REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT
Latvia
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State of affairs up to 8 January 2007

This report has been drafted for the **European Network of Legal Experts in the non-discrimination field** (on the grounds of Race or Ethnic origin, Age, Disability, Religion or belief and Sexual Orientation), established and managed by:

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.

The basis for the prohibition of discrimination in Latvia is Art.91 of the Satversme (the Latvian Constitution) providing that "All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind". The reference to "discrimination of any kind" without specifying the grounds implies that the prohibition covers all possible grounds, including the grounds of the two Directives – thus also the discrimination based on sexual orientation which was for the first time included in the Latvian legislation by 21.09.2006 amendments to the Labour Law.
The constitutional prohibition of discrimination is supplemented by non-discrimination clauses scattered in various laws, most of them pre-dating the era of the Directives. As the result of this, these laws do not adequately address the issue of discrimination and often do not cover all grounds covered by the Directives; while sometimes the lists of grounds in these laws are left open, in a number of cases they are closed, thus excluding the reference to the grounds not expressly spelled out. Also, the patchy nature of Latvian anti-discrimination legislation results in not all fields required by the Directives being covered; notably, access to goods and services is one such field. The situation is gradually changing, though; while the first law that was drafted and also amended to actually implement the Directives - the Labour Law initially did not expressly mention sexual orientation as a prohibited ground and it had to be argued to be subsumed under "other circumstances", on 21.09.2006 the Labour Law was finally amended to include express reference to sexual orientation, although to this date it remains the only law to contain it; another such law - the Law on Social Security amended on 01.12.2005 - still does not contain this ground and here still "other circumstances" would have to be argued, yet there is no case law to confirm this argument would be successful.

There are two main peculiarities of Latvia. The one is the so-called non-citizens - a special category of persons defined by the Law on the Status of Those Former USSR Citizens who are not Citizens of Latvia or Any Other State as persons who resided in Latvia on 1 July 1991 and have not obtained the citizenship of any other country. The rights of citizens and non-citizens differ to some extent, and since for these people Latvia is the only state they belong to such differences are inevitably suspect, especially given the fact that non-citizens constitute around 20 % of the population (452 028 out of 2 302 935 inhabitants as of 01.01.2005).
The second is the ethnic composition of the inhabitants – only 58.8% are ethnic Latvians, while 28.7% are ethnic Russians[1] and also for some other minorities, notably Ukrainians the native language is most likely to be Russian. This means that any language requirements might be suspect as being the proxy for ethnic origin and would have to be looked at carefully.

0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

[1] The 01.01.2005 data of the Population register.

Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

The main problems of Latvian anti-discrimination legislation are the following ones:
*not all fields covered by the directives are covered, notably, access to goods and services available to public; in relation to employment such relationships that come under the terms of the Labour Law - after the 02.11.2006 amendments including civil service, but still excluding self-employment - are covered.
* the protection against discrimination is often incomplete as 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; sexual is orientation explicitly listed as a prohibited ground only in the Labour Law and only since 21.09.2006 in force from 25.10.2006 amendments, and instruction to discriminate and harassment, as well as victimization are addressed only by two laws - the Labour Law and the Law on Social Security.
* the provision for shifting the burden of proof exists only in relation to employment - and only for such relationships that come under the terms of the Labour Law; to cases coming under the Administrative procedure law - i.e., where an administrative act or factual action of administration is challenged –the exception of examination *ex officio* applies.
* the possibility to award moral damages exists only in relation to employment - and only for such relationships that come under the terms of the Labour Law, as well as in relation to cases coming under the Administrative procedure law; in all other areas the available sanctions can hardly be considered dissuasive and effective.

Amendments to a number of laws designed to address some of the remaining gaps had been drafted and introduced to the Parliament and some are in various stages of legislative procedure. Despite the upcoming general election in October 2006 and the negative publicity to non-discrimination issues resulting from the holding of the Gay Pride in Riga in July 2005 – an event that triggered very strong sentiments and intolerant statements from high standing officials and resulted *inter alia* in the adoption of a constitutional amendment defining marriage as the union between a man and a woman - and unfortunate events surrounding the banned Gay Pride in July 2006 with activists being attacked by hostile counter demonstrators the Parliament, after first voting amendments still silent about sexual orientation and presidential suspenseful veto in June did on 21.09.2006 adopt amendments to the Labour Law including sexual orientation as a prohibited ground. In November the possibility of an association to engage in procedures or to bring a case on behalf of the victim was introduced and the protection of Labour Law applied also to civil service relationships with little publicity and no discussion.
As a possibly problematic area – at least in the law - has to be noted the formulation in Art. 29(1) of the Labour Law prohibiting differential treatment in establishing the employment relationship, as well as during its existence – which might leave outside its protection, for example, occupation pension schemes in case a person wanted to challenge a discriminatory arrangement after the end of her labour relationship. Likewise, professional organizations might pose a problem; although it could be argued that constitutional equality clause applies to them to the extent that they can be said to exercise a public function, a clear and explicit guarantee would be preferable. The protection provided against disability-based discrimination, including the issue of reasonable accommodation, is also somewhat questionable due to the construction of the notion of disability in Latvian law.

Latvia has not asked for deferral of the implementation of the provisions related to age and disability and has implemented the Directive 2000/78 as far as the age discrimination is concerned by means of amendments to the Labour Law, although age discrimination in access to vocational training outside employment relationships is not expressly covered.

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

a. Name of the court
b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
c. Name of the parties
d. Brief summary of the key points of law (no more than several sentences)

In 2006 two cases relating to application of the Directives were decided by the courts of general jurisdiction.

1) the Riga regional court 08.06.2006 judgment in case Māris Sants v. Rīgas Kultūru vidusskola [Riga Cultures secondary school], deciding the case in the appellate instance.
The first instance court (Riga city Ziemeļu district court in the 25.05.2005 judgment in case No. C32242904047505) Māris Sants v. Rīgas Kultūru vidusskola [Riga Cultures secondary school] had held that the plaintiff, a former Lutheran minister that had lost his position as a minister after he had publicly admitted his homosexual orientation – an event widely publicised at that time- had been discriminated on the basis of his sexual orientation when the school, after encouraging him to submit his application for the position of the teacher of history of religion following an initial phone inquiry, informed him that the position had been filled already by employing another candidate whose qualifications were lower than the plaintiff's. That had been the first case based on non-discrimination provisions of the Labour Law confirming that sexual orientation is a prohibited ground of differential treatment even in the absence of express reference to it in the open-ended list contained in the relevant provision at that time.
The appellate instance court accepted that the agreement with the successful candidate - who had found out about the vacancy from a different source - had already been reached and hence an employment contract with him concluded during the period between the submission of the advertisement for publication and its actual publication. Since the advertisement contained only information about the vacancy and not an announcement of a competition the director of the school did not have to evaluate the candidates in a comparative way, thus the person who had applied first and with whom an oral agreement had already been reached could be accepted. Thus, in the court's opinion no discrimination based on sexual orientation had taken place. To the extent that it distinguishes announcements for vacancies and announcements of competitions and considers that in the former case the candidates do not have to be evaluated in a comparative way, the reasoning of the court opens the door to the possibilities of discrimination in the vast majority of cases where a competition is not a legal requirement; in practice such announcements almost never mention that the person would be employed 'on a competitive basis".The judgment has been appealed.

2) Jelgava court, the 25.05.2006 judgment in case No.15066406 National Human rights office on behalf of Sanita Kozlovska v. SIA "Palso". S.Kozlovska – a person of Romani ethnic origin had been referred to the interview at the respondent enterprise by the State employment service. In the referral form the respondent had indicated as the reason for the refusal to employ the person her accent – which it denied at the hearing, arguing that Kozlovska did not have the required secondary education and her appearance had been inappropriate - which was held to constitute discrimination on the basis of race. The judgment had been appealed by the respondent, yet the judgment of the first instance entered into force in December 2006 after the appellant respondent failed to show up for the hearing for the second time.

3) A third case – Jurmala city court 25.04.2006 judgment in case No. C 17043006 I.Kozlovskis v. .Ozoliņš did not involve application of the Directives, but derogatory remarks by the respondent addressed to homosexuals in the context of Gay Pride 2005 held in Riga. The plaintiff based his case on Civil Law anti-defamation provisions, the court referring to the concept of value-judgments vs. facts and the absence of express identification of the plaintiff – thus departing from an earlier line of defamation cases, see below - in the relevant statements to reject the claim. The judgment has been appealed.

Earlier cases on discrimination include two more cases decided in 2005:

4) Cēsu district court, the 05.07.2005 judgment in case No. C11019405 Anga Stūriņa v. Straupe municipal council. The plaintiff who from 1997-2004 had regularly been employed by the municipality for the winter season at the heating central had been discriminated against on the basis of her gender and property status[2] by not being employed again in the 2005 season.

5) Riga regional court, the 11.07.2005 judgment in case No. C04386004 Raimonds Smagars v. SIA "Vernisāžas centrs". The plaintiff - a user of a wheelchair – had twice been refused entry into a nightclub. The court held that he had been discriminated against on the basis of his disability, thus offending his honour and reputation (the wording of the applicable anti-defamation provision of the Civil Law), and awarded the plaintiff moral damages thus continuing the line of cases where, in the absence of more specific legislation, the Civil Law provision on protection of honour and reputation is relied on in cases of discrimination, which might be important, although it falls outside the scope of the Directives.

Still earlier cases where discrimination – at least to some extent was the issue, even if not related to application of the Directives, include:
1) Latgale regional court, the 01.11.2000 judgment in case No.2-268 A Abramova v. "Latgales druka". The court held that the plaintiff had been victimized due to the defence of her rights, namely, after she had been dismissed as the result of the reduction of the number of employees she had challenged the dismissal in the court; the salary she was receiving after her reinstatement by the court decision was lower than the one she had been receiving before and also lower than that of her other colleagues. The case was decided under the provisions of the old Labour Code prior to the legislation transposing the Directives.
2) Senate of the Supreme court, the 08.05.2002 judgment in case No.SKC-297 Muhina v. Central Prison, available electronically at http://www.vestnesis.lv/index.php?mode=DOC&id=62698 (in Latvian, subscription only) . The court held that the plaintiff had been discriminated based on her gender as the prison warder position had been advertised for men only, while this position was not on the list of jobs where women may not be employed. Claim for moral damages rejected as the refusal to employ the plaintiff was based on hard working conditions and specific requirements to personnel related to the need to participate in searches of persons of the opposite gender. The case was decided under the provisions of the old Labour Code prior to the legislation transposing the Directives
3) Civil law chamber of the Supreme court, the 09.04.2003 judgement in the case PAC-244 Kristofers Edžugbo and Peteris Mensahs v. Liberty party and Latvian television (the so-called "Los Amigos case"). The advertisement with the participation of the plaintiffs contained

[2] Discrimination on the basis of property status had not been argued by the plaintiff and was found to have taken place at the court' s own initiative because the municipality had instead employed another person who had not even responded to the call for applications and was already employed by the municipality, because "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.

incitement to discrimination based on race and diminished the reputation and honor of the plaintiffs. The first in the line of cases where, in absence of more specific legislation, the Civil Law provision on protection of honour and reputation was relied on in cases of discrimination.
4) Latgale district court of Riga , the 08.09.2003 judgment in case No. C29240503 George Ronney Steel v. "Brivibas partija" [the Liberty party] and SIA "Latvijas Televizija" [The Latvian Television Ltd], available electronically at http://www.politika.lv/index.php?id=107531&lang=lv (in Latvian). The discriminatory advertisment - the same one that was at issue in the previous case - constituted an "illegal attack on dignity and honour" within the meaning of Art.2352 a of the Civil Law.

Additionally, the Constitutional court has decided two cases of relevance to the issues covered by the Directives –
1) in the 20.05.2003 decision in the case No. 2002-21-01, available electronically at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/21-01(02).htm the provisions of the law setting the age limit of 65 for occupying the post of university professor or associated professor, as well as highest administrative positions in universities and scientific institutions was invalidated as discriminatory. The challenge was based on non-discrimination article and article on right to work (Art. 106 "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications"); the main arguments where that to limit the right to work based on age, not abilities or qualifications, as provided for by Art.106, is contrary to this article, and that the process of assessing of abilities should be individualized, not using the age as proxy. The Constitutional court held that the restrictions were not proportionate, as the evidence showed they were not suitable for attaining the aim sought, namely, failed to attract young people to the academia. Since the Constitutional court held that the restrictions violated the right to work and thus were invalid, it did not consider whether they were also discriminatory.
2) in the 18.12.2003 decision in the case No. 2003-12-01, available electronically at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/12-01 (03).htm
the provision of State Civil Service Law providing that upon reaching the pensione age the person has to retire from the civil service unless the superior decides otherwise was upheld. The challenge concerned right to work (Art.106), right to hold a position in civil service (Art.101) and right not to be discriminated against (Art.91). The main argument related to discrimination was that persons of comparable qualifications are treated differently based on whether they have reached pensioning age, and also that gender-based discrimination had taken place, as pensioning age still differs for men and women. The Constitutional court held that the regulation of civil service relationships may differ from that of employment relationships and that restrictions were proportionate, keeping in mind the necessity to ensure good administration and the interest of the society in ensuring that the corps of civil servants does not age and the age equilibrium in it is maintained. One of the arguments of the court was that it is also the question of employment policy and that by restricting the right to work of persons who have other source of income – namely, the pension – the possibilities to work of persons who can only earn their living by work are broadened. The court also took into account the empirical evidence that showed that only about 1/7 of the persons concerned by the norm where actually dismissed form the service, while the other 5/6 continued to work.

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?
b) Are constitutional anti-discrimination provisions directly applicable?
c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

a) At the constitutional level the principle of non-discrimination is enshrined in Art.91 of the Satversme (the Latvian Constitution) providing that "All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind".
Art.91 refers to "discrimination of any kind" without specifying the grounds and thus covering all possible grounds, including the grounds of the two Directives – thus also the discrimination based on sexual orientation also in relation to other fields, not only employment . As the Constitution stands highest in the hierarchy of norms, this permits an argument that a non-exhaustive list of grounds in fact applies also in cases of laws that only contain an exhaustive list of grounds in their non-discrimination clauses[3], although in practice this would inevitably complicate the 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 Art.91, Art. 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 international human rights standards binding upon Latvia[4]. 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 norms with those international treaties concluded by Latvia that do not contradict the Constitution must be noted especially. This also 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 norms must comply with these treaties[5]. Moreover, in practice it has also 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

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[3] For example, while Art.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 Art.91 of the Constitution it is possible to regard these grounds as non-exhaustive.

[4] Constitutional Court 30 August 2000 judgment in case No.2000-03-01, available in English at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/03-01(00).htm

[5] While views as to *why* international treaties take place below the Constitution (Satversme) and above the ordinary statues (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) differ – 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 is well established and affirmed by practice.

implementing legislation. The European Convention on Human Rights and Fundamental Freedoms stands out as particularly important, as not only the Constitutional Court who is by far a leader in using international legal instruments, but also courts of general jurisdiction are starting to rely on it, or at least refer to it increasingly. It also must be noted that the plaintiffs in the Constitutional Court are increasingly relying not only on the non-discrimination clause of the Satversme, but also on those of international treaties binding on Latvia – primarily the ECHR – and that the Constitutional Court has in certain cases examined, inter alia, whether Art.14 of the ECHR has been violated.[6] Importantly, the Constitutional Court has also hed that where the Constitution provides for higher standard of protection that the one provided for by the international agreements binding on Latvia the higher standard applied.

b) The Constitution generally is regarded as directly applicable. It was first in the "Compensation of losses case"[7] that the Constitutional court held that Constitutional norms can be applied directly. While the petitioner argued discrimination because a change in the law failed to provide for the compensation of losses in his case, the Constitutional court held that Art.92 of the Constitution could be applied directly and that the absence of a concretising law cannot serve as the ground for refusal of the court to accept the claim.
For a while the situation was complicated by the uncertainty whether it was the right or possibly the duty of the courts of general jurisdiction to refer cases of doubt concerning the compliance of a norm with a norm of higher legal force to the Constitutional court[8], but the Administrative procedure law was amended to provide also for referrals by the administrative courts if there is doubt about the compliance of a norm with the constitutional norm or a binding international law. As the number of court references, including the ones by the administrative courts, is gradually growing, one can start of speaking that the decision making on compliance of legal norms with the norms of Constitution or binding international document is being concentrated within the hands of the Constitutional court, while administrative courts retain the power to apply the highest norm if the discrepancy occurs on the lower levels of the hierarchy of norms.
This, however, raises the question to what extent is the Constitution directly applicable. At the current stage it would seem safe to state that the Constitution is directly applicable whenever it is the basis for the claim of the individual against the state, and this claim is not recognized by the legislation as was the case in the "Compensation of losses case" referred to *supra*. In other cases, including, most probably, most of more complicated "claims" cases, the case

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6 See, for example, the Constitutional Court judgment in the cases 2000-03-01 and 2001-02-0106.

7 The 5 December 2001 decision in the case No. 2001-07-0103, available in English at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/07-0103(01).htm 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 Art.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 longer time in pre-trial detention than the period of deprivation of liberty imposed on him by the sentence. The Constitutional court held 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 Art.92 of the Constitution, the court having the duty to adjudicate the case.

8 The problem had been created by the different regulation of the issue by the Criminal Procedure Code and the Law on Civil Procedure providing for court referral, as distinguished from the Administrative procedure law that came come into force on 1 July 2003 which initially did not provide for court referral but instead authorised the judge himself to decide on the conformity of norms and to apply the norm of higher force in cases of incompatibility, without, however, the authority to invalidate the incompatible norm. This problem, however, has been solved now, as Art.104(2) of the law since 15.01.2004 provides that the administrative court has to refer the case to the Constitutional court if it considers that the norm contradicts the norm of the constitution or that of international law, while on the lower levels of the hierarchy of norms it just applies the norm with the higher legal force, for example, the norm of a statute if the regulations adopted by the government do not comply with it .

would have to go up to the Constitutional court – either by means of court referral or, after exhaustion of all other remedies, by the means of constitutional complaint.

c) The main problem, however, is that the Constitution is generally not regarded as directly applicable to actions by private individuals, and thus lacking 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.
However, the recent case law suggests that the international – and probably also constitutional norms, although the courts generally still seem to be reluctant to refer, or more than just refer, going into substance instead, to them – can be of importance when interpreting the duties contained in ordinary legislation and thus, by the combination of the two, relied on to impose duties on private parties that may not be obvious from just looking on 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. Thus, in the Steel case[9] where the notion of "illegal attack on dignity and honour" contained in Art.2352 a of the Civil Law was at issue, the court relied on, *inter alia*, Art.89 of the Constitution and the Convention on 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 horizontal applicability of at least some of the norms of the Constitution, however, this would need to be confirmed by the case law. Similarly, in the Smagars case[10] the discrimination- even if nowhere expressly prohibited was found "unacceptable in a democratic state based on the rule of law" and also held to constitute an attack on dignity on honour, and in Sants case[11] 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 the first instance this ground was not listed expressly.

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The one ground that was expressly prohibited only recently – by 21.09.2006 amendments to the Labour Law - is sexual orientation. To a significant extent it is still a taboo topic, which was demonstrated both at the time of the adoption of the new Labour Law – the most advanced law in terms of outlawing discrimination – and when adopting the first amendments to it[12] aimed at removing some of the remaining deficiencies and at bringing the Labour Law in complete compliance with the requirements of the Directives: both times during the examination of the draft law by the responsible Parliamentary committee the express reference to sexual orientation in the non-discrimination clause was deleted and "other circumstances" was added instead in order to leave the list open. The situation repeated itself in 2006 when on 15 June the Parliament again chose to remove the express reference from the draft amendments; the President vetoed the resulting law stating it does not comply with Latvia's EU obligations. On the repeated vote on the law on 21.09.2006, despite the

[9] George Ronney Steel v. "Brivibas partija" [the Liberty party] and SIA "Latvijas Televizija" [The Latvian Television Ltd], case No. C29240503, the judgment by the Latgale district court of Riga adopted 08.09.2003, see under 0.3 Case law
[10] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law
[11] The 25.05.2005 Riga city Ziemeļu district court judgment in case No. C32242904047505, see under 0.3 Case law
[12] First amendments dealing with discrimination adopted on 07.05.2004.

upcoming Parliamentary election and hence the political climate which did not seem favorable the law including reference to sexual orientation was adopted 46 votes "for", 35 "against" and 3 abstentions, 9 registered MPs failing to take part in the vote at all. The amendments to the Law on Social Security adopted on 01.12.2005 - in fact, the second Latvian law transposing the Race Directive – omits express reference to sexual orientation while listing a number of other grounds, the list being open-ended. That the general attitude – including that of MPs – has not changed much was demonstrated once again in early January 2007 when the Parliament, voting in the 2nd reading on the proposed amendments to the Code of administrative offences to prohibit differential treatment chose not to mention specific grounds. However, even in the absence of such express reference the first case where discrimination based on sexual orientation was alleged[13] the court held the discrimination based on sexual orientation was prohibited. In any case, the Civil Procedure Law requires that the Latvian legislation be applied to the extent it does not contradict the directly applicable EU legislation; this requires the courts to consider sexual orientation as a prohibited ground of discrimination even in the absence of its express inclusion in the law at least in the cases concerning vertical relationships with the state, and as the judgment mentioned above showed it was not even an issue whether it was prohibited or not; one may only speculate whether the courts would consider it as coming under "other circumstances" only in claims against the state or in cases brought against private parties as well.

The grounds which are commonly referred to in Latvian legislation are: race, ethnicity (sometimes called national origin), gender, language, party membership, religious or political opinions, property or social status, position occupied and origin, sometimes – also health condition[14], place of residence and occupation. The Labour Law – one of the two 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[15]"; it is the only law to mention sexual orientation, and along with the Law on Social Security amended 01.12.2005 which employs the same wording it is one of the two laws that specifically refer to disability, and along with Administrative Procedure law - one of the three laws that refer to age. The recently adopted Criminal Procedure Law[16] lists origin, social and property status, occupation, citizenship, racial and ethnic origin, attitude towards religion, gender, education, language, place of residence and other circumstances[17]. In other laws predating the time when the transposition of EU legislation began the listing of grounds is random, never covering all of the required grounds and, most importantly, not all of them leave the list of grounds open.
One of such laws which contains a closed, yet not all-encompassing list of grounds is the Law on Scientific Activity[18] which provides, in Art.3, that "Everybody has the right to engage in scientific activity regardless of race, ethnicity, gender, language, party membership, religious or political opinions, property or social status, position occupied and origin". It is also important to note that in certain areas the person's citizenship or other status is a condition for access to certain services. This applies, for example, to law on Education[19] or to

[13] The 25.05.2005 Ziemeļu district court judgment in case C32242904047505
[14] Izglītības likums [Law on Education]
[15] At the 25.05.2005 Ziemeļu district court judgment in case C32242904047505 mentioned above indicates, so far at least sexual orientation has been considered to come under such "other circumstances'.
[16] Kriminālprocesa likums, adopted 21.04.2005.
[17] While sexual orientation has been considered to come under "other circumstances" at least in the context of labour law even prior to its express inclusion (see footnote 16), there is no case law confirming that also age and disability would be considered as coming under other circumstances in the absence of specific reference to them.
[18] Likums par zinātnisko darbību, adopted 10.11.1992.
[19] "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

access to social security which is limited to Latvian citizens, non-citizens, third-country nationals and stateless persons to whom a personal ID number has been issued, with the exception of persons in possession of temporary residence permits only (Art.59(1) of the law on Social Aid); a similar provision on the possession of permanent residence permit as a precondition for acquiring of the status of an unemployed person was invalidated by the Constitutional Court as regards the spouses of Latvian citizens who can only obtain the permanent residence permit after a certain number of years, as the intention of the spouses clearly is to stay permanently, by the same differing from other persons who receive temporary residence permit.[20]

The Law "On the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups"[21] declares that "the residents of the Republic of Latvia are guaranteed, regardless of their national origin, equal human rights, which correspond to international standards" (Article 1). Additionally, Article 3 of this law specifically provides for equality in the employment sphere:
"The Republic of Latvia guarantees to all its permanent residents, regardless or their national origin, equal rights to work and remuneration for work. Any direct or indirect actions to restrict, based on national origin, the opportunities of permanent residents to choose their profession or to occupy a position according to their skills and qualifications, are prohibited."

While in those cases when the particular law provides a closed list of grounds or does not contain any anti-discrimination clause at all – as is, for example, the case with the Law on Housing[22], it is possible to invoke Art.91 of the Constitution as far as the public sphere is concerned; in the private sphere there are, in the absence of a general anti-discrimination law, no guarantees of equal treatment. As an exception, the protection against discrimination on two grounds has to be noted – Art.78 of the Criminal Law[23] protects against discrimination on the basis of racial or national origin (in the field of economic, political, or social rights only, and only if intent to discriminate can be shown) and Art.150 of Criminal Law protects against discrimination based on religion or belief.
To summarize, 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 specifically mentions 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

a) How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?
Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation

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property and social status, race, ethnicity, gender, religious or political opinions, health condition , occupation and place of residence"

20 Constitutional Court judgment in the case No 2001-11-0106 adopted 25 February 2002, available in English at http://www.satv.tiesa.gov.lv/Eng/spriedumi/11-0106(01).htm.

21 Likums par Latvijas nacionālo un etnisko grupu brīvu attīstību un tiesībām uz kultūras autonomiju, adopted 19.03.1991

22 Likums par dzīvojamo telpu īri, adopted 16.02.1993

23 Krimināllikums, adopted 17.06.1998

which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion')?
c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?
d) Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination.

The national anti-discrimination law does not contain any definitions of the grounds of discrimination, and they have not been at issue in any of the court cases decided so far; as the survey carried out by the Latvian Association of Personnel Management indicated, it appears that some of them, particularly the term "social origin" seem enigmatic and would need further explanation. While it is clear that "race" would be interpreted using the definition contained in Convention on elimination of all forms of racial discrimination, one may well imagine that when applying the non-discrimination provision of the Labour Law the courts in certain circumstances might have difficulties deciding whether the discrimination was based on person's race or skin colour, since this law contains a reference to both. Disability contained so far only in the Labour Law is another problematic ground, as, first, the Latvian term for it ("invaliditāte") assumes a serious "physical or mental" impairment – thus excluding milder forms of it - , which is divided into 3 possible degrees of disability in accordance with the provisions of Law On Medical and Social Protection of Disabled Persons[24] depending on the gravity of the impairment, and, secondly, 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 have been officially recognized or whether it covers any *de facto* disability. This can be problematic and amount to insufficient implementation unless the courts, when confronted with this issue, will interpret the notion of disability on a compatible way.
There are no definitions of the grounds elsewhere in the law, and also none of the draft laws currently pending before the Parliament do not contain any definitions of grounds.
The two laws that refer to age as a prohibited ground of discrimination are the Labour Law and the law on Social Security, and they do not limit the scope of "age".
d) The issue of multiple discrimination has not been addressed in Latvia, and in the only case where multiple discrimination was found to exist – Stūriņa case[25] - it was found at the court's own initiative and the line of reasoning was not well developed.

2.1.2 Assumed and associated discrimination

a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.
b) Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?

[24] Likums "Par invalīdu medicīnisko un sociālo aizsardzību", adopted 29.09.1992
[25] Cēsu district court, the 05.07.2005 judgment in case No. C11019405 Anga Stūriņa v. Straupe municipal council, see under 0.3 Case law.

The national law does not explicitly prohibit discrimination on either assumed characteristics or the one based on association. The wording of the anti-discrimination provisions in Latvian laws referring to person being treated differently because of her (meaning – the particular person's who is invoking the provision) race, religious conviction etc. certainly would leave it easier to address the discrimination based on assumed characteristics than the one based on association, however, in the absence of the relevant case law testing these two issues the only thing that can be said with certainty is that the law contains no express prohibitions.

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

a) How is direct discrimination defined in national law?
b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).
c) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

After the 07.05.2004 amendments to the Labour Law there finally is the definition of direct discrimination, as Art.29(5) of this law now states that "Direct discrimination exists if in comparable situation the person, based on her gender, is, was or may be treated less favourably than another person"; Art.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 - but 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 used also in the amended Law on Social Security and further used in a number of draft anti-discrimination provisions to other laws pending in the Parliament.
According to Art.29(2) of the Labour Law the justification for differential treatment is possible "only in cases where a particular gender [and, by virtue of Art.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". Also Art. 2.1.(6) of the Law on Social Security uses a general justification of direct discrimination.
There are no specific provisions specifying the comparison concerning the ground of age.

While technically the Labour Law applies only to employment relationships[26] (including pre-contractual relationships, as both the reference in Art.29(1) to "establishing employment relationship" and Art.34 dealing with the consequences of violating the prohibition of differential treatment when establishing employment relationship indicate) and employment-related claims, - thus by definition excluding self-employment and related claims, it is not inconceivable and, indeed, likely – at least as long as there is no general anti-discrimination law or definitions in other laws apart from Law on Social Security - that this definition would be used in other cases when the issue of direct discrimination is raised, especially since it would also follow from the international treaties binding on Latvia.

In the context of criminal law, there is no definition, but something comparable to a description of direct discrimination, although to a limited extent only, in Art.78 of the Criminal Law outlawing "restricting directly or indirectly economic, political or social rights

[26] 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 specialized civil service relationships; the latter includes policemen, border guards, individuals in diplomatic or consular service and certain other institutions.

of individuals or creating, directly or indirectly, advantages for individuals based on their racial or ethnic origin". Art.150 of the Criminal Law contains a similar wording speaking of "directly or indirectly restricting person's rights or creating any advantages" based on a person's attitude towards religion. Art.78 is placed in the Chapter of the Criminal Law dealing with "Crimes against humanity, peace, war crimes, genocide, which to some extent could explain the high threshold for the application of this article, as it requires the proof of intent, while Art.150 is contained in the Chapter "Offences against person's basic rights and liberties"; amendments to both these articles are currently pending in the Parliament.

2.2.1 Situation Testing

a) Does national law permit the use of 'situational testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.
b) Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?
c) Outline important case-law within the national legal system on this issue.
d) Outline how situation-testing is used in practice and by whom (e.g. NGOs)

The national law is silent on the issue of situational testing, and there is no evidence of it being used and hence no case law on it. To some extent it might be considered that in the Smagars case[27] the plaintiff himself did the situational testing, as after the first instance of being refused admittance to the nightclub he returned with the TV team for a "testing", yet it does not tell anything of how the courts would react to the testing carried out by a person other than the victim of discrimination himself. The crucial issue would be whether the court would consider situational testing as being of relevance to the case at hand, since according to Art.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 the 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 argument of experience of other countries would probably depend on each particular court, although it is undeniable that evolution in other countries would certainly influence also the Latvian courts and law on the books. The means of proof in this case thus would be the testimonies of the witnesses and the general rules concerning such testimonies (such as prohibition of hearsay, rules on privileged witnesses etc.) would apply.

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

a) How is indirect discrimination defined in national law?
b) What test must be satisfied to justify indirect discrimination?
c) Is this compatible with the Directives?
d) In relation to age discrimination, does the law specify how a comparison is to be made?

After the 07.05.2004 amendments to the Labour Law there is also in place the definition of indirect discrimination that complies with the definition used by the Directives. Art.29(6) of this law now provides:
"Indirect discrimination exists if in comparable situation 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, Art. 29(9) applies the protection against discrimination, including this definition, to differential treatment on grounds of race,

[27] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law above.

skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances, and this definition (with the exclusion of direct reference to sexual orientation) is used in the amended law on Social Security and in a number of draft anti-discrimination provisions. Also, 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 test for justification is the same one as for direct discrimination. Also the Law on Social Security uses the same provision for both direct and indirect discrimination, stating that "differential treatment (with the exception of harassment) related to one of the [prohibited] grounds is permissible only if this treatment is objectively justified by a legitimate aim, the means for attaining which are proportionate." The wording is compatible with that of the Directives, yet there exists no case law showing that also the courts interpret it in the compatible way.
There are no specific provisions specifying the comparison concerning the ground of age, and no case law either.

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.
b) Is the use of such evidence commonly used? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?
c) Please illustrate the most important case law in this area.
d) Are there national rules which permit data collection? Please answer in respect of all 5 grounds.

The national law is silent on the issue of the use of statistical evidence, and there is no case law so far where it would have been used. The gathering of evidence for the purposes of civil proceedings is governed by the Civil procedure law, Arts. 110-112 of which determine the written evidence, which encompasses information on facts of relevance to the case - including data to show prima facie case of discrimination - in any form. Art.111 enables the party to request the court by means of a motivated request that certain evidence be provided, describing it and explaining why he thinks that this evidence is in the possession of the person concerned. Art. 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 it 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 the proving of which this evidence was required, has been proved. However, if it is impossible for the person requested to provide this evidence, she has to notify the court explaining the reasons for this impossibility.

Since so far these provisions have never been used in the context of discrimination cases by the courts of general jurisdiction, it is difficult to predict what might be the difficulties related to such requests - how specific the courts would require the description of the evidence sought to be, and how much extra effort to prepare the evidence for the presentation could be required from the respondent. 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, and both in the case where the age limit for occupying the post of university professor[28] and the case where the age limit for holding a position in civil service[29] was challenged the statistical evidence was important for the

[28] Case No. 2002.21.01, see under 0.3 Case Law above
[29] Case No. 2003-12-01, see under 0.3 Case Law above

decision reached as in one case it showed the inappropriate character of the limitation, namely, the inability to attain the aim sought, and in the other one – the lack of impact of the provision challenged. Hence also for the courts of 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, although at this stage it is entirely speculative.

The main law regulating the data collection is the Law on protection of data of natural persons[30], which defines as sensitive data the data on person's race, ethnic origin, religious, philosophical or political conviction, trade unions membership, as well as data which provide information on person's health (which would cover also disability) or sexual life (apparently, even if not expressly, covering sexual orientation). Art.11 in principle announces the prohibition of processing of sensitive data, but contains a range of exceptions, among which, in addition to written agreement of the data subject that his data be processed, are: when the legal norms governing an employment relationship provide for data procession without the agreement of the data subject; when the processing of data is necessary for the purposes of medical treatment; when processing is necessary for provision of social aid and is performed by the aid providers; or when processing of data is needed for statistical studies performed by the Central statistics department. All data processing systems need to be registered with the Data inspection, and it may refuse the registration if the law is not complied with.
Thus, in principle the employers are prohibited from keeping the records in respect of ethnic or racial origin, disability, religion or belief or sexual orientation. However, obviously there are exceptions in the professions involving work with people where the medical certificate is needed, and in cases of disability in as far as it requires special accommodation. Theoretically, it presumably might be also possible to keep the record of personnel's religious affiliation in case the employer wanted to enable the employees to observe their particular religious holidays, however, it is not the practice in Latvia.
As far as state registers are concerned, the 1998 Population register law requires that ethnicity of the person be recorded; Art. 12 of this law expressly prohibits to include in the register information on person's race or colour, religion or belief and membership of a denomination, political convictions or party membership, sexual orientation or illnesses, as well as – more generally – "other information not provided for in Art. 10 of this law", which would also encompass disability. The person's ethnicity is determined by the ethnic origin of her parents, and in case of different ethnic origins of parents only one ethnicity can be recorded for the child[31], although this entry can be changed only once by choosing the ethnicity of another parent or grandparent. Thus, the ethnicity entry does not necessarily permit to make conclusions about the person's race or colour. The classificatory of ethnicities drawn up by the Central Statistical bureau and used *inter alia* for the purposes of population census contains 180 possible ethnicities.
The recording of person's ethnicity was also done during the 2000 Population census, which also asked the question about person's native language, but not the question about his/her religious affiliation. Recording of the ethnic origin in passports is optional, as is the recording of ethnic origin in the Civil registry when registering marriage or birth of a child according to the Civil Registry law[32]; the latter law also permits the recording of person's religion or belief and membership of a denomination, if the person so wishes when registering marriage or birth of a child[33]. However, while the law itself does not limit the choice of religion of belief to be registered, in practice the possibility to enter it into the registry is limited to the 8

[30] Fizisko personu datu aizsardzības likums, adopted 23.03.2000
[31] After the entry into force on 15.04.2005 of the new Civil registry law the practice, acording to the employee of the registry intrviewed, is in such cases to record "ethnicity not chosen" to enable the child to chose himself the ethnicity of one of his parents when receiving his passport at the age of 16.
[32] Civilstāvokļa aktu likums, adopted 17.03.2005
[33] In practice, it seems, judging from the interview with an employee of the Registry, the person is actually asked about her religious affiliation, which is then recorded then unless the person refuses to provide this information.

denominations who according to the Civil Law have the right to conclude marriages recognized by the state, i.e., Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers, Methodist, Baptist, Seventh Day Adventist or Judaist denominations; apparently, the computer program does not permit the registration of other religions, and according to the employee of the Registry interviewed this place would be simply left blank if the person stated she belonged to a denomination or world view other than any of these eight.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.
b) Is harassment prohibited as a form of discrimination?
c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

After the 07.05.2004 amendments to the Labour Law the harassment is defined in national law as the "subjection of a person to such unwanted by this person conduct, including conduct of sexual character, which is related to the gender of the person, if the purpose of effect of this conduct is violating the dignity of the person or creating an intimidating, hostile, degrading or offensive environment" (Art.29(7)). Again, Art.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 marital status, sexual orientation or other circumstances, and this definition (with reference to prohibited grounds which in the case of Law on Social Security do not expressly include sexual orientation) is further used in the amended Law on Social Security and in a number of draft anti-discrimination provisions. Art.29(4) of the Labour Law specifically provides that also harassment shall be considered discrimination. , and Art. 2.1.(2) of the Law on Social Security lists it as one of forms of differential treatment.

So far only the Labour Law and the Law on Social Security are the only laws to contain both the 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 also 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 it remains only a theoretical possibility.

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

There are no known additional sources on the concept of harassment, including codes of practice.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

After the 07.05.2004 amendments to the Labour Law Art.29(4) of this law expressly states that "the instruction to discriminate shall also be considered discrimination". This position is

adhered to in a number of draft anti-discrimination provisions and, while there is no comparable provision in any other law in force apart from the Law on Social Security, due to the fact that instruction to discriminate is considered by the Labour Law as being discrimination, one may argue that it could be applied also to other laws containing anti-discrimination provisions but no express reference to instructions to discriminate.[34]

Additionally, it may be considered that some limited protection against instructions to discriminate is provided by Art 78 of the Criminal Law prohibiting "restricting directly or indirectly economic, political or social rights of individuals or creating, directly or indirectly, advantages for individuals based on their racial or ethnic origin" taken together with Art. 20 of the Criminal Law which speaks of various forms of accomplices (organiser, inciter and supporter). However, this only applies to the very limited cases falling under Art.78 which, moreover, are limited to discrimination on the grounds of racial or ethnic origin. The same possibility to invoke Art.20 applies to instruction to discriminate based on religion or belief if taken together with Art.150 of the Criminal Law which prohibits "restricting directly or indirectly a person's rights or creating any advantages to persons based on their attitude towards religion".

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

a) How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. e.g. does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?
b) Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?
c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?
d) Does national law require buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Art.11 of the 1992 Law on Medical and Social Protection of Disabled Persons[35] provides that disabled persons have the right to such social security as is necessary, *inter alia*, to ensure a place in society that corresponds to his wishes and abilities, in particular with regard to occupation. Art.12 of the Law on Social Security reiterates that disabled persons have the right to such social security as necessary for their involvement in the society, by creating for them suitable conditions for employment that correspond to their ability to work and interests. However, these norms are considered declarative and the reality leaves much to be desired. This is not limited to the sphere of employment, but applies to all spheres of life, also to

[34] The need for inclusion in the law of prohibition of instruction to discriminate was illustrated by one of the few well-publicised cases that is also illustrative of the more general problem of the application of the prohibition of discrimination to the private sector. In the case that took place in 1999, a member of home guard forces (Zemessardze) guarding a private café refused to let a person of Roma origin enter the café by referring to the instructions of the owner of café not to let such persons in. The leadership of the home guard, after investigating the case at the request of the National human rights office, concluded, *inter alia*, that the guard himself could not have acted in a discriminatory way as one of his grandparents was Roma, and that the owner of the café bore all the responsibility as he was the author of the internal rules on which the guard had relied. This was the end of the story, and no criminal proceedings were instigated. Human rights in Latvia in 1999. Latvian Center for Human Rights and Ethnic Studies, p.41

[35] Likums "Par invalīdu medicīnisko un sociālo aizsardzību", adopted 29.09.1992

education and access to government institutions, including the courts, the vast majority of which simply remain physically inaccessible for physically disabled persons.
However, after the 07.05.2004 amendments to the Labour Law Art.7(3) of this law provides that "To ensure implementation of the principle of equal rights in relation to the disabled persons 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 the disabled persons 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." There are no more detailed provisions permitting to assess the disproportionality of the burden and no case law.
This provision is part of Art.7 dealing with the principle of equal rights, Art.7(1) stating that "Everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair working remuneration" and Art.7(2) specifically providing that the rights provided for in Art.7(1) shall be ensured without any direct or indirect discrimination. Thus the context in which the duty of reasonable accommodation is placed is that of equal rights and non-discrimination, even if the law does not expressly qualify the failure to provide reasonable accommodation as discrimination. Nevertheless, from the fact that the same amendments adopted 07.05.2004 expressly state in Art.29(4) that harassment and instruction to discriminate shall be considered discrimination one could, using the *inclusion of the one is the exclusion of another* principle, argue that the legislator did not intend to regard failure to provide reasonable accommodation as discrimination. However, the absence of case law makes it impossible to draw any more exact conclusions.

In addition to the right of disabled persons to "suitable conditions for employment" as provided for in the Law on Medical and Social Protection of Disabled persons and the Law on Social Security discussed at the beginning of this section, the duty of the employers to provide reasonable accommodation can be deduced from the Law On Labour Protection[36], Art.4(1)(3) of which requires the employer to adapt the workplace to the individual, mainly as regards the design of workplaces, work equipment, as well as in respect of the choice of work and production methods. However, this is not viewed in the context of discrimination, and in practice the access of disabled persons to employment remains problematic, although there is no case law on the failure to provide reasonable accommodation, which may also be taken as an indication that the duty of providing it had not been determined by law with sufficient precision. This also makes it doubtful whether it is regarded as an enforceable duty at all – both by the employers and by the employees; case law would be needed to answer this question. On measures aimed at encouraging employment of people with disabilities, see under Positive action below. It must also be noted that the Ministry of Welfare has drafted a new law regulating the protection of disabled persons which currently has made public in the homepage of the Ministry for possible comments and suggestions.

The Latvian law provides for no duty to provide reasonable accommodation on any of the other grounds. While it does require that the buildings meant for public use be designed in a way enabling the access of disabled persons, it has never been viewed in the context of the Directive, and there is no case law on it. In reality access to public buildings, including courts, often remains difficult, since the law only requires that the newly built buildings be built in accessible way.

36 Darba aizsardzības likums, adopted 20.06.2001

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for disabled workers?
b) Would such activities be considered to constitute employment under national law?

While the law does not expressly speak about sheltered or semi-sheltered accommodation or employment, the number of projects aimed at disabled workers has increased – both of the kind that can be considered to constitute employment and on of the kind that can be more properly regarded as rehabilitation measures. For more, see under Positive action below.

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)

Are there residence 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 be generally said that the protection against discrimination applies to all persons regardless of their citizenship. However, there are some laws where the citizenship or status in Latvia is the precondition for the guarantee of equal rights or access to certain services– notably, the Law on education which restricts its protection to "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". Also, the 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, with the exception of persons in possession of temporary residence permits only (Art.59(1) of the law on Social Aid); a similar provision on the possession of permanent residence permit as a precondition for acquiring of the status of an unemployed person was invalidated by the Constitutional Court as regards the spouses of Latvian citizens who can only obtain the permanent residence permit after a certain number of years, as the intention of the spouses clearly is to stay permanently, by the same differing from other persons who receive temporary residence permit.[37]

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

The Latvian laws dealing with discrimination do not specifically distinguish between natural and legal persons neither as far as protection nor liability is concerned.

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[37] Constitutional Court judgment in the case No 2001-11-0106 adopted 25 February 2002, available in English at http://www.satv.tiesa.gov.lv/Eng/spriedumi/11-0106(01).htm.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

Since the Labour Law as well as the Law on Social Security provide for instruction to discriminate as the separate form of discrimination, it can be argued that in such cases most probably both the instructor and the direct perpetuator would be held liable for two separate offences. Similarly, in the few cases that might come under the Criminal Law provisions (Art.78 and 150) it would be two offences of discrimination and of incitement (see under 2.5 *supra*).
In cases of harassment, by relying the definition of harassment as provided by the Labour Law, it could be argued that "subjection to unwanted conduct" can be also done by the employer by failure to oppose such conduct by his employees – yet it 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 interpretation.
In case of employers additionally Art. 1782 of the Civil Law could be applied stating that the employer has to exercise due care when selecting his employees and verify their ability to fulfil their duties, otherwise he may be held liable for the damages caused by them; in cases where the employer is the state, municipality or some of the other public law legal persons and which are covered by the provisions of the Administrative procedure law the compensation for losses and also moral damages can be asked from the employer. The responsibility of the employer was at issue in the Smagars case[38] where the respondent argued that the employer can only be held responsible for pecuniary damages caused by his employees, not for moral damages, however, the court held that the anti-defamation provision of the Civil Law does not exclude the legal persons from its scope.

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 the national law, or any case law.

3.2 Material Scope

Preliminary note: one of the two main problems of Latvian anti-discrimination legislation is its application to the private sector. As Art.91 of the Constitution contains a general equality clause providing that "All persons in Latvia shall be equal before the law. Human rights shall be observed without discrimination of any kind" and the Constitution is directly binding on all public bodies, the prohibition of any kind of discrimination – be it racial and ethnic discrimination or discrimination on grounds of religion or belief, disability, age or sexual orientation – applies to the whole public sector and all fields listed in Art.3.1 of the Racial Equality Directive and Employment Equality Directive even if there are no separate clauses to this effect in laws governing the respective sphere. However, the absence of such separate clauses and, more importantly, of the lack implementation and sanctions mechanism, including the shared burden of proof (which currently exists only under Labour Law and thus applies to employment-related relationships only), complicates implementation considerably.

[38] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law above

Moreover, the Constitution does not have horizontal effect, which means that private relationships are covered only when there exist specific legislation to this effect.

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

Access to employment in all its aspects is governed by the Labour Law which regulates employment relationships, including access to employment, trial periods, working conditions, pay, promotion and dismissals and prohibits differential treatment, providing protection against it as required by the Directives and covering all fields mentioned therein, although sexual orientation is not expressly spelled out. It applies both to the public and private sectors, including – by virtue of Art.2(4) of the State Civil Service Law[39] - the state civil service and specialised civil service, but excluding military service and contract work of self-employed persons which does not qualify as employment relationship and is based on the provisions of the Civil Law.

Art. 2(4) of the State Civil Service Law with the amendments adopted 02.11.2006 and in force from 10.11.2006 provides that in the state civil service those norms regulating employment relationships with regard to inter alia principle of equal rights, prohibition of differential treatment and prohibition to cause adverse consequences (prohibition of victimisation) apply. It applies to about 1/4 (approximately 28.000 people) of persons working in the public sector, namely, *inter alia*, in the ministries, the subordinate institutions, state police, border guard, State fire fighting and rescue service, state revenue service and diplomatic service qualify as civil servants and thus come under the provisions of State Civil Service Law. This excludes the remaining 3/4 working for the central government and also persons working for the local governments who are employed on the basis of an employment contract thus coming under the provisions of the Labour Law.

The age limit of 65 for occupying the post of university professor or associated professor, as well as highest administrative positions in universities and scientific institutions was invalidated as contrary to the constitution by the 20 May 2003 Constitutional Court decision[40]; however, the case was decided on the basis of the constitutional article providing for the right to freely choose employment and workplace, and, since the age-based restriction was found to violate this article, the Constitutional court did not consider whether it was also discriminatory. Theoretically the outcome of the case might have entailed – or at least asked for - reassessment of other age limits contained in legislation. However, an apparently similar age limit contained in Art.41(1)(f)of the State Civil Service Law establishing that the civil service relationship shall be terminated when the civil servant has reached the age of retirement unless there is the decision by the head of the institution to the contrary was found by the Constitutional Court to violate neither the right to choose freely employment and workplace nor the prohibition of differential treatment[41] – somewhat unexpectedly after the university professors' case, the general feeling being that the Constitutional court has not sufficiently substantiated the distinguishing of the two cases. The court held that the state civil

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39 Valsts civildienesta likums, adopted 07.09.2000

40 The 20 May 2003 decision in the case No. 2002-21-01, available electronically at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/21-01(02).htm, see under 0.3 Case law above

41 The December 18 2003 decision in the case No. 2003-12-23., available electronically at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/12-01(03).htm, see under 0.3 Case law above

service differs from the work in private sector both by the legal aspects of creating the legal relationship and the aims of the work to be performed. Namely, unlike in the employment relationship, there is no contract and no equality of the parties to the contract, the civil servant being appointed to his post by the competent institution; it is the state that one-sidedly regulates the competence of the civil servants and other aspects of the civil service relationship, including the termination of the service. To ensure that the executive branch can discharge its functions, the state has to regulate the status of civil servants – one of the preconditions of such status being age, both minimum and maximum age. The legitimate aim of the restriction, in the court' s opinion, is the balancing of the age structure of civil service, as well as ensuring to the younger generation the possibility to perform state civil service. In holding that the restriction is proportionate the court refers, *inter alia*, to the Directive 2000/78, namely, to the consideration no. 25 providing for differential treatment if it is justified by legitimate employment policy. One of the arguments of the court was that it is also the question of employment policy and that by restricting the right to work of persons who have other source of income – namely, the pension – the possibilities to work of persons who can only earn their living by work are broadened - which admittedly is the argument which does not explain the different result in the previous case. The court also took into account the empirical evidence that showed that only about 1/7 of the persons concerned by the norm where actually dismissed form the service, while the other 5/6 continued to work, concluding that the contested norm strikes the right balance by both permitting the possibility to serve to civil servants who have reached the pensioning age and ensuring the principle of good administration. This argument developed in relation of the right to freely choose employment argument, the court said, applies also to the challenge on age-based discrimination. As far as the argument on gender-based discrimination was concerned – based on the fact that in the period of transition the pensioning age differs for men and women, and hence the age when the persons of different gender may be discharged from the state civil service – the Constitutional court held that the norms of the State Civil Service Law should have been applied in conjunction with the norm of the Law on Pensions providing for the same pensioning age for men and women, not in conjunction with the norm of transition provisions of this law which provides for gradual raising of the pensioning age for women to equalise this age for men and women. Thus the Constitutional court held that the application of the challenged norm had been discriminatory, but did not invalidate the norm as such.
There is no equality guarantee - with the exception of the one implied in the Constitution - as far as the military service is concerned.
Likewise, there is no equality guarantee that would apply to the contract work governed by the provisions of the Civil Law. The draft amendments currently in the legislative process providing for a general equality clause applying to contracts the participation in which is publicly accessible are intended to take care of this deficiency.

There is no express prohibition of differential treatment as far as access to self-employment is concerned, but to the extent that Art.91 of the Constitution applies to all public bodies acting in all spheres, access to self-employment is nevertheless covered as it involves certain registration procedures performed by public bodies.
It must also be noted that in addition to the provisions described above, discrimination in any sphere, including employment, and both in the public and private sectors based on religion is outlawed by Art.150 of the Criminal Law.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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))
Is the public sector dealt with differently to the private sector?

The Labour Law anti-discrimination provision in Art.29(1) specifically mentions establishing the employment relationship and promotion, and in explicitly protects in Art.29(9) against differential treatment based on grounds of race, age, religious conviction disability and sexual orientation. Prior to the 21.09.2006 sexual orientation could only be argued be subsumed under "other circumstances", and as the only case on sexual orientation-based discrimination decided so far indicates, whether or not sexual orientation is covered did not seem to be an issue[42]. The Labour Law and hence its guarantees applies both to the public and private sector, state civil service and specialized civil service included.

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 - to the extent they are applicable to a particular relationship - in the military service, self-employment or contract work. However, as noted *supra*, discrimination based on religion in any sphere is punishable pursuant to Art.150 of the Criminal Law.

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

a) Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.
b) In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 ?

a) Art. 29(1) of the Labour Law also 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 and disability is now explicit, the list being left open by mention of "other circumstances", and applies also to civil service (including specialized civil service) relationships. Additionally, Art.60 (1) of the Labour Law reiterates that equal work remuneration has to be given to men and women for the same kind of work or work of equal value. The Ministry of Welfare explained that at the time of drafting it was felt that the need to re-emphasise equal pay independently of gender existed because it was one of the most problematic areas in practice. No explicit guarantee concerning the working conditions, pay or dismissals - to the extent they apply to a particular sphere - exists within the sphere of military service, self-employment or contract work; the draft amendments currently in the legislative procedure would take care of contract work.
b) Occupational pension schemes is a new phenomenon in Latvia, and a very limited one; hence occupational pension schemes has never been an issue and there is also no information available on their arrangements. There is no express prohibition of discrimination anywhere in the law, unless we interpret the working conditions and remuneration mentioned in Art. 29(1) of the Labour Law as covering also occupational pensions; this construction is somewhat complicated by the reference in this provision to 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

[42] The 25.05.2005 Ziemeļu district court judgment in case C32242904047505, see under 0.3 Case law above

arrangement in the pension scheme already after the end of the employment relationship; a clear regulation by the law seems to be the preferable and sure solution.

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))

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national Anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities ?

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 Art.29(1) of the Labour Law referring to "occupational training"; race, age, religious conviction, disability and sexual orientation are explicitly covered. No explicit guarantee concerning the access to vocational guidance, vocational training or education exists specifically within the sphere military service, self-employment 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 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 and sexual orientation. Art.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[43], occupation and place of residence."
To some extent it could be argued, though, that the protection against disability-based discrimination can be subsumed under the heading of "health condition". As far as its application to the public sector is concerned, the reference to Art. 91 of the Constitution can cure the deficiency of the lack of reference to particular grounds, even if it is somewhat complicated, especially since in cases when the particular ground for discrimination is not expressly mentioned, the burden of proof which rests on the plaintiff is clearly even more significant, as he also has to 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. Also, this means there is no implementation mechanism in this law and, naturally, no shared burden of proof.
The conclusion thus is that in relation to vocational training outside employment relationships differential treatment is not adequately prohibited

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))

[43] In the autumn of 2002 there was a case when a teacher following the instructions of her superior had not let an HIV-positive pupil to enter a class. The case was well-publicised, raising, *inter alia*, the issue of the protection of sensitive data, and the teacher was disciplinary punished.

Art.2 of the Law on Trade Unions[44] refers to the right of all persons residing in Latvia, who are employed or study, to establish trade unions. However, there is no specific prohibition of discrimination in the exercise of this right. Art.2(2) of the Law on Organisations of Employers and Their Associations[45] similarly 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 does not contain any on-discrimination clause.
However, after the 05.07.2004 amendments to the Labour Law Art.8 of the Labour Law which reiterates the right of employees and employers to freely create and join organisations to protect their interests specifically provides for these rights "without any direct or indirect discrimination related to any of the grounds referred to in Art.7(2) of this law"; Art.7(2) among other refers to race, religious conviction, age, disability and sexual orientation, as well as "other circumstances".

