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including summary



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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Latvia

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Reporting period 1 January 2020 – 31 December 2020

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CONTENTS

EXECUTIVE SUMMARY	5
INTRODUCTION	13
1 GENERAL LEGAL FRAMEWORK	16
2 THE DEFINITION OF DISCRIMINATION	19
2.1 Grounds of unlawful discrimination explicitly covered	19
2.1.1 Definition of the grounds of unlawful discrimination within the directives	20
2.1.2 Multiple discrimination	22
2.1.3 Assumed and associated discrimination	22
2.2 Direct discrimination (Article 2(2)(a))	23
2.3 Indirect discrimination (Article 2(2)(b))	24
2.3.1 Statistical evidence	25
2.4 Harassment (Article 2(3))	27
2.5 Instructions to discriminate (Article 2(4))	28
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	29
3 PERSONAL AND MATERIAL SCOPE	33
3.1 Personal scope	33
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)	33
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)	33
3.1.3 Private and public sector including public bodies (Article 3(1))	34
3.2 Material scope	35
3.2.1 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))	35
3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	35
3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	36
3.2.4 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))	36
3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	37
3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)	38
3.2.7 Education (Article 3(1)(g) Directive 2000/43)	38
3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)	43
3.2.9 Housing (Article 3(1)(h) Directive 2000/43)	45
4 EXCEPTIONS	46
4.1 Genuine and determining occupational requirements (Article 4)	46
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	46
4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)	46
4.4 Nationality discrimination (Article 3(2))	47
4.5 Health and safety (Article 7(2) Directive 2000/78)	49
4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	49
4.6.1 Direct discrimination	49
4.6.2 Special conditions for younger or older workers	50

4.6.3	Minimum and maximum age requirements	50
4.6.4	Retirement.....	51
4.6.5	Redundancy	53
4.7	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5) Directive 2000/78)	54
4.8	Any other exceptions.....	54
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78).....	55
6	REMEDIES AND ENFORCEMENT.....	56
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	56
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	61
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)..	63
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	65
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	66
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43).....	71
8	IMPLEMENTATION ISSUES.....	83
8.1	Dissemination of information, dialogue with NGOs and between social partners	83
8.2	Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78).....	85
9	COORDINATION AT NATIONAL LEVEL.....	87
10	CURRENT BEST PRACTICES.....	90
11	SENSITIVE OR CONTROVERSIAL ISSUES	91
11.1	Potential breaches of the directives at the national level	91
11.2	Other issues of concern	91
12	LATEST DEVELOPMENTS IN 2020.....	92
12.1	Legislative amendments	92
12.2	Case law.....	92
	ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION	95
	ANNEX 2: INTERNATIONAL INSTRUMENTS.....	97

EXECUTIVE SUMMARY

1. Introduction

Latvia is a multi-ethnic country, although the proportion of the different ethnic groups among its population has varied. Ethnic origin is recorded in the population register. It is based on the ethnicity of either of a person's parents and can be changed upon reaching the age of majority by choosing the ethnicity of any grandparents. The entry of ethnicity in passports is optional. In 2011, of a population of 2 067 887, 62.1 % were Latvians, 26.9 % Russians, 3.3 % Belarusians, 2.2 % Ukrainians, 2.2 % Poles, 1.2 % Lithuanians, 0.3 % Jewish, 0.3 % Roma, 0.1 % Estonians, 0.1 % Germans, and 1.3 % others.¹

Latvian citizens number 1 762 123 or 85.16 % of the population; of these, ethnic Latvians constitute 71.1 %, while the remaining citizens are representatives of different minorities, and 10.10 % of them (209 007 inhabitants) are non-citizens,² of which ethnic Russians form the largest group. Therefore, issues relating to non-citizens are often treated as mainly concerning Russians or Russian-speakers, and the rights of citizens and non-citizens, as well as linguistic issues, remain sensitive. There are over 73 000 third-country nationals, of which the largest group are citizens of Russia (52 271), followed by Ukrainians (9 357) and Belarusians (3 922).³

The Roma population in Latvia is relatively small, at 6 842 (2020),⁴ although it is higher according to data from Roma associations.⁵ In a 2015 survey, 82.3 % of Roma alleged that they or their relatives had been refused work due to their ethnic origin.⁶ As of 2016, there are no longer separate Roma classes in Latvia. The share of Roma children attending special schools – 34 % in 2016/2017 – was disproportionally high,⁷ but has decreased in 2020/2021 through mandatory mainstreaming of children with some disorders (behavioural, language, etc.) in general education schools.

There have been no recent studies on age discrimination. Nevertheless, according to surveys, age discrimination (i.e. discrimination against those over 55), particularly in employment, is perceived as the most frequent type of discrimination.⁸ The difficulties of disabled persons in finding employment are also common knowledge, although there are no sufficiently representative studies to confirm this.

¹ 2011 Population Census.

² Non-citizens are a special category of people – former USSR citizens who were resident in Latvia on 01.07.1991 and have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons. Office of Citizenship and Migration Affairs, Statistics of the Population Register (01.01.2021), Latvian population breakdown by nationality, available at: <https://www.pmlp.gov.lv/lv/media/2889/download>.

³ Office of Citizenship and Migration Affairs, Statistics of the Population Register.

⁴ Office of Citizenship and Migration Affairs, Statistics of the Population Register (01.01.2021), Latvian population breakdown by nationality and ethnic affiliation, www.pmlp.gov.lv/lv/media/2885/download.

⁵ Latvijas Fakti Market and Social Research Centre (2015), *Roma in Latvia (Romi Latvijā)*, p 44. The research was conducted under a project entitled 'Different people. Diverse experience. One Latvia II', No. JUST/2013/PROG/AG/4978/AD, p. 5, http://ec.europa.eu/justice/newsroom/files/summaries_selected_2013_ag_prog_ad_en.pdf.

⁶ Tīrgus un sociālo pētījumu centