of redress. Although the State Labour Inspectorate has conducted informative seminars on the Labour Law, these have concentrated on issues of non-discrimination in only a limited way. Similarly, the Ministry of Welfare has published an Employer's Manual, which, among other topics, covers the prohibition of differential treatment. Admittedly, the efforts to disseminate information have increased considerably, as well as dialogue with, and the involvement of, NGOs.

Measures to promote dialogue with NGOs

Latvia provides training on discrimination and tolerance-related issues for different target groups with the active involvement of NGOs. Thus, the Latvian Centre for Human Rights, within the framework of different projects, has organised over 35 training seminars on non-discrimination and diversity management of various durations (8 to 30 hours) for NGOs, trade union representatives, police officers, judges, health and social workers, civil servants and journalism students. The LCHR has published different informative brochures and reports on non-discrimination, and has created an anti-discrimination database on its website. This is the largest online resource in Latvia for policy documents, anti-discrimination legislation, court cases, surveys, reports and publications.²³³

For several years Latvia has been implementing the 'Latvia - Equality in Diversity' project. Since 2009, within the framework of the European Integration Fund for Third-Country Nationals, several projects have been implemented in order to educate professionals.

In 2005 the Prime Minister and representatives of NGOs signed a memorandum on the cooperation of the Cabinet of Ministers and NGOs. Although this memorandum does not specifically address the issue of discrimination, it clearly recognises the importance of NGO participation in the decision-making process and aims to ensure such participation, as well as its effectiveness.

Dialogue between social partners

Social dialogue in Latvia is conducted within the framework of the National Tripartite Cooperation Council (further - 'the NTCC').²³⁴ The NTCC is made up of an equal number of representatives from the Government, the Latvian Confederation of Employers and the Latvian Union of the Free Trade Unions. The NTCC examines drafts of framework documents, programmes, laws and other legal acts and submits its proposals to the relevant ministries in relation to a wide range of social and economic issues. Four sub-councils have been established on the following issues: social insurance, professional education and employment, healthcare and labour issues. The last of these, the Labour Tripartite Cooperation Sub-Council, deals with issues of employment law, labour protection

²³³ See Latvian Centre for Human Rights www.cilvektiesibas.org.lv.

²³⁴ Latvia, Regulation on the National Tripartite Cooperation Council (*Nacionālās Trīspusējās sadarbības padomes nolikums*), 30.10.1998, available in Latvian at <http://likumi.lv/doc.php?id=50778>.

and equal opportunities. Issues of discrimination have been discussed in the work of the sub-councils and the NTCC to a limited extent only, i.e. only as far as they relate to employment law, and mostly in relation to gender-based discrimination. Issues of gender-related discrimination have been examined more closely.

The social dialogue concerning discrimination-related issues related to gender-based and disability-based discrimination should be noted in those areas where dialogue and cooperation with the relevant NGOs is well established. In 2002 the Gender Equality Council was created as a consultative and coordinating institution (with the participation of NGOs, including the Latvian Gender Equality Association, which is the umbrella organisation for NGOs active in this field) to promote the elaboration of a policy on gender equality and the implementation of the Framework Document on the Implementation of Gender Equality. In May 2010 the Gender Equality Committee was created, replacing the Gender Equality Council. The replacement of the council by the committee was motivated by the need to renew its members. At the same time, its hierarchical structure changed: the council was an advisory and coordinating state institution attached to the Cabinet of Ministers, with its members approved for a three-year term by the Prime Minister, whereas the committee is subordinate to the Minister of Welfare and operates on the basis of an order issued by the minister. In 1997 the National Council for the Affairs of Disabled Persons, uniting representatives of NGOs and state institutions, was created under the aegis of the Ministry of Welfare to promote the full integration of disabled persons in political, economic and social life based on the principle of equality.

The Secretariat for the Minister with Special Assignments for the Integration of Society was initially the responsible institution for the Roma in Latvia 2007-2009 State Programme, which emphasises inclusion by promoting equal opportunities in the spheres of education, employment and human rights. Most of the activities focused on the improvement of Roma educational opportunities, the promotion of Roma culture and the preservation of the Roma ethnic identity. During the three years, none of the planned activities aimed at the improvement of Roma employment opportunities was carried out, largely due to reduced funding (in 2007 there was 66 % of the planned funding, in 2008 there was 36 % and in 2009 there was only 17 %). Roma integration issues were marginally included in the National Identity, Civil Society and Integration Policy Fundamental Principles 2012-2018, which were adopted in October 2011. The Ministry of Culture is responsible for the advancement of Roma issues at a national level. There is no structured dialogue for non-discrimination on grounds of sexual orientation.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

There is no specific regulation in national law establishing a mechanism that is designed to screen and eventually abolish laws, provisions and regulations that do not comply with the principle of non-discrimination. If it is the legal provision itself that is discriminatory, the person who has suffered from discrimination on the basis of the measure can, by first initiating procedures in the courts of general jurisdiction, submit a constitutional complaint to the Constitutional Court, which may declare null and void the legal provisions that are contrary to provisions of a higher legal force, up to the Constitution. This, however, is a cumbersome procedure, requiring the prior exhaustion of all other remedies. The alternative would be to turn to the Ombudsman's Office, asking it to bring a complaint. However, the Ombudsman can only bring abstract review cases, and since the unconstitutional law usually loses its force only prospectively, the result of the case will be of no avail to the particular complainant. In the case of a concrete review as a result of a constitutional complaint, the Constitutional Court can make, and has made in the past, an exception to allow the author of the complaint to benefit from the positive result of the case.

There does exist a mechanism, however, for ensuring that contracts, collective agreements and internal rules that are incompatible with the principle of equal treatment are abolished – or, more precisely, are recognised by the courts as being void. Article 6 of the Labour Law provides that ‘provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments, erode the legal status of an employee, are void and can be declared as such by courts of general jurisdiction’. According to Article 43(1) of the Civil Procedure Law, claims concerning labour disputes are exempt from judicial costs which mean that the applicant does not have to pay state duty or other costs directly related to the proceedings.

However, this does not include lawyers’ fees, although, since the adoption in 2005 of a law to provide for state-paid legal aid, it has become possible to ask for state aid to cover lawyer’s fees.

b) Rules contrary to the principle of equality

It is difficult to estimate whether any laws etc. that are contrary to the principle of equality are still in force; at least, there are no apparent cases to indicate this. More often, the laws would not be discriminatory in themselves, but would fail to provide adequate protection against discrimination. In cases of conflict, EU law would take precedence over national law.

9 COORDINATION AT NATIONAL LEVEL

Following the transposition of the anti-discrimination directives and since the closure of the Secretariat of the Special Assignments Minister for Integration Affairs (SSAMIA) on 1 January 2009, there has been no national authority coordinating issues regarding anti-discrimination.

The Ministry of Welfare is responsible for issues relating to discrimination in the field of employment relationships, social security, children and family affairs, as well as in relation to equal opportunities regarding disabled persons and gender equality, thus covering the grounds of gender, disability and age.

Tasks and obligations in relation to social integration have been handed over to different ministries, eventually ending up with the Department for Social Integration Affairs within the Ministry of Culture (MoC). The regulations governing the MoC do not explicitly mention anti-discrimination functions, however the competence of the MoC in the realm of social integration and the promotion of civil society also includes a role 'to ensure the observance of the rights of minorities, including Roma, by facilitating the elimination of racial and ethnic discrimination.' The Ombudsman's Office has not assumed a national coordinating role on non-discrimination issues.

There is no national action plan on anti-discrimination or anti-racism, but the Government has adopted several framework documents and action plans for the implementation of the UN Convention on the Rights of Persons with Disabilities and its Additional Protocol. In September 2013, the Government approved the framework document for 2014-2020.²³⁵

The Framework Document on Guidelines on National Identity, Civil Society and Social Integration Policy 2012-2018²³⁶ includes a brief paragraph on anti-discrimination, citing that an institutional mechanism and an anti-discrimination legislative framework have been developed, while discrimination often remains unrecognised and unpunished. In such a situation, particular groups of the population face a greater risk of suffering discrimination, for example the Roma. There is little case law, and there are no regular surveys or information campaigns which would make this problem more visible in the public consciousness. A positive attitude to diversity should be promoted in society in order to ensure a tolerant and respectful attitude to diversity and those who are different.

The action plan accompanying the guidelines envisages a range of activities, such as the development of a system of data collection, including on the situation of Roma in various socio-economic areas (employment, education, healthcare and affordable housing), the conducting of surveys, training on non-discrimination for different target groups, improving methods to better identify discrimination, etc. The implementation of different activities is foreseen through different EU-funded programmes and bilateral financial instruments.

²³⁵ Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādnes 2014.-2020.gadam, 22.11.2013, available in Latvian at <http://polsis.mk.gov.lv/view.do?id=4559>.

²³⁶ Latvia, Guidelines on National Identity, Civil Participation and Society Integration 2012-2018 (*Nacionālās identitātes, pilsoniskās sabiedrības un sabiedrības integrācijas politikas pamatnostādnes 2012.-2018.gadam*).

10 CURRENT BEST PRACTICES

There are no major examples of best practice regarding discrimination at national level.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

Disability is defined as a long-term or non-transitional very severe, severe or moderate level of limited functioning, and is divided into three possible degrees of disability in accordance with the provisions of the Disability Law, depending on the gravity of the impairment. The issue may arise whether the concept of disability in the laws covers only those disabilities that have received official qualification, in which case the person's status as disabled has consequently been officially recognised, or whether it covers any *de facto* disability. This can be problematic and can amount to insufficient implementation unless the courts, when confronted with this issue, interpret the notion of disability in a compatible way. Disability is expressly mentioned in the Labour Law, the Consumer Rights Protection Law; the Law on Patients' Rights, the Law on Social Security, and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators. It might possibly be subsumed under the term 'health condition' as mentioned in the Law on Education, but it is not expressly spelled out. (Section 2.1.1, Section 2.6 c)

Until early 2014, associations were entitled to represent a victim or victims of discrimination before all the three court instances. However, following the amendments to the Civil Procedure Law (in force since 4 January 2014),²³⁷ the right to legal representation at the instance of cassation is reserved to the person participating in the case or to their advocate. This excludes the possibility of legal representation of victims of discrimination in civil claims by other persons with a law degree (e.g. NGO staff), who are not participants in the case and do not have the status of an advocate (defence counsel). These amendments were adopted allegedly to strengthen the role of advocates in civil cases to ensure the quality of claims. However, this may impact on access to justice for certain vulnerable groups, including victims of discrimination, as cases of discrimination have predominantly been brought before the courts by NGOs. The amendments contravene the non-regression clauses of the equality directives. (See section 6.2)

In early 2015, the Legal Equality Department of the Ombudsman's Office was closed down, and the staff were assigned to other departments,²³⁸ which raises the issue whether the office fulfils the minimum race equality requirements in practice.

Latvian anti-discrimination law remains scattered across many pieces of legislation. However, the main problem is that while most if not all of the fields covered by the directives are covered in Latvia, the law often does not apply to all grounds, which results in incomplete protection. The older laws that contain an equality clause never include all of the grounds required by the directives, and not all laws leave the list of grounds open. Furthermore, the laws that are supposed to implement the directives often leave some grounds uncovered. In relation to employment, relationships that come under the terms of the Labour Law, including those in the civil service, are covered with regard to all grounds. The law prohibiting discrimination of self-employed persons, including access to economic activity/self-employment (Law on the Prohibition of Discrimination of Natural Persons-Economic Operators) covers the grounds of gender, age, religious, political or other belief, sexual orientation, disability, race and ethnic origin. Sexual orientation is explicitly listed as a prohibited ground for discrimination in two laws. The Consumer Rights Protection Law covers the grounds of race, ethnicity, gender and disability.

The Labour Law includes a provision stating that 'in a religious organisation differential treatment based on a person's religious belief is admissible where, taking into account the

²³⁷ Latvia, Amendments to the Civil Procedure Law (*Grozījumi Civilprocesa likumā*), 19.12.2013, available in Latvian at: <http://likumi.lv/doc.php?id=263490>, published In Latvian Herald (*Latvijas Vēstnesis*) 2(5061), 03.01.2014, available in Latvian at: www.vestnesis.lv/?menu=doc&id=263490.

²³⁸ LR Tiesībsargs (2015). Staff, at <http://www.tiesibsargs.lv/en/about-us/darbinieki>.

ethos of the organisation, a particular religious belief is an objective and substantiated precondition for the work or activity in question.’ According to the wording, this only applies to a religious organisation, thus excluding other beliefs, and the wording seems to create a broader exception than the one provided for in Directive 2000/78, yet it remains to be seen how it will be interpreted by the courts. (See Section 4.2)

The provision for shifting the burden of proof exists only in relation to employment, including self-employment, and (concerning limited grounds) in relation to access to goods and services, education and activities concerning a reduction of unemployment. The exception of examination *ex officio* applies to cases that come under the Administrative Procedure Law - i.e. where an administrative act or factual action of administration is challenged, and which thus encompasses the whole state-provided social security sphere. In such cases, the court itself investigates the facts of the case. (Section 6.3)

The possibility of awarding non-pecuniary damages exists only in relation to employment, education and cases coming under the Administrative Procedure Law and Consumer Rights Protection Law – in relation to access to goods and services and the limited scope of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators; in all other areas, the available sanctions can hardly be considered dissuasive and effective (See section 6.5). The Law on Private Pension Funds contains an exhaustive list of prohibited grounds for discrimination, which does not include disability or sexual orientation. It is doubtful whether, in the presence of this *lex specialis*, a reference to the general anti-discrimination provision of the Labour Law could remedy this deficiency, even if ‘working conditions and remuneration’ could be interpreted as also covering occupational pensions.

11.2 Other issues of concern

There is limited case law concerning discrimination on grounds of race/ethnic origin (1), disability (2), age (2), religion (0), and sexual orientation (0). Court cases on discrimination are not specifically recorded and remain unknown to the wider public.

On the work of the equality body, the Ombudsman’s Office remains complaints driven, and there is limited involvement in public awareness raising, conducting research or surveys.

12 LATEST DEVELOPMENTS

12.1 Legislative amendments

There have been no major legislative amendments concerning the Racial Equality Directive or the Employment Equality Directive in 2014.

In September, the Parliament adopted amendments to the Criminal Law, criminalising hate speech and hate crimes on grounds of gender, age, disability and other features. For incitement to hatred cases, criminal liability is foreseen only in cases when substantial harm has been caused. Sexual orientation has not been named explicitly. (Section 6.5)

12.2 Case law

There have been few known discrimination cases on grounds of race/ethnic origin, age, disability, sexual orientation and religion/belief. Several court judgments adopted in late 2013, including a Supreme Court Senate judgment on discrimination on grounds of age, were made public only in 2015.

Name of the court: Riga Regional Court Civil Case Court Collegium

Date of decision: 10 February 2014

Name of the parties: P²³⁹ v. SIA '...' (Parties of the case have been anonymised)

Reference number: No C32276312 (CA-0854-14/17)

Brief summary: Key aspect: no need to specifically prove the existence of moral damage in case of age discrimination; moral damage is presumed from the very fact of age discrimination in the employment relationship.

Key facts of the case: A 71-year-old man was fired during his probation period, although the employer made no complaints about his performance as captain of an ice-breaking ship during the probation period. The claimant requested that the decision to dismiss him be declared null and void, that the employment contract be terminated by court judgment, and that he be granted lost earnings and moral compensation. The first instance court and the appeals court terminated his contract as requested, and established the existence of age discrimination, therefore lost earnings were granted. However, the courts decided that the person could not prove the existence of moral damage as they did not see the causal link between his health condition and his damaged reputation and the moral damage from being fired because of his age. The claimant disagreed on the interpretation of Article 29(8) of the Labour Law, which allows a person to ask for moral compensation in cases where discrimination is established in an employment relationship.