As regards professional organisations, the Law on the Bar[46] does not contain any equality clause at all, but Latvian citizenship is a condition for access to the Bar. To the extent that professional organisations can be said to exercise certain public functions, again it is possible to refer to constitutional guarantees of equality, but all in all it must be admitted that this is a problematic sphere clearly requiring legislative action as the requirements of the Directives are currently not fulfilled.

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

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

In addition to constitutional guarantees of equality, Art.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 Art.111 states that the state shall protect human health and guarantee a basic level of medical care for everyone. Art.2 of the Law on Social Security[47] refers to "prohibition of differential treatment" as one of the principles of provision of social services, and the 01.12.2005 amendments have introduced Art.2.1. specifying that in provision of social services differential treatment based on 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; in this law sexual orientation as a prohibited ground is not spelled out, but could be argued to come under "other circumstances". These amendments have also redefined social services, thus extending the application of this law and the equality guarantee now contained herein, in the following way: "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 realization of person's social rights" (Art.13).

Art.16 of the Medical Care Law[48] provides that everyone has the right to receive urgent medical care as provided for by the Cabinet of Ministers, while Art.17 of that law states that the right to medical care guaranteed by the state is enjoyed by Latvian citizens, non-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, yet given the new definition of social services it appears that

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44 Likums "Par arodbiedrībām", adopted 13.12.1990

45 Darba devēju organizāciju un to apvienību likums, adopted 29.04.1999

46 Advokatūras likums, adopted 27.04.1993

47 Likums par sociālo drošību, adopted 07.09.1995

48 Ārstniecības likums, adopted 12.06.1997

the equality guarantee now 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 in the particular laws the explicit guarantee of equality is missing and in some 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 falls within the public sphere. However, the services provided by the private sphere (private medical care, for example) are not covered by the wording to the Law on Social Security, nor does the constitutional guarantee apply to it.

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

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

In addition to the constitutional guarantee of equality, Art.3 of the Law on Social Services and Social Security[49] provides that the Latvian citizens, non-citizens, foreign citizens and stateless persons who have received the personal ID number, except persons who have received temporary residence permits, have the right to social services and social security; Art.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 realization of person's social rights" - shall be provided without the discrimination on the basis of 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 provided by state or municipal institutions. In addition to that, to the extent that provision of such services and security is a public function, the constitutional guarantee of equality applies. However, 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 Art.29 (1) of the Labour Law prohibiting differential treatment generally "during the period of existence of employment legal relationships" applies also to any social advantages provided by the employer, but those social advantages provided, for example, by private foundations outside the framework of an employment relationship are not covered. The draft amendments to the Civil Law would take care of this problem, at least in part.

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

This covers all aspects of education, including all types of schools. Please also consider cases of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

49 Sociālo pakalpojumu un sociālās palīdzības likums, adopted 31.10.2002

The Law on Education applies to both the public and private sphere and contains a closed-list non-discrimination clause which does not include all the grounds required by the Directives[50], excluding, namely, age, disability and sexual orientation..
It has to be noted that in reality the access of disabled children and adults to education remains a problem. The school and university buildings, as a rule, are inaccessible for a person in a wheel-chair, so most often physically disabled children would be offered instruction at home instead of integration in mainstream education. The same applies also to people with learning disabilities where specialised education and instruction at home is a *de facto* clear preference.
Specialized Roma classes exist in some municipalities (7 in 2003) with higher concentration of Romani people. Most of them are in the status of pedagogical correction classes (i.e., classes intended for pupils with special educational needs) and are intended as a learning aid to help the children with the problem of the language of instruction and also with the problem of the pupil not fitting in the class because of his age because of earlier dropout. However, it is not mandatory that the child attend one of these classes, and the attitude of the Roma themselves towards theses classes varies. While some perceive it as a learning aid, others think that the education provided in these classes is of lower quality, while still others would chose these classes to spare their children discriminatory remarks they might face in ordinary classes. While the declared idea of these classes is to integrate the Roma children into the educational process as such and later to insure their transfer to ordinary classes, in the only municipality that has had a longer experience with specialized classes it appears that the integration into the mainstream does not work. In some instances the schooling in these specialized classes takes place in the afternoon, unlike it is the case with the ordinary classes, thus contributing to segregation and isolation.[51] It also appears that in two municipalities 40% of the Roma children attend schools for pupils with special needs.[52] Thus *de facto* access to education or Roma people remains problematic, and according to the data of the 2000 population census roughly ¼ of Roma aged 15 and more have completed less than 4 years of schooling, 18,2% have completed 4 years, only 7,8% have completed general or specialized secondary schooling and 0,4% (or 26 persons) have higher education[53]. There are no complete data on illiteracy in the Roma community, yet is indicative that in February 2003 85% (or in absolute numbers -39 persons) of illiterates who had registered with the State employment agency as looking for employment were Roma.[54]

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

Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

Access to goods and services currently is an uncovered field. There is no general law on services, hence, while in the public sphere the constitutional guarantee applies and in the

[50] Art.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."
[51] Čigānu stāvoklis Latvijā [The situation of Roma in Latvia], Latvian Centre for Human Rights and Ethnic Studies, Riga, 2003, p. 27
[52] Ibid., p. 26
[53] 25.2% did not indicate their level of education
[54] Čigānu stāvoklis Latvijā [The situation of Roma in Latvia], Latvian Centre for Human Rights and Ethnic Studies, Riga, 2003, p. 19

private sphere the limited protection offered by Art.78 and 150 of the Criminal Law in relation to the gravest cases only on the grounds of race/national origin and religion or belief, there is no adequate protection against private discrimination and no adequate sanctions even for public discrimination. As an illustration, see the footnote under 2.5. Instruction to discriminate the case on access to a café: although the actions of the owner of the café clearly came under the terms of Art.78, no criminal case was opened. However, as the Smagars case[55] indicated, some protection against discrimination in access to goods and services may be provided by the anti-defamation provision of the Civil Law.

The draft amendments to the Law on Consumer protection prepared by the Secretariat of the minister with special assignments for the integration of society provide for the applicability if the still-to-be-adopted amendments to the Civil Law provide for protection against discrimination in cases of contracts the participation in which is publicly accessible.

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

To which aspects of housing does the law apply? Are there any exceptions?

The Law on Housing does not contain a non-discrimination clause, but this sphere would come within the ambit of the draft amendments to the Civil Law described under 3.2.9 described *supr*a if and once they are adopted. In addition to that, it can be argued that the amended Law on Social Security (see under 3.2.6.) amongst those social services provided by state or municipal institutions and intended to promote the realization of person's social rights comprises also access to housing, even if not referring to it expressly; access to private housing is not covered.

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The only statute that refers to occupational requirements is the Labour Law. Its Art.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"; Art.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 Kozlovska v. SIA "Palso"[56] - where the court does refer to "objective precondition" there is no real discussion of it since the employer claimed that the he had indicated the "accent" as the refusal to employ at the request of the plaintiff and that the real reasons behind it had been the lack of the required secondary education and the appearance unsiutable for the available position, thus he did not actually argue that the lack of accent was an objective and substantiated precondition; the court concluded that there was no dispute of the plaintiff's knowledge of the Latvian language – which would have been such objective precondition and that the respondent has not shown that the lack of accent would be such a precondition.

[55] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law above

[56] The 25.05.2006 Jelgava court judgment in case No.15066406, see under 0.3 Case law above

Prior to the entry into force of the Labour Law on 1 June 2002 the situation was different as the Labour Code in force up till then prohibited differential treatment except where restrictions or advantages had been provided for by a statute or other normative act; two such acts were the 1992 regulations of the Council of Ministers No.292 on Hard jobs and jobs in a harmful environment where it is forbidden to employ women and on Hard jobs and jobs in a harmful environment where it is forbidden to employ persons below eighteen years of age. Thus, the criterion was a formal one – inclusion of a particular job title in such list or in any law. The result was that in the first pure gender discrimination case in Latvia, Muhina v. Central Prison where a woman had been denied employment as a prison warder by virtue of being a woman, the case was decided in favour of the plaintiff exactly because the respondent had not shown that a statute or any other normative act provides for an exception in relation to the position of a prison warder[57]. 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 essential.

4.2 Employers with an ethos based on religion or belief

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?
b) Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?

The 21.09.2006 amendments to the Labour Law included a provision stating that "in a religious organisation differential treatment based on person's religious belief is admissible where, taking into account the ethos of the organisation, a particular religious belief is an objective and substantitated precondition for the work or activity in question. The wording seems 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 it will be interpreted by the courts. This provision is a counterpart of Art.14(1) of the Law on Religious Organisations providing 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. Additionally, as far as exemptions based on religion or belief is concerned, Art.150 of the Criminal Law which prohibits "direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion", except for "activities in the institutions of a religious denomination".
There is no case law on exemptions based on religion or belief; in 2002 a Lutheran minister[58] was dismissed by the archbishop for being a practicing homosexual, however, while the case received considerable publicity, the minister chose not to pursue a legal case against the church.

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57 Judgment of the Senate of the Supreme Court in the case No.SKC-297 (8 May 2002). The lower court had also mentioned, however, that by applying to a position that had been advertised inviting only men to apply the plaintiff had consciously had created the possibility of being subjected to discrimination, which should be taken into account when deciding on damages. See under 0.3 Case law above.

58 The same minister that later sued the Riga Cultures secondary school for discrimination based on sexual orientation, see under Case law.

4.3 Armed forces and other specific occupations

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?
b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

None of the laws regulating armed forces, employment in police, prison or emergency services contains an equality guarantee – and hence provides for no exceptions – however, after the 02.11.2006 amendments to the State Civil Service Law the equality guarantees contained in the Labour Law apply also to civil service and specialized civil service; access to all of these occupations is restricted to Latvian citizens. Art.28 he Law on fire safety and fire fighting[59] provides that in the State fire security and fire fighting service only persons aged 18-40 are accepted; the service can be performed until the person reaches the age of 50, yet in can be prolonged until 60 if the person so wishes and after the evaluation of her physical and professional abilities; the law also requires that the applicant's physical condition and health condition correspond to the requirements of the service. The Military service law[60] provides for age limits of 27, 35 or 40 years depending on the seniority for admission to military education establishments; the maximum age limits for professional military service ranges from 36 to 60 years depending on seniority in active service and from 55 to 65 in reserve (limited extensions are possible), whereas the person can be admitted to professional military service if it will be able to serve at least 5 years before reaching the prescribed age limit. The Law on Police sets 50 years as the maximum age for service in police and permits for unlimited extensions for higher echelons, as well as the age between 18 and 35 for access to the service in the police; also the requirement of physical condition and health condition enabling the person to fulfil the police duties is contained in the law.

4.4 Nationality discrimination

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).
a) How does national law treat nationality discrimination?
b) Are there exceptions in anti-discrimination law that seek to rely on Art 3(2)?

There are no provisions in national laws that would rely specifically on the exception contained in Art.3(2) of the Directives, yet in a number of cases nationality - or the person' s status in Latvia, usually requiring that the person be issued the ID number and sometimes excluding persons in possession of temporary residence permits only - is a condition for access to certain professions or benefits; thus, all employment in civil service and specialized service, as well as military service is restricted to Latvian citizens; also, the Law on the bar restricts the access to practice of legal profession to Latvian citizens and – recently – also to EU nationals admitted to the bar in other EU member states. In some cases, however, the difference of treatment exists which may be hard to justify – thus Art.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 foreigners and stateless persons who have worked outside Latvia before 1991: for citizens the years worked are taken into the account when calculating their pensions, but not for the other categories. The issue is particularly important for Latvian non-citizens, yet unfortunately when this provision was

[59] Ugunsdrošības un ugunsdzēsības likums, adopted on 24.10.2002
[60] Militarā dienesta likums, adopted on 30.05.2002.

challenged in the Constitutional court [61], the court, based on the fact that non-citizens are not mentioned in this provision and only expressly deals with citizens, foreigners and stateless persons, considered it a legislative omission it could not decide upon.

4.5 Work-related family benefits

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

(a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

(b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

The Latvian law provides for no family-related benefits, hence, also there is neither exclusion nor inclusion of same-sex partnerships which, moreover, are not recognized in Latvia; on the other hand, the broad equality guarantee contained in Art.29 (1) of the Labour Law prohibiting differential treatment generally "during the period of existence of employment legal relationships" presumably would apply also to work-related family benefits provided by the employer. Also, Art.29 of the Labour Law provides for family status ("ģimenes stāvoklis") as one of the prohibited grounds for differential treatment - which presumably might oppose provision of any benefits to married couples only as opposed to unmarried couples. However, things seem to be more complicated as far as same-sex partnerships are concerned; most often "ģimenes stāvoklis" is translated as "marital status" – and while normally in various administrative forms to be filled in the Latvian wording "ģimenes stāvoklis", which literally means "family status", indeed is asking for person's marital status, the possibility to read it as "family status" is crucial now after the 15.12.2005 Constitutional amendment (adopted in the aftermath of the Gay Pride held in Riga in July 2005) provides that marriage is a union of a man and a woman – thus reading it 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 laws 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-relayed family benefits to opposite-sex partners.

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?
Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

[61] The26.06.2001 judgment in case No. 2001-02-0106, available electronically at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106(01).htm

There are no exceptions from occupational health and safety rules for disabled persons, or specific provisions relating to any of the other grounds, and there are no provisions for their additional protection, either.

4.7 Exceptions related to discrimination on the ground of age

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?
b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?
c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?

There is no special test in Latvian legislation for justification of age-based discrimination; the general " objective and substantiated precondition" test contained in Art.29(2) of the Labour Law applies also to age-based differential treatment in employment relationships covered by this law. Art.37 of the Labour Law sets out restrictions on work of persons under age, while Art.32(3) prohibits the indication 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 no interpretation of the "objective and substantiated precondition" test by the courts.
Age-based restrictions apply to access to certain professions – military or police service (age between 18-35 years; see under 4.3 above), membership in the judiciary (30 years), membership of the bar (25 years). On retirement ages and the Constitutional court cases where age limits were challenged, see under 4.7.4 below and 3.2.1 above.
Similarly, age restrictions apply in certain training programs, for example, military or police training programs, age restrictions apply. However, generally, there is no evidence of discrimination in access to training.
The law does not expressly deal with the issue of non-discrimination in the context of occupational pensions; to the extent that it can be argued to come under the general prohibition of differential treatment contained in the Labour Law no special provision for occupation pension schemes has been made.

