



Executive Summary

Country Report Latvia 2013 on measures to combat discrimination

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1. Introduction

Latvia is, and always has been, a multi-ethnic country, although the proportion of the different ethnic groups among its population has varied. In 2011, of 2,067,887 people 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. Latvian citizens constitute 1, 732, 880 persons or 83,8% of the population; of these, ethnic Latvians constitute 71.42%. 13.04% or 282 876 inhabitants are non-citizens,¹ of which ethnic Russians are the largest group at 65.7%. Therefore, issues relating to non-citizens are often treated as mainly concerning Russians or Russian-speakers, and linguistic issues remain sensitive.

The percentage of ethnic Latvians in the public sector is disproportionate (2002). Proportion of minorities among employees in public administration is below 20%. The Roma population experiences discrimination in different areas of life. Roma only classes have decreased since 2003, and in 2013/2014 such classes were in one school. The Roma population in Latvia is relatively small, comprising 8,517 people (2012), although more according to the data of 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 either.

The ethnic employment gap re-emerged as a result of the economic crisis in 2009 and the most serious problem for ethnic minorities in the labour market is that they face significantly higher unemployment risk, while the most urgent task is to achieve adequate representation of minorities in the public administration.²

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

² Hazans, Mihails. Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers. in Muižnieks, N. (ed) How Integrated is Latvian Society? An Audit of Achievements, Failures and Challenges, Riga: University of Latvia Press, 2010. pp.125-158 available in English

http://www.szf.lu.lv/fileadmin/user_upload/szf_faili/Petnieciba/sppi/demokratija/Integracija_anglu.pdf.



There is limited evidence about the difficulties encountered by LGBT persons as many are forced to conceal their sexual orientation due to negative attitudes commonly found in Latvian society. Sexual orientation remains a controversial topic. However, negative publicity to non-discrimination issues resulting from the first Gay Pride in Riga in July 2005 and subsequent Gay Prides has decreased in recent years.

The only consultations with NGOs taking place on a regular basis are those addressing issues of disability and gender. While the framework for dialogue with social partners also exists, the issue of discrimination has so far been addressed to a limited extent only, mostly on gender issues.

After the transposition of the anti-discrimination Directives and the closure of the Secretariat of the Minister for Special Assignments for Integration of the Society (integrated into the Ministry of Children, Family and Integration Affairs,; then the Ministry of Justice and since 2011 - Ministry of Culture) there is 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 providing, *inter alia*, that human rights shall be observed without discrimination of any kind. Thus, the Constitution outlaws all discrimination, but does not expressly state the grounds on which discrimination is prohibited. The Constitution is regarded as having direct effect, that is, it directly binds all public bodies, but it does not have horizontal effect. This means that while discrimination is illegal in the public sector even without any further laws, which are thus only needed to provide for sanctions and the enforcement of the principle of non-discrimination, in the private sector the introduction of special laws to outlaw discrimination is essential. The same applies to international treaties: the treaties binding on Latvia only bind the public bodies.

Apart from Protocol No. 12 to the European Convention of Human Rights, which it has signed but not ratified yet, Latvia is a party to most of the important international agreements relevant for counteracting discrimination such as: International Covenant on Civil and Political Rights, the Optional Protocol to the Covenant; the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, Framework Convention on the Protection of National Minorities, the Convention of the Rights of the Child and since 2010 – also of the UN Convention on the Rights of Persons with Disabilities. In 2013 Latvia ratified the Revised European Social Charter. The Latvian Government has not recognized the



competence of the Committee on the Elimination of Racial Discrimination, though. These ratified instruments constitute part of the domestic legal order after they have been promulgated in the Official Journal and can be applied directly by domestic courts, unless their application depends on the enactment of a statute.

Anti-discrimination law is fragmented in Latvia: there is no one single comprehensive law, however, the 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 expressly provided for by statute and, even though it is outlawed in the public sector due to the supremacy of the Constitution, the absence of a specific implementing law considerably complicates enforcement of the prohibition.

The most comprehensive prohibition is found in the Labour Law adopted in 2001 and subsequently amended to address the remaining gaps. It prohibits discrimination in employment relationships covered by this law, and since November 2006 its non-discrimination provisions apply to state civil service relationships.

The Labour Law, the Law on Prohibition of Discrimination of Natural Persons-Economic Operators (19.12.2012), and the Electronic Mass Media Law (2013) are the only laws to include sexual orientation as a prohibited ground and, together with the Law on Social Security and Consumer Rights Protection Law they are among the five laws that expressly refer to disability. The Consumer Rights Protection Law (access to goods and services) limits 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, Law on Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security, the Law on the Rights of Patients, the Administrative Procedure Law, and the Law on Scientific Activity.

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 is the case of the Law on Social Security, this does explicitly cover all 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 Consumer Rights Protection Law.

The Criminal Law amended in 2007 protects against discrimination on the basis of racial or national origin, as well as "violation of prohibition of discrimination provided for in legal acts".



The main problem with Latvian anti-discrimination legislation is the patchy nature of the regulation. Generally all of the required fields are covered, within those fields not all of the required grounds are covered.

3. Main principles and definitions

The Labour Law, Law on Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security,³ the Law on the Support to Unemployed Persons and Job Seekers and Consumer Rights Protection Law 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, Consumer Rights Protection Law, the Law on the Support to Unemployed Persons and Job Seekers, the Law on Social Security and the Law on Prohibition of Discrimination of Natural Persons - Economic Operators, the Education Law and in connection with a complaint to the Ombudsman's Office. The law is silent on the issue of discrimination by association or on presumed grounds or characteristics; the wording of the anti-discrimination provisions in Latvian laws referring to a person's (meaning the person who is invoking the provision) race, religious conviction etc. certainly would leave it easier to address discrimination based on assumed characteristics than that based on association. However, in the absence of the relevant case law testing these two issues, the only thing that can be said with certainty is that the law contains no express prohibitions.