Judgment: The court ruled that, with a precondition that discrimination is established, the court must rule on the amount of moral compensation, referring not only to its interpretation of the Labour Law but also to the practice of the European Court of Justice, and the person is not required to prove the existence of the moral damage. The court distinguished Civil Code principles on moral compensation requiring proof of the causal link between the damage and the amount of compensation, and the *lex specialis* Labour Law, which contains no such requirement. Furthermore, the court emphasised that the prohibition of discrimination is a fundamental right, and referred to other judgments by the Senate (Case No SKC-684 of 6 June 2012, Case No SKC-1548 of 3 May 2013 and Case No SKC-1482 of 8 May 2013) concerning the shift of burden of proof whereby the duty to prove that discrimination did not occur lies with the employer. Therefore, it is not logical to require the claimant to prove the result of such discrimination. The Senate ruled that the appeals court had failed to apply Article 29(8) of the Labour Law correctly, and the judgment was overturned. On 10 February 2014, the Riga Regional Court Civil Cases Collegium awarded moral compensation of 1 422.87 EUR to the claimant.

²³⁹ In all court judgments the individual names are anonymised.

Name of the court: Administrative Department of the Supreme Court of Latvia

Date of decision: 27 August 2014

Names of the parties: B. v. State Revenue Service (Valsts ieņēmumu dienests)

Reference number: No A420322813 (SKA-409-14) (cassation)

Brief summary: Key aspect: The margin of appreciation for civil service employers is wide; the only criterion that must be assessed by the employer is whether keeping a person who is at retirement age in service is necessary. Nevertheless, the court has a limited capacity to assess whether the margin of appreciation is applied in an arbitrary manner, and it is limited by the circumstances indicated by the applicant on why the employment policy is merely a formality.

Key facts of the case: In 2010, the applicant reached the age of retirement. In 2012, she was fired due to her retirement age in accordance with Article 41(1) paragraph f of the State Civil Service Law, which allows the employer to evaluate if the employment relationship with a person at retirement age is still necessary and possible and whether it is proportionate to terminate the employment relationship. The appeal court did not see objective reasons for terminating the employment with the applicant because the employer - the State Revenue Service - had not evaluated several aspects, including who could replace the applicant, what resources would be necessary to organise the replacement, why it was proportional to fire the applicant due to her retirement age, and whether her professional qualification was below the required level.

Judgment: The Cassation Court referred to recital 25 of the preamble of Directive 2000/78/EC of 27 November 2000, establishing a distinction between allowed differential treatment on grounds of age and prohibited age discrimination, and to Article 6 of the directive, establishing criteria for allowed differences of treatment on grounds of age, stating that such different treatment shall be objective, based on the law for a legitimate aim, appropriate and necessary to achieve that legitimate aim.

The court declared that Article 41(1) paragraph f allows for firing a person for the sole reason of their reaching retirement age. In order to support that statement, the court referred to Constitutional Court Judgment No 2003-12-01 analysing the relevant article of the State Civil Service Law, which established that there was a legitimate aim to facilitate access to the civil service by young people (such a legitimate aim is also supported by the jurisprudence of the Court of Justice of the European Union), and that the tools to achieve this objective were appropriate and proportional. The Cassation Court disagreed with the Appeals Court on the correct reading of the internal documents of the civil service, indicating there was no requirement to assess the elements indicated by the Appeal Court prior to firing the person of retirement age. The Appeal Court decision was overturned, and the case was referred back to the Appeal Court.

Name of the court: Administrative District Court [Administratīvā rajona tiesa]

Date of decision: 2 December 2013

Names of the parties: B. v. Health Inspectorate [Veselības inspekcija] and Ministry of Health [Veselības ministrija]

Reference number: No A420571712

Link to webpage: <http://www.l2d.lv/v.php?i=82686>

Brief summary: The claimant is a physically disabled person in a wheelchair, who had a new-born baby. She had complained to the Health Inspectorate (HI) about her inability to physically access several health institutions over a certain period of time, asking the inspectorate to impose a duty on the institutions to ensure access to the premises in accordance with laws in force at the time. In most cases, the HI did not establish a violation of the Construction Law by the health institutions. The claimant submitted a complaint to the court and, in addition, asked for moral compensation of LVL 1 000 (~EUR 1 742).