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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

There are no special conditions for integration of such persons or their protection, with the exception provided for in Art.108 of the Labour Law: in cases of redundancies one of the groups of persons with priority to remain employed is persons who raise child up till the age of 14, a disabled child up till the age of 16, or who have at least 2 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

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

In certain training programs, for example, military or police training programs, age restrictions apply. The Military service law[62] provides for age limits of 27, 35 or 40 years depending on the seniority for admission to military education establishments; the maximum age limits for professional military service ranges from 36 to 60 years depending on seniority in active service and from 55 to 65 in reserve (limited extensions are possible), whereas the person can be admitted to professional military service if it will be able to serve at least 5 years before reaching the prescribed age limit. The Law on Police sets the age between 18 and 35 for access to the service in the police. Similarly, an age restriction of 35 years applies to access to service in the police. State civil service law does not provide for minimum age, yet contains an equivalent higher education requirement; the maximums age for civil service is the retirement age; see under 4.7.4. Retirement below. The Law on judiciary sets the minimal age limit of 30 years, while the Law on the bar sets the minimum age of 25 years for access to the bar. However, generally, there is no indication of age limitations in access to training, and there has been no discussion as to whether these age limit comply with the requirements of the Directive.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

b) Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?

d) Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?

[62] Militarā dienesta likums, adopted on 30.05.2002.

For these above questions, please indicate whether the ages are different for women and men.'

According to Art.11 of the Law on State Pensions[63] the right to a state pension arises when the person has reached 62 years of age; this is the age to be reached at the end of the pension reform, and has been accomplished in 2003 for men and will be reached in 2008 for women, while for the time being it is 61 years for women; prior to the reform, the retirement age was 55 years for women and 60 years for men. 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 arises earlier. However, it is not mandatory that the person who has reached the state pension age actually receive the pension; yet there is no good reason for not doing it, since the person can both work and receive a full amount of the state pension[64].

While there are generally no mandatory retirement ages requiring a person to retire upon reaching the pension age, access to certain positions, for example, the civil service, is conditioned on the person not having reached the pension age; upon reaching the pension age the person has to retire from the civil service unless the superior decides otherwise. This provision of the State Civil Service Law was challenged in the Constitutional court which, however, held that it did not violate the prohibition of differential treatment[65]. Prior to this case the age limit of 65 for occupying the post of university professor or associated professor, as well as highest administrative positions in universities and scientific institutions was invalidated as discriminatory by the 20 May 2003 Constitutional Court decision[66], although even in this case the prohibition to occupy the posts concerned was not absolute: the Law on Higher Educational Establishments provided for the possibility to continue 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.
A similar provision establishing the retirement age of 50 years which can be extended till 60 years is contained in Art. 35 of the Law on fire safety and fire fighting.

The Labour Law, however, 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 exactly those persons who have reached retirement age would be the first targets for dismissal based on considerations of social justice.
Occupational pension schemes is a new phenomenon in Latvia, and a very limited one; hence occupational pension schemes has never been an issue and there is also no information available on their arrangements.
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 to any retirement age - or an age when the termination of the employment contract becomes possible - set by contract or collective bargaining, or unilaterally by the employer, the guarantee contained in Art.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, erode the legal status of an employee, are void and

63 Likums "Par valsts pensijām", adopted 02.11.1995
64 Prior to the judgment of the Constitutional Court invalidating the relevant norm the person who continued to work could only receive part (around 100 Euros at that time) of her pension.
65 The December 18 2003 decision in the case No. 2003-12-01 , available electronically at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/12-01(03).htm
66 The 20 May 2003 decision in the case No. 2002-21-01, available electronically at http://www.satv.tiesa.gov.lv/Eng/Spriedumi/21-01(02).htm

can be declared such by courts of general jurisdiction" would apply; there has been no discussion on the possible impact of the Directive or the *Mangold* decision on application of this clause.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?
b) If national law provides compensation for redundancy, is this affected by the age of the worker?

The Labour Law does not provide for order of preference for selection for redundancy, and Art.108 of this law only sets the criteria for priority of the persons to stay in the employment in cases of selection for redundancy, thus tipping the balance in their favour. These criteria in cases when the performance results and qualifications do not substantially differ include seniority (employees who have worked for the relevant employer for a longer time – so in fact seniority is an asset) and employees for whom less than five years remain until reaching the age of retirement; all in all there are ten such grounds for priority and none of them has automatic priority over the others. The compensation for redundancy ranges from 1 to 4 months salary depending on the person's length of employment by the particular employer, so in the context of compensation seniority, but not the age matters.

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)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

There are no such exceptions in the law.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

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

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

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic.
b) Do measures of positive action exist in your country? Which are the most important?
Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma.

Positive action so far has largely been foreign to the Latvian legal system, and there are no specific measures aimed at ensuring or promoting full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age or sexual orientation. There is no information 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. There is one exception – a reduction of social tax if employing disabled persons – while normally the total tax payable is 35.09% from which the employer pays 26.09%, if the employee has 1st or 2nd degree disability[67], the total tax payable is 28,56 %, with the employer paying 21.24%. The difference thus is minor – around 5% and thus cannot be regarded as a significant incentive. Additionally, there is a pilot project run by the Employment State Service aimed at the creation of subsidised work placements for persons with disabilities – the expenses related to the adjustment of the work place up to 200 Lats (around 300 Euros) or 500 Lats (720 Euros) are covered, as well as for the first 12 months the minimal salary to the person employed, and for the next 12 months – 75% of the minimal salary; in 2005 358 such subsidized work places were created, and from 2003 when the project begun the total amount of such workplaces has reached 1278.
There are no quotas for access of disabled persons to the labour market and no relevant case law.

6. REMEDIES AND ENFORCEMENT

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

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?
b) Are these binding or non-binding?
c) Can a person bring a case after the employment relationship has ended?

In relation to each, please note whether there are different procedures for employment in the private and public sectors.
In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

Currently 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. The institutions to which such persons can turn are:

1) In case 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.

Art.76(2) of the Administrative Procedure Law that entered into force on 1 February 2004 permits to challenge an administrative act or factual action – which would also include discriminatory acts and behaviour in civil service relationships in the public sector - before a higher institution, and then (or, if such higher institution does not exist or it fails to notify the applicant of the outcome of his or her submission, directly) in the administrative court.
The Administrative Procedure Law contains several novelties designed to make the challenge easier for the individual and speed up the procedure while at the same time minimizing the

[67] The term "disability" in Latvian assumes a serious impairment, which depending on the gravity of the impairment is divided into 3 possible degrees of disability in accordance with the provisions of Law On Medical and Social Protection of Disabled Persons; a medical commission upon evaluating the person's condition decides on which degree of disability has to be recognized to the person.

representation costs – the principle of objective investigation by the court an the possibility to opt for written procedure if both parties agree which is still used rather reluctantly. Currently all three instances of administrative courts are located in Riga – thus in some cases written procedure is the only realistically feasible option, yet it is hoped that eventually more administrative courts will be created in other regions.
According to Art.38 of this law any person, not only a lawyer may be a representative in administrative procedure, and pursuant to the law on state-sponsored legal aid the individuals can apply for such aid in administrative cases.
Article 16 of the Law on the Public Prosecutor's Office provides for the prosecutor's involvement in the protection of rights and lawful interests of disabled, under-aged and other such 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 the opening of a criminal case, but may also lead to initiating a civil case. There is no data available as to whether there have been complaints about any kind of discrimination amongst such complaints, and, in any case, there have been no prosecutions based on the discrimination aspect of Art.78 or Art.150 of the Criminal Law.
Since the 15.12.2005 amendments to the National Human Rights Office law also the Office may in cases of discrimination after the examination of the complaint, with the agreement of the person concerned submit an application to the institution that has discriminated .

2) Courts of general jurisdiction

The provision of Article 92 of the Constitution stating that 'Everyone has the right to defend their rights and lawful interests in an impartial court has 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. Administrative cases concerning acts of institutions of state authority and state officials, including the civil service relationships are now heard by administrative courts. The procedure for adjudicating non-administrative cases, which also includes cases arising from labour relationships in the private sector and also in the public sector outside the civil service is determined by the Civil Procedure Law, and the Labour law provides, in several articles addressing different stages of employment relationship, for a one month time limit for bringing the case to the court in cases of discrimination – thus being an exception from the general 2 year time limit for employment-related claims. The general time limit prescribed by Art. 1895 of the Civil Law for cases when no other time limit applies is 10 years. Importantly, there are no provisions excluding the bringing of a case after the end of the employment relationship as long as the time limits are complied with.
The payment of court expenses, as well as the state levy is waived in cases based on an employment relationship and when the case has been initiated by the prosecutor (Article 43(1), paras.1 and 5 of the Civil Procedure Law, Article 218 of the Labour Law). However, this does not include lawyers' fees, yet since the adoption of the law on legal aid provides for by the state[68] in 2005 a mechanism has been set up whereby persons in need can be granted free legal assistance in court proceedings; it remains to be seen whether the funding allocated to this mechanism will be sufficient and how it will work in practice.
It has to be noted separately that access to legal aid has already been made easier after the judgement of the Constitutional Court which invalidated he provision of the Civil procedure law adopted in 2002 providing for representation of individuals, if not by close relatives, then only by sworn advocates[69]; this was held -in absence of the state system of legal aid at that point – to be contrary to the right to fair trial, and in another case the provision of the same law providing for compulsory representation by a lawyer at the cassation instance was

[68] Valsts nodrošinātās juridiskās palīdzības likums, adopted 17.03.2005, in force since 01.06.2005
[69] The judgment adopted on 6 November 2003 in case 2003-10-01, the English translation not available

likewise invalidated. After the invalidation of these norms the Parliament amended the law so that now the person can be represented by anybody, not just sworn advocates.
Also, since the 15.12.2005 amendments to the National Human Rights Office law the Office may (but is not obliged to) after the examination of the complaint, with the agreement of the person concerned, bring an application to the court in civil or administrative cases where the essence of the case is related to the violation of the prohibition of differential treatment; this possibility has been used so far once- in the Kozlovska case, see under 03. Case law above..

On discrimination cases decided by the Latvian courts, see under 0.3. – Case law.

3) State Labour Inspectorate

The State Labour Inspectorate was established by the Law reinstating the force of the 28th of April, 1939 statute "On Labour Inspection"[70], and its work is currently regulated by the new State Labour Inspectorate law[71]. 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; it can issue a warning or an instruction to the employer, inform the prosecutor's office and state and local government institutions about violations of law or apply administrative penalties of up to Lats 250 (approximately 400 Euros) for four administrative violations included in the Code of Administrative Offences. These include Article 41, which provides for a general liability for violations of legal acts regulating areas of labour relationships and labour protection. Theoretically, employers who discriminate against a person on the grounds of the person's race, ethnic origin, gender, age, disability or sexual orientation or religion or belief in refusing to conclude a labour contract, dismissing or during the term of the contract can be punished according to this article. However, there are no known cases, and apparently have been no complaints on discrimination in employment. However, it would be wrong to conclude from this that no discrimination ever occurs; rather, it can be presumed that the employees fear victimisation, as is shown by the fact that often the complaints are filed only after the particular employment relationship has ended.

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

4) The National Human Rights Office

The National Human Rights Office was established in 1995 and the Law on the National Human Rights Office was adopted on 5th December 1996. The NHRO is an independent ombudsman-like institution entrusted with the task of promoting the observance of human rights. Article 2 of the Law on the National Human Rights Office obliges it, inter alia, to examine and review complaints concerning human rights violations, and to react to such violations. The Office then has to attempt to resolve a conflict through conciliation. If this fails, the Office advises the parties of its opinion and proposals in the form of recommendations, and also presents its suggestions and recommendations for the prevention of human rights violations to the relevant institution or official; however, it cannot enforce its

70 Likums "Par Latvijas Republikas 1939. gada 28. aprīļa likuma «Par darba inspekciju» spēka atjaunošanu", adopted 04.05.1993

71 Valsts darba inspekcijas likums, adopted 13.12.2001

recommendations[72], nor can it apply any fines. However, the amendments adopted on 15.12.2005 conferred on the National Human Rights Office a new right after the examination of the complaint, with the agreement of the person concerned, to submit an application to the institution that has discriminated or to bring an application to the court in civil or administrative cases where the essence of the case is related to the violation of the prohibition of differential treatment, thus acting as the representative of the person; this possibility has been used once so far. The Office has also standing to initiate an abstract review case in the Constitutional Court concerning the conformity of legal norms with the norms of higher force and conformity of national legal norms with the international treaties binding on Latvia; it has no standing to bring concrete review cases where the rights of a concrete individual have been violated. The Office was supposed to be reorganized into an ombud institution by 01.01.2007, but the Parliament failed to appoint an ombudsman on time; however, it is expected that it will be done shortly. For more information, see under 7. Specialized bodies.

5) The Constitutional Court.

The Constitutional Court was established in 1996 and it examines compliance of laws and other legal norms with the Constitution, as well as other cases under its jurisdiction. It has the right to declare provisions found not 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 standing to apply to the Constitutional Court regarding compliance of laws and international treaties signed or ratified by Latvia with the Constitution, compliance of other legal acts with the legal norms (acts) of higher legal force, as well as compliance of national legal norms of Latvia with the international agreements entered into by Latvia: the President; the Saeima; not less than twenty 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 established by 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 his or her 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 6 months after the last decision in the case. There has been a limited, yet steadily growing number of judicial referrals so far, while constitutional complaints have been widely used. Although 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. In the first case, the provisions of the Law on Higher Educational Establishments and of the law on Scientific Activity setting the age limit of for occupying administrative positions in scientific institutions and higher educational establishments and higher academic positions were successfully challenged – although the court did not decide the case based on the discrimination argument - , while in the second one a similar challenge to age limit in civil service failed.

To conclude, while avenues - both ordinary and extraordinary - for enforcement of the principle of equal treatment do exist, until recently they have almost never been used. While in part this can be explained by fear of victimisation, it also indicates that action to disseminate information and awareness raising campaigns are needed.

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72 This was amply demonstrated by the 1997 case when a person had been forced to leave the police service because of sexual orientation. Although the national Human Rights Office was of the opinion that discrimination based on sexual orientation had occurred, the problem was not solved as the authorities involved disagreed with the findings of the Office.

Another separate 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; while those buildings that are built recently have to address the accessibility issue, the accessibility often stops at getting into the building, the relocation within the building remaining a problem. There are no rules on provision of information in Braille, and the only context within the sign language interpretation must be provided by the state is that of court proceedings.

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

Please list the ways in which associations may engage in judicial or other procedures
a) in support of a complainant
b) on behalf of one or more complaints (please indicate if class actions are possible)

After the 02.11.2006 amendments to the Law on Organizations and Foundations[73] in force from 23.11.2006 such organisations and foundations whose aims provided for in their regulations are the protection of human rights and individual rights can, with the agreement of the natural (legal persons are thus excluded) person affected 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. Prior to these amendments only the National Human Rights Office could bring a case on behalf of the victim since the end of 2005, and the rights of members only - leaving non-members without the protection - could be protected by trade unions pursuant to Art. 14 of the Law on Trade Unions and Art.8 of the Law On Labour disputes[74] and by voluntary organisations pursuant to Art. 10 of the Law on Organisations and Foundations, within the sphere of the aims and tasks of the voluntary organisation. While there is nothing to prevent engagement on behalf of several complaints, 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.

Looking at the procedural laws, while the Civil Procedure law still is silent on the issue – which does not affect the right provided for in other laws, the Administrative Procedure law provides that "in cases provided for in law, public legal entities and persons within the jurisdiction of private law have the right to submit a submission to an institution or an application to a court in order to defend the rights and legal interests of persons". Art.183 of the Administrative Procedure Law also introduces the institution of *amicus curiae* by providing that "an association of persons which is considered a recognised representative of interests in some sector and from which expert opinions may be expected may petition the court in writing to permit it to submit its opinion regarding facts or rights in the relevant sector".

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

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

[73] Biedrību un nodibinājumu likums, adopted 30.10.2003

[74] Darba strīdu likums, adopted 26.09.2002

Art.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 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 Art.(9) provides that its provisions (thus including those on the burden of proof) also apply to the prohibition of differential treatment based on race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances of an employee. Art.9 specifically applies the shared burden of proof to victimisation cases. So far the provision has been applied in three cases involving access to employment and coming under the terms of the Labour Law – in a gender-based discrimination case, race-based discrimination case and in a case on sexual orientation.

The Administrative Procedure Law in force since 1 February 2004 introduces the principle of "objective examination" in an administrative procedure. Art.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 Art.8(5) of the Race Directive and Art. 10(5) of the Employment Equality Directive. Additionally, Art.150 on the burden of proof provides that the institution has to prove the facts on which it relies as the grounds for its objections and the plaintiff, according to his or her possibilities, shall participate in collecting of evidence and that if the evidence submitted by parties is not sufficient the court shall collect it on its own initiative. However, no discrimination cases so far have been brought under this law. Note that this law also applies in 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 (Art.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 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. True, in one such case – the case on the requirement of the possession of a permanent residence permit for persons wishing to acquire the status of unemployed, the Constitutional court, while refusing to satisfy the complaint as it was, nevertheless distinguished a particular category of persons – spouses of Latvian citizens concerning whom it can be presumed that their presence in Latvia is not intended to be temporary - and found that such a requirement was unconstitutional in relation to them. It should be noted that the plaintiff had not referred separately to this category of persons, and it 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 on to do it, and certainly there is no provision on a shift in the burden of proof in cases alleging discrimination.

It can be concluded that the requirements of the three Directives concerning the burden of proof are currently complied with in relation to all grounds only in cases related to

employment relationship, including civil service relationships, and are generally complied with in administrative 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)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, or person that help the victim of discrimination to present a complaint)

Art.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 grounds of a person's complaints about the violation of the principle of equal treatment. After the 05.07.2004 amendments part 2 of this Article applies to victimization cases the sharing of burden of proof.
Similarly, Art.8(2) of the Labour Law protects against any unfavourable consequences resulting from a person's membership in a workers' organisation:
"Affiliation of an employee with the organisations referred to in Paragraph one of this Articles or the desire of an employee to join such organisations may not serve as a basis for refusal to enter into an employment contract, for termination of an employment contract or for otherwise restricting the rights of an employee".
Even if Art.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 Art.29(8) of the Labour Law establishing the right to compensation refers both to differential treatment and the creation of adverse consequences.
Protection against victimization is provided also in Art.34(2) of the Law on Social Security providing that providing that
"Infliction of a punishment on a person as well as creation directly or indirectly of adverse consequences to her because due to the fact that the person in a permissible manner avails herself of the protection of her rights in relation to the prohibition of differential treatment shall be prohibited".
It must be noted that both under the Labour Law and under the amendments to the Law on Social Security the wording of the victimization clause, by referring to "his (or her) rights" seems to confine the prohibition against discrimination to the actual victim of the discrimination, witnesses and other persons assisting the complainant thus being excluded.

Another instance of protection against victimisation is that provided by the Law on national Human Rights Office: Art.6 (3) of this law provides that "nobody may impede the Office in the exercise of its responsibilities or detain, influence or punish a person for cooperating with the Office (..)"; this, however, obviously applies only to cases that are being investigated by the National Human Rights Office. All other cases – with the exception of employment related victimisation coming under the terms of the Labour Law or Law on Social Security and victimisation resulting from complaint to the national Human Rights Office - remain unprotected, even if with regard to public sphere one could refer to Art.92 of the Constitution providing for "the right to commensurate compensation to persons whose rights have been infringed without a basis", and even in those protected cases it is covered only by the prohibition and not by accompanying sanctions.

There is one single court case on victimisation, which, however, was decided before the new Labour Law entered into force. The plaintiff, Dagmara Abramova worked as a printer in a printing house - a private company "Latgales druka". In 1998 she was dismissed in accordance with Article 33(1(2)) of the old Labour Code then in force as a result of the reduction of the number of employees. Later that year she was reinstated to her position by a decision of the court of first instance. On 11th January 1999 Abramova and "Latgales Druka" signed amendments to her labour contract and agreed on the monthly salary of LVL 60. On 3 August 1999 Abramova submitted a complaint to the court that she was misled when she signed the amendments, she asked for an annulment of the amendments as well as the recovery of the LVL 2791 that she would have received if the amendments had not been adopted. She claimed that she had been discriminated against due to her activities in the trade union. She also indicated that she was the only employee whose salary was not linked on the work performed and her salary remained constantly low. Abramova received a positive decision in the court of the first instance and her claim was rejected in the court of appeal. The Supreme Court found that the Latgale Regional Court did not consider certain evidence in the case as indicated by the applicant. The Supreme Court, inter alia, pointed out that the court of appeal had not considered whether the principle of equal treatment as provided for by Article 1 of the Labour Code had or had not been violated given that the system of payment was changed only in relation to Abramova. As a result the court sent the case back for reconsideration.[75] The Latgale Regional Court reaffirmed the findings of the court of first instance that "the discrimination here is against Abramova as an employee who defends her rights and it is the result of a conflict with the employer, even Abramova's representative pointed to this".[76] So the Latgale Regional Court found a violation of the principle of equality 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, whereas the Supreme Court urged the lower courts to examine whether discrimination on the grounds of gender had taken place. This shows that the Latvian courts might be prepared to view victimisation in the context of discrimination and perhaps could protect against victimisation even in the absence of a specific prohibition.

It can be concluded that prohibition on victimisation exists only in the framework of the employment relationships, inckuding civil service relationships, coming under the terms of the Labour Law or Law on Social Security and in relation to a complaint to the National Human Rights office. In no other field there is as of yet an express prohibition of victimisation.

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

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.
b) Is there any ceiling on the maximum amount of compensation that can be awarded?
c) Is there any information available concerning:
- the average amount of compensation available to victims

75 Case No.SKC-415, 27 September 2000

76 Case No.2-268 A, 1 November 2000

- the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?

Speaking specifically about anti-discrimination law, it is possible currently to speak of specific sanctions contained in Labour Law and in Criminal Law.

Art.78 of the Criminal Law provides:

"1) For a person who commits acts knowingly directed towards instigating national or racial hatred or enmity, or knowingly commits the restricting, directly or indirectly, of economic, political, or social rights of individuals or the creating, directly or indirectly, of privileges for individuals based on their racial or national origin, the applicable sentence is deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage.

2) For a person who commits the same acts, 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, the applicable sentence is deprivation of liberty for a term not exceeding ten years."

Art.150 of the Criminal Law provides:

"For a person who commits direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion, excepting activities in the institutions of a religious denomination, or commits violation of religious sensibilities of persons or incitement of hatred in connection with the attitudes of such persons towards religion or atheism, the applicable sentence is deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage."

Thus, it can be seen that Criminal Law provides protection only against discrimination on the basis of racial or national origin (in the field of economic, political, or social rights only, and only if intent to discriminate can be shown) and religion or belief. It must be remembered, moreover, that Art.150 has never been applied, while Art.78 has never been applied in the discrimination aspect; besides, as Art.78 requires showing of intent ("acts knowingly directed", Art.78 is very difficult to prove. This is confirmed by the fact that so far there has been only one conviction based on Art.78 and involving hate speech, not discrimination; there are no discrimination-related convictions. While theoretically, of course, this could mean that these sanctions are extremely dissuasive, one may, in fact, doubt instead whether they can be considered efficient. It must be noted, though, that draft amendments to the Criminal Law rewording both these articles and presumably facilitating the application of Criminal Law to cases of discrimination are currently pending in the Parliament.

Art.29(8) of the Labour Law as amended on 05.07.2004 provides:
"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 case of a dispute the amount of compensation for moral damages shall be determined by the court at its discretion".
Similarly, Art.92 if Administrative Procedure Code provides that "Everyone is entitled to claim compensation for financial loss or personal harm, including moral harm, which has been caused him or her by an administrative act or an actual action of an institution".

Generally, non-pecuniary damages is an field under development in the Latvian law; until the adoption of the Law on Reparation of Damages caused by the State Administrative Institutions[77] only case when Latvian law allows for non-pecuniary damages is that provided for in Arts. 2349, 2352., 2352.a and 2353 of Civil Law in cases of mutilation, unlawful deprivation of liberty, defamation[78] and rape, and it appears that only the defamation provision has been used so far to award moral damages. In the two defamation cases brought under Civil Law and related to defamation and incitement to racial discrimination the damages awarded where 3000 Lats (around 4800 Euros) to each of the plaintiffs in the Los Amigos case[79] out of 30.001 Lats claimed by them and a symbolic 30 (around 50 Euros) Lats in the Steel case[80] , while in the Smagars case[81] on disability-based discrimination in access to a public place the amount of damages awarded was 3000 Lats (around 4800 Euros) out of the 30.001 Lats claimed. In the three discrimination cases brought under the Labour Law the amounts awarded were 2000 Lats (around 3000 Euros) by the court of the first instance in the sexual orientation-based discrimination case[82], the claim later being rejected on appeal, which was the amount asked for by the plaintiff[83] and 1000 Lats (around 1500 Euros) in the gender discrimination case[84] also awarding the whole amount the plaintiff had asked for and also 1000 Lats (around 1500 Euros) race discrimination case[85] where the plaintiff had asked for 3000 Lats (around 4800 euros). It must be noted that in all four cases decided in 2005 and 2006 the courts, when deciding on the amount of damages to be awarded, specifically and expressly use the considerations of the need for the sanction to fulfil the preventive function.
There is no maximum amount for damages under the Civil Law, yet Art. 14 of the Law on Reparation of Damages caused by the State Administrative Institutions sets the maximal amount of non-pecuniary damages for personal harm at 5000 Lats (around 8000 Euros) or 7000 Lats (around 10,000 Euros) in cases of grave personal harm, and 20.000 Lats (around 24.000 Euros) if harm has been caused to life or grave harm has been caused to health; the maximum amount or damages for moral harm is set at 3000 Lats (around 4800 Euros) or 5000 Lats (around 8000 Euros) in cases of grave moral harm and 20.000 Lats (around 24.000 Euros) 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 the state institutions in final instance the courts would be ready to award both the damages for personal harm and moral harm; the definition of personal harm and moral harm in the law permits the cases of discrimination to come under the terms of both of them, and the law itself permits applying for several kinds of damages at the same time. It has to be noted that the Latvian law does not know punitive damages.

Other non - discrimination specific sanctions can be found in the Administrative Offences Code[86]: its Art.41 provides that an employer can be find up to 250 Lats (ca. 400 Euros) for violations of employment legislation, however, there are no known instances of the application of this provision in the context of discrimination. Another provision that makes it

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[77] Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums, adopted 02.06.2005 and entering into force on 01.02.2006.

[78] In the Muhina case discussed above the court was not prepared to award moral damages to Muhina based on Art.2352.a (defamation), as the provisions of the Labor Code then in force, in the opinion of the Senate, were *lex specialis* in the field of equal treatment in labor relationships and the refusal to employ Muhina could not be regarded as injury to her honor or dignity, as Art.2352.a only applies to cases where untrue information has been disseminated.

[79] The 09.04.2003 Supreme court judgement in the case PAC-244.

[80] The 08.09.2003 Latgale district court of Riga judgment in case C29240503., see under 0.3 Case law above

[81] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law above

[82] The 25.05.2005 Ziemeļu district court judgment in case C32242904047505, see under 0.3 Case law above

[83] The court rejected the claim for pecuniary damages, though, as it considered the amount of damages was not proved as it would have been difficult for how long would the employment have lasted had the plaintiff been employed.