The grounds for discrimination are not defined either in the Labour Law or elsewhere and there is concern that disability might be interpreted narrowly compared to the UN Convention on the Rights of Persons with Disabilities, using the technical meaning of this term, i.e. depending on formal recognition of a person's diminished ability to work and excluding *de facto* disability.

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

Provision 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 Prohibition of Discrimination of Natural Persons Economic Operators, the Law on the Support to Unemployed persons and job seekers, the Education Law and the Consumer Protection Law does not distinguish between direct and indirect discrimination, as well as between the grounds covered by 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 in the national order, but, in separate instances they lack

³ The old definition of indirect discrimination narrowing to comparable situations remains in the law.



sufficient precision. In such cases it remains with the courts to consult the text of the Directives.

Additionally, the Labour Law provides for an exemption for employment by religious organisations, which 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, both in the public and private sector, including state civil service relationships (yet excluding military service) and contract work of self-employed persons, including the establishment of such relationships, concerning *inter alia* gender, race, age, disability, religion and sexual orientation.⁴

Access to vocational guidance and training, as well as issues of education in both the public and the private sectors are covered by the Labour Law which refers to “occupational training” and the Law on Education,⁵ which also applies to both the public and private sectors. The problem with the latter, however, is that it contains an exhaustive list of grounds which does not include age, disability (although the latter can be subsumed under the “health” heading) and sexual orientation. Education and training could 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 the Support to Unemployed Persons and Job Seekers covering the retraining prohibits discrimination on grounds gender, race and ethnic origin.

The respective laws on membership of and involvement in organisations of workers or employers or in professional organisations do not always contain anti-discrimination clauses; while in relation to the former two the provision of the Labour Law applies, professional organisations remain problematic and uncovered. The field of social protection, including social security and healthcare, has been covered by Law on Social Security; which lists age and disability,⁶ yet 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 as of 28 October 2010 by the amended Law on Consumer Rights Protection. Its list of prohibited grounds is limited to gender,

⁴ 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”.

⁵ Listing as prohibited grounds “property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence”.

⁶ The list of prohibited grounds, with the exception of sexual orientation, is the same as in the Labour Law, see footnote 4.



race, ethnic origin and disability which as such is not contrary to the Directives, However, amendments were approved by the government in summer 2012 to include religious or other conviction, age and sexual orientation, but by the end of 2013 had not yet been adopted by the parliament.

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 amicable settlement; it can file a complaint in an administrative court if it is in the public interest, or bring a case to the civil court if the issue is violation of equal treatment.

The normal avenue for redress would be a court of general jurisdiction. A law on state-sponsored legal aid in civil and administrative cases⁷ has been in force from 2005, yet its real impact has still to be evaluated. Since November 2006 NGOs can submit a complaint or bring a case on behalf of the natural persons who are the victims of discrimination. Also the Ombudsman's Office can bring such a case. However the amendments to the Civil Procedure Law adopted in December, 2013 now restrict the representation at cassation level, including discrimination cases, to victims and advocates only, thus excluding NGOs, 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 Prohibition of Discrimination of Natural Persons-Economic Operators (both latter laws covering access to goods and services), Law on Education and Law on the Support to Unemployed Persons and Job Seekers. Supreme Court has several times criticised lower courts for failing to shift the burden of proof . In cases coming under the Administrative Procedure Law the exception of examination *ex officio* applies.

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

The relatively low average compensations awarded in discrimination cases raises the issue of their proportionality, effectiveness and dissuasiveness. Moreover, the

⁷ State sponsored legal aid in administrative cases was discontinued in 2009.



majority of court judgements are not publicly available. The provisions of Criminal Law providing for penalties of up to two years' imprisonment have not been applied yet.

The majority of discrimination cases brought before the courts concern the area of employment, predominantly on gender grounds. From 2005 through 2013 in the known discrimination cases which resulted in the favourable outcome for the victim (ten - concerning discrimination on ground of gender, three - disability, one ethnic origin, one - victimisation) the amounts awarded ranged from 300 LVL (~428 EUR) to 5,000 LVL (~7,142 EUR). The highest award was granted in a conciliation case, while the median moral compensation awarded is 1,000 LVL (1,500 EUR).

The Administrative Procedure Law provides for compensation for financial loss or personal harm, including moral harm, which has been caused to an individual by an administrative act or an actual action of an institution. The Code of Administrative Offences provides for a fine of from 100 to 500 LVL (~ 140 EUR to ~714 EUR) for violation of prohibition of discrimination.

From 2008 until 2013, the State Labour Inspectorate has issued decisions in 44 cases concerning violation of prohibition of discrimination, two cases in 2008, two in 2009, one in 2010, six in 2011, and 13 in 2012 and 20 in 2013. Most concern advertisements for job vacancies indicating unjustified requirements concerning potential employee's gender, age or ethnicity. Minor sanctions are imposed - warnings and small fines 100-200 LVL, however since 2012, the number of cases including fines increased.

6. Equality bodies

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



The budget cuts inevitably affected the functioning of the body. In 2010 the budget of the Office was cut by 57 % compared to 2008. This also resulted in the personnel cuts. At different times, there have been one to three staff members specialising on non-discrimination issues in the Office, which has raised concern as to its compliance with the requirements of the Race Equality Directive (designated equality body) in practice. The budget for 2013 was slightly raised to EUR 969, 187.71 and the Legal Equality Section includes four persons.