The court referred to Article 111 of the Constitution of Latvia and to the UN Convention on the Rights of Persons with Disabilities to establish a duty by the state to ensure and

supervise access to medical care to persons with disabilities, and to ensure that access to healthcare implies ensuring as much personal freedom to persons with disabilities as possible [13]. Ensuring physical access to healthcare institutions is a matter of non-discrimination based on disability, including reasonable accommodation of health service premises. The court established omission by the Health Inspectorate. In line with Article 92 of the *Satversme*, persons have a right to just satisfaction if their rights have been violated. Since the Health Inspectorate did nothing over a certain period of time to ensure access to certain health institutions, irrespective of the complaints received, the claimant suffered discomfort, and experienced humiliation and helplessness. Therefore, the court found that moral compensation was necessary in the present case. The claim was satisfied in part. In some cases, the omission of the Health Inspectorate was established, since the institution approached its duty to supervise the access of premises by a disabled person in a very formal way. The claimant was awarded moral compensation of LVL 300 (EUR 427) for humiliation, suffering and a feeling of helplessness. The court imposed an obligation on the Health Inspectorate to issue a written apology to the claimant and to issue an administrative act to impose an order on the health service provider to ensure access by persons with disabilities to the premises. The case dealt with a violation of domestic law; nevertheless, in order to interpret the domestic law, principles of the Convention on the Rights of Persons with Disabilities such as the reasonable accommodation principle were used as interpretative guidelines and rationale for domestic law requirements on physical access to premises by disabled persons.

Name of the court: Administrative Regional Court [Administratīvās apgabaltiesa]

Date of decision: 27 September 2013 (published 30 June 2015)

Name of the parties: B. v. State Social Insurance Agency [Valsts Sociālās apdrošināšanas aģentūra]

Reference number: Nr.A420528911

Link to webpage: www.uzzina.lv/vuzn.php?vuzn_id=74769

Brief summary: The claimant was a mentally disabled person. He challenged the decision of the relevant state agencies to pay him an old-age pension instead of a disabled person's pension since his reaching pension age. The amount of the disabled persons' pension²⁴⁰ was higher than that of his old-age pension. Article 19 of the transitional provisions of the Law on State Pensions states that, for a disabled person, the amount of the old-age pension must not be smaller than that of the disabled person's pension that had been received until the pensionable age. Initially, the old-age pension was not paid, since the claimant lacked the required length of service [10 years]. By the time he submitted proof of the required length of service, the time limit for submitting such proof as envisaged by the Law on Pensions had passed.

Article 30(4) of the Law on State Pensions states that the pension is to be paid from the day of pensionable age, but not earlier than 12 months after the request to receive the pension and the submission of all the required documents. The person reached pension age on 26 April 2011. As he lacked the necessary length of service, he was granted state social security benefit for almost a year, instead of an old-age pension. The necessary documents were submitted on 5 March 2013. Accordingly, the claimant received his pension from 5 March 2012. Thus, he received his old-age pension for a period of one year less than the period since his pension age had begun. The Social Security Agency maintained that his old-age pension had been granted not instead of a disabled person's pension (EUR 87), but instead of state social security benefit (EUR 62). The claimant challenged the decision.

The Administrative District Court satisfied the claim and imposed a duty on the State Social Security Agency to pay the claimant's old-age pension at the disabled persons' pension rate (which was higher than the old-age pension rate), even if the person had reached the

²⁴⁰ The disabled person's pension can be received until the setting of pension age. One may not receive both a disabled person's pension and an old-age pension.

pension age, as well as paying an additional payment for length of service. The State Social Security Agency appealed the decision. The Administrative Regional Court upheld the decision of the first instance court, but highlighted the need to apply reasonable accommodation in the specific case.