[84] The 05.07.2005 Cesis region court judgment in case C11019405, see under 0.3 Case law above

[85] The 25.05.2006 Jelgava court judgment in case No.15066406, see under 0.3 Case law above

[86] Administratīvo pārkāpumu kodekss, adopted 07.12.1984

possible to address discrimination is Art.137 providing that a taxi driver refusing to provide service to a passenger (which thus would cover cases of discrimination, even if it was not the aim of this provision) can be fined from 25 to 250 Lati (40-400 Euros); Art.201-51 imposes a fine on a school principal if the rules on accepting and expelling of pupils are not complied with – with certain imagination this too could be used against discriminatory practices. The fine in this case is 50 to 100 Lats (80 to 160 Euros). This exhausts the actions for which administrative punishments can be applied, although, especially given the high threshold set by Art.78 of the Criminal Law, it certainly would be useful to provide for at least an administrative punishment for cases when no intent required by Art.78 exists. This would also be in line with Latvia's obligations under Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination to which Latvia is a state party, and currently amendments to the Administrative Offences Code providing for punishment in cases of discrimination are pending in the Parliament.

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 individual 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.

Additionally, in the case of discrimination, currently individuals may file a complaint to the following: the State Labour Inspectorate (in relation to employment relationships), where the outcome of the proceedings can be a halt to the discrimination and the restoration of equality; the National Human Rights Office (in relation to discrimination by representatives of public authorities in all areas) where the outcome can be a friendly settlement; or the court (in relation to discrimination in all spheres) or administrative court. Individuals may seek a halt to the discriminatory practices before the court (of either a representative of the public authorities or a private person), restoration of violated rights or status and compensation for damages if one can prove their existence.
All in all, the addition of express reference to moral damages in the Labour Law and the adoption of the Law on Reparation of Damages caused by the State Administrative Institutions is certainly a welcome recent development, however, as not all spheres required by the Directives are covered by Latvian legislation there are inevitably gaps also relating to sanctions in these uncovered fields – although the latter law admittedly would cover most of the public sphere. A number of draft amendments to laws, the amendments to Civil Law particularly standing out as having the widest application and introducing the moral damages in relation to differential treatment and adverse consequences-based claims are intended to take care of the situation. Additionally, amendments introducing administrative responsibility for discriminatory practices not covered by the existing provisions and not amounting to violations of the Criminal Law, and amendments to the Criminal Law itself extending the protection against discrimination to the grounds other than the two grounds currently covered are pending in the Parliament.

7. SPECIALISED BODIES

Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin?
b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.
c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.
d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?
e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?
f) Is the work undertaken independently?

By the amendments to the Law on the National Human Rights Office adopted 15.12.2005 the national Human Rights Office (NHRO) has been officially designated the specialised body for the promotion of equal treatment – without listing the grounds and thus not limited to racial or ethnic origin as the only ground of discrimination; even though it is not stated expressly in the law, it can deal with cases of discrimination emanating both form the public and the private sectors. Until this amendment the national Human Rights Office did not have a special mandate in the field of non-discrimination, but a wider one relating to human rights in general. NHRO is an independent ombudsman-like institution entrusted with the task of promoting the observance of human rights. The Director of the Office is appointed for a 4 years term by the parliament upon the proposal of the Cabinet of Ministers, and the Office is funded from the state budget.

According to Article 2 of the Law on the National Human Rights Office, the NHRO has the following functions: (1) to provide information to and raise awareness, of the public on human rights; (2) to inquire into any individual complaint related to human rights violation; (3) to take immediate measures in cases of human rights violations and to identify situations causing human rights violations on its own initiative; (4) to monitor human rights situation in the country, to prepare and promote programmes for the promotion of observance of human rights; (5) to carry out an analysis of the legislation; and (6) to report annually to the Parliament. The recent amendments referred to confer on the National Human Rights Office the new right after the examination of the complaint, with the agreement of the person concerned, to submit an application to the institution that has discriminated or to bring an application to the court in civil or administrative cases where the essence of the case is related to the violation of the prohibition of differential treatment. The Parliament may have an influence upon the independence of the NHRO in two ways - when approving or dismissing the Director and when adopting the budget. Currently the NHRO is headed by an acting director; after the expiry of the mandate of the previous one in June 2005 an open competition was announced for the position and a selection committee consisting of both politicians and experts created under the auspices of the Ministry of Justice; the committee was supposed to

propose to the Cabinet of Ministers – who was further supposed to submit the proposal to the Parliament – the candidate receiving most votes, yet in disregard of the regulation regulating its work the committee came up with the names of two candidates, the most successful candidate being unacceptable for the governing coalition for political reason. The candidate put to vote in the Parliament did not receive the majority of voted and the NHRO continues with an acting director only and probably will so until the reform of the NHRO transforming it into an ombud institution. NHRO carries out its functions, including conducting the reports and surveys independently. Thus, it can concluded that the functions of the NHRO correspond to those required by Art.13 of the Race Equality Directive and include dealing with discrimination on any grounds; in practice the main focus of the work of the NHRO has been more in the field of gender discrimination.

The NHRO is entitled to review individual complaints, to acquire the necessary information and to strive for a friendly settlement. It can make recommendations, but it does not have power to enforce its recommendations. Neither can it levy any fines. Yet, as already noted, since 12.01.2006 when the relevant amendments entered into force it has a new right, with the agreement of the person concerned, to submit an application to the institution that has discriminated or to bring an application to the court in civil or administrative cases, and has already brought and won one such case The power of the NHRO to submit a constitutional complaint to the Constitutional Court must be noted; after the 2002 amendments to the Constitutional Court law the NHRO has brought a number of complaints and already won several of them.
According to the available data concerning the 3rd d quarter of 2006, the possibility to consult the Office has been used also in discrimination cases: 63 oral consultations have been provided, and 39 written complaints received, most of them about gender-based discrimination, but also on discrimination on the ground of race. In 2005 the Office also produced and disseminated free of charge an informative booklet on prohibition of differential treatment.

Insufficient funding remains a problem, though. Also, a law[87] was adopted on 06.04.2006 providing for the creation of an institute of an ombudsman instead of the NHRO and on its basis; in comparison with the NHRO, in the work of the new institution there will be more emphasis on ensuring the observation of the principle of good administration and on the possibility for it to act on its own initiative, and the funding is expected to be much more appropriate. The law entered into force on 01.01.2007, but due to the failure of the Parliament to appoint the ombudsman the reform has not been completed and the NHRO continues *de facto* in the process of reorganisation. A new vote on the nomination of the ombudsman is expected by the end of February.

8. IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State
a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)
b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and

[87] Tiesībsarga biroja likums

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The National human rights office and the Secretariat for the minister with special assignments for the integration of society are the bodies that have taken measures specifically directed at disseminating information on anti-discrimination legislation to the public at large or to the representatives of the authorities; the National human rights office has produced and disseminated an information booklet specifically dealing with differential treatment and avenues of redress. The Secretariat for the minister with special assignments for the integration of society in 2006 conducted a number of activities, including organising the week against racisms, participated in organising a conference on islamophobia and anti-Semitism, held a seminar on "Different sexuality" and submitted the proposal to the Cabinet of Ministers to include in the National program on the promotion of tolerance sexual minorities as one of the target groups. While the State Labour Inspectorate has conducted informative seminars on the new Labour Law, they have not concentrated on the issues of non-discrimination. Similarly, the Ministry of Welfare has published an Employer's Manual which among other topics covers the prohibition of differential treatment to which 3 pages are devoted. Although it is possible that some NGOs might fill in this gap – for example, the Latvian Association of Personnel Management has conducted a survey among its members and published a manual on anti-discrimination issues – there is a clear need for governmental action in the field of training and dissemination of information, both as regards public the at large and in particular the public authorities charged with the application of legal norms.

Social dialogue in Latvia is conducted within the framework of the National Tripartite Co-operation Council (further - "the NTCC"). The latest Regulations on the National Tripartite Co-operation Council were adopted by a Resolution of the President of Ministers on 30th October 1998. 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 Independent Trade Unions. The NTCC examines drafts of the framework documents, programmes, laws and other legal acts and submits its proposals to the relevant ministries in relation to wide range of social and economic issues. Four sub-councils have been established on the following issues: social insurance, professional education and employment, health care, labour issues. The latter - Labour Tripartite Co-operation Sub-Council started its work on 28th September 2000 and it deals with issues of employment law, labour protection and equal opportunities. If one of the parties to the Sub-Council disagrees with the relevant provisions, the decision must by taken by the NTCC.
It can be said that Latvia is still in the process of establishing a habit of discussing equality related issues amongst the representatives of trade unions, employers and the Government. Issues of racial and ethnic 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. Issues of gender related discrimination have been examined more closely. Thus, the social dialogue concerning discrimination related issues is at a rather initial stage, and so is the dialogue with NGOs. There are two exceptions related to gender-based discrimination and disability-based discrimination where the 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 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 1997 the National Council of 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.
With the exception of these two institutions under the aegis of the Ministry of Welfare, which generally stands out as far as the cooperation with NGOs is concerned, as well as the Secretariat for the minister with special assignments for the integration of society until recently there was no evidence of the government taking any steps to promote serious dialogue with NGOs. However, the situation is changing slowly, as in.2005 the Prime Minister and NGO representatives signed a memorandum on the cooperation of the Cabinet of Ministers and NGOs; while the memorandum does not specifically address the issue of discrimination, it clearly recognizes the importance of NGO participation in decision-making process and aims at ensuring such participation, as well as its effectiveness.

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

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

b) Are any laws, regulations or rules contrary to the principle of equality still in force?

There is no specific regulation in national law establishing a mechanism 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 norm itself that is discriminatory, the person who has suffered from discrimination on the basis of this norm can, by first initiating procedure in the courts of general jurisdiction, submit a constitutional complaint to the Constitutional Court which may declare null and void legal norms that are contrary to the norms of a higher legal force up to the Constitution; this, however, is a cumbersome procedure requiring the prior exhaustion of all other remedies, although the alternative would be turning to the national Human Rights Office asking the Office to bring the complaint. However, the Office can only bring abstract review case, 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 case of a concrete review as a result of 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 incompatible with the principle of equal treatment be abolished – or, more exactly, recognized by the courts as being void. Art.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 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 means 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, yet 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.

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 such apparent cases; rather, more often the laws would not be discriminatory in themselves, but would just fail to provide adequate protection against discrimination. The principle of lex posteriori derogat legi priori (more recent rules prevail over less recent rules) could be easily used to held invalid the older incompatible norms, while it might be more difficult with the principle of "lex specialis derogat legi generali (special rules prevail over general rules) as it would have to be determines whether , for example, the more specific law in particular field is the special norm, or the character of the special norm would be recognized to the norm in the field ot non-discrimination. However, in practice it should not be a problem, given also the constitutional prohibition of discrimination.

9. OVERVIEW

The year 2006 was remarkable in that against all odds and despite the negative publicity concerning the issue of sexual orientation and the pre-election climate the amendments to the Labour Law were adopted providing an express reference to sexual orientation as a prohibited ground for differential treatment. Among the important developments the amendment to the State civil service law applying the provisions of the Labour Law in the field of protection against differential treatment to the civil service relationships and thus remedying an important gap in the anti-discrimination legislation have to be mentioned, as well as the introduction of possibility for associations to engage in proceedings on behalf of the victim. As far as the case law is concerned the 2006 brought the first case on racial discrimination and in the second instance reversed the favourable judgment in the sexual orientation discrimination case.

Among the failures the lack of interest of the governing coalition in ensuring the timely appointment of the ombudsman and the transformation of the National human rights office into the ombudsman institution has to be noted; deeply deplorable are the events around the banned Gay Pride parade, the court this year upholding the ban based on public order threats contained in classified security information which was not made public, where the police failed to provide adequate protection to the participants of the “Friendship days” against the counter demonstrators pelting them with excrements and eggs.

10. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

The Ministry of Welfare is responsible for issues relating to the discrimination in the field of employment relationships, whereas for everything else the Secretariat of the minister for special assignments for societal integration affairs is responsible.

Annex

1. Table of key national anti-discrimination legislation

2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Latvia Date: 08-01-07

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services	e.g. prohibition of direct and indirect discrimination or creation of a specialised body
Labour Law	01.06.2002, amendments adding sexual orientation as a protected ground adopted on 21.09.2006	Race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation "or other circumstances"	Civil	Employment relationships proper (civil service and specialized civil service excepted)	Prohibition of discrimination in relation to all aspects of employment relationships; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment

Law on Social Security	07.09.1995, amendments containing the equality guarantee in force from 03.01.2006	Race, skin colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances	Administrative	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	Prohibition of differential treatment in provision of social services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment
State Civil Service Law	Adopted 07.09.2000, amendments in force from 10.11.2006	Grounds not specified	Administrative	Civil service relationships	Application of Labour Law provisions on protection against discrimination to civil service relationships
Law on the National human rights office	Law in force from 31.12.1996, amendments in force from 12.01.2006	Grounds not specified			Designation of NHRO as he specialized body, right of the NHRO to institute court or other proceedings on behalf of the victim of discrimination
Law on Organisations and Foundations	Amendments in force from 23.11.2006	Grounds not specified			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

Name of country: Latvia Date: 08-01-07

Instrument	Signed (yes/no)	Ratified (yes/no)	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)	yes	yes	no	yes	yes
Protocol 12, ECHR	yes	no			
Revised European Social Charter	no	no		Ratified collective complaints protocol?	
International Covenant on Civil and Political Rights	yes	yes	no	yes	yes
Framework Convention for the Protection of National Minorities	yes	yes	No, but declaration on definition of minority		yes
International Convention on Economic, Social and Cultural Rights	yes	yes	no		yes
Convention on the Elimination of All Forms of Racial Discrimination	yes	yes	no	no	yes
Convention on the Elimination of Discrimination Against Women	yes	yes	no	no	yes
ILO Convention No. 111 on Discrimination	yes	yes	no		yes
Convention on the Rights of the Child	yes	yes	no		yes