Key points of analysis: The Administrative Regional Court explained that 'reasonable accommodation' means not imposing an unnecessary and disproportionate burden on disabled persons while they exercise their fundamental rights. In the present case, the court insisted that reasonable accommodation should be provided by giving more time for submitting the required documents. Otherwise, the limitation on the social guarantees of the disabled claimant would be disproportionate merely because the person failed to meet the required deadline. That would amount to discrimination on the basis of disability contrary to the UN CRPD and Article 91 of the Constitution of the Republic of Latvia.

The court concluded that the claimant was prohibited from receiving the old-age pension at his disabled person's pension rate due to the late submission of all the required documents. It concluded that procedural deadlines for exercising the rights of persons are in principle a just mechanism, and that a 12-month period for submitting the required documents in order to obtain the retirement pension is a reasonable requirement in principle. Nevertheless, in the present case, the claimant was a person with a mental disability. Accordingly, there were objective reasons for the extension of the period of time for submitting the documents, since it is generally more difficult for persons with mental disability to understand the complicated arguments of a decision and to understand the required action for the protection of their rights. The court referred to Article 28 of the CRPD requiring Member States to recognise the rights of disabled people to social protection without discrimination, including reasonable accommodation and the duty of states to facilitate access to such rights.

Nevertheless, in the opinion of the court, the present case was not typical, because it was rare that length of service was not fully recorded for a person with disability, and additional steps had to be taken to prove length of service. Accordingly, there was a gap in the law with regard to such situations, and the situation at hand prevented the strict observance of the deadline established in Article 30 of the Law on State Pensions; otherwise, Article 109 of the Constitution (*Satversme*), on the rights of disabled persons, and Article 28 of the CRPD, on social guarantees for disabled persons, would be violated, and there would be discrimination on the basis of disability. Furthermore, the Constitutional Court of Latvia has established that formal law requirements should not prevent the taking into account of the specific factual circumstances of the case in atypical cases; and that, in atypical situations, state institutions are allowed to step away from the enforcement of legal consequences if such a decision is justified (Case No 2006-41-01 para 15, see also *Zehenter v. Austria* (ECtHR, Judgment of 16 October 2009)).

This is the first court case in the area of social protection where the court has drawn attention to reasonable accommodation in the case of a mentally disabled person.

No cases were brought before the courts by Roma in 2014.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Latvia

Date: 1 January 2015

Title of legislation (including amending legislation)	Title of the law: Labour Law [Darba likums] Abbreviation: Date of adoption: 20.06.2001 Latest amendments: 23.10.2014 Entry into force: 01.06.2002 Web link: http://likumi.lv/doc.php?id=26019 Grounds covered: Race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation "or other circumstances"
	Civil/administrative/criminal law: Civil
	Material scope: Employment relationships proper (civil service and specialized civil service excepted)
	Principal content: Prohibition of discrimination in relation to all aspects of employment relationships; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment
Title of legislation (including amending legislation)	Title of the law: State Civil Service Law [Valsts civildienesta likums] Abbreviation: Date of adoption: 07.09.2000 Latest amendments: 29.05.2014 Entry into force: 01.01.2001 Web link: http://likumi.lv/doc.php?id=10944 Grounds covered: Grounds not specified
	Civil/administrative/criminal law: administrative
	Material scope: Civil service relationships
	Principal content: Application of Labour Law provisions on protection against discrimination to civil service relationships
Title of legislation (including amending legislation)	Title of the law: Law on Prohibition of Discrimination of Natural Persons-Economic Operators [Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums] Abbreviation: Date of adoption: 19.12.2012 Latest amendments: - Entry into force: 02.01.2013 Web link: http://likumi.lv/doc.php?id=253547 Grounds covered: Gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin
	Civil/administrative/criminal law: Civil
	Material scope: Access to self-employment; access to goods and services of a self-employed person
	Principal content: Prohibition of discrimination in access to self-employment; access to goods and services of a self-employed person; prohibition and definition of victimization
Title of legislation (including amending legislation)	Title of the law: Law on Social Security [Likums par sociālo drošību] Abbreviation: Date of adoption: 07.09.1995 Latest amendments: 06.03.2008 Entry into force: 05.10.1995 Web link: http://likumi.lv/doc.php?id=36850

	<p>Grounds covered: Race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: Social services - measures ensured by state or municipality as monetary or material support or other services to promote the full realization of person's social rights</p> <p>Principal content: Prohibition of differential treatment in provision of social services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment</p>
Title of legislation (including amending legislation)	<p>Title of the law: Law on Education [Izglītības likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 29.10.1998</p> <p>Latest amendments: 17.12.2014</p> <p>Entry into force: 01.06.1999</p> <p>Web link: http://likumi.lv/doc.php?id=50759</p> <p>Grounds covered: Property and social status, race, ethnic origin, gender, religious and political belief, state of health, employment and place of residence</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: Access to education</p> <p>Principal content: Prohibition of discrimination in access to all types of education, prohibition of victimisation, reversal of burden of proof</p>
Title of legislation (including amending legislation)	<p>Title of the law: Consumer Rights Protection Law [Patērētāju tiesību aizsardzības likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 18.03.1999</p> <p>Latest amendments: 18.09.2014</p> <p>Entry into force: 15.04.1999</p> <p>Web link: http://likumi.lv/doc.php?id=23309</p> <p>Grounds covered: Gender, race, ethnic origin, disability</p>
	Civil/administrative/criminal law: Civil
	Material scope: Access to goods and services
	Principal content: prohibit discrimination in access to goods and services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment
Title of legislation (including amending legislation)	<p>Title of the law: the Law on Ombudsman [Tiesībsarga likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 06.04.2006</p> <p>Latest amendments: 25.09.2014</p> <p>Entry into force: 01.01.2007</p> <p>Web link: http://likumi.lv/doc.php?id=133535</p> <p>Grounds covered: Not specified</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: legal status, functions and tasks of the Ombudsman, as well as the procedures by which the Ombudsman shall perform the functions and tasks specified by the Law</p> <p>Principal content: Entrusts the ombudsman with promotion of observation of the principle of equal treatment and elimination of all kinds of discrimination</p>
Title of legislation (including amending legislation)	<p>Title of the law: Law on Organisations and Foundations [Biedrību un nodibinājumu likums]</p> <p>Abbreviation:</p> <p>Date of adoption: 30.10.2003</p> <p>Latest amendments: 23.01.2014</p> <p>Entry into force: 01.04.2004</p>

	Web link: http://likumi.lv/doc.php?id=81050
	Grounds covered: Not specified
	Civil/administrative/criminal law: Civil
	Material scope: principles for the activity, organisational structure, liquidation and re-organisation of associations and foundations
	Principal content: Right on behalf of the victim to turn to the state institutions and courts in order to protect the rights and legal interests of the person in cases related to the violation of the prohibition of differential treatment

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Latvia

Date: 01 January 2015

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	10.02.1995	27.06.1997	No	Yes	Yes
Protocol 12, ECHR	04.01.2000	Not ratified	No	No	No
Revised European Social Charter	29.05.2007	26.03.2013	Article 12 para 4	Ratified collective complaints protocol? No	Yes
International Covenant on Civil and Political Rights	N/A	14.04.1992	No	Yes	Yes
Framework Convention for the Protection of National Minorities	11.05.1995	06.06.2005	No, but of definition minority	N/A	Yes
International Convention on Economic, Social and Cultural Rights	N/A	14.04.1992 (27.01.1992 – ILO database)	No		Yes
Convention on the Elimination of All Forms of Racial Discrimination	N/A	14.04.1992	No	No	Yes
Convention on the Elimination of Discrimination Against Women	N/A	14.04.1992	No	No	Yes

Instrument	Date of signature (if not signed please indicate) Dd/mm/yyyy	Date of ratification (if not ratified please indicate) Dd/mm/yyyy	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
ILO Convention No. 111 on Discrimination	N/A				Yes
Convention on the Rights of the Child	N/A	14.04.1992	No		Yes
Convention on the Rights of Persons with Disabilities	18.06.2008 Optional protocol signed 22.10.2010	01.03.2010 Ratified 31.08.2010	No	Yes	Yes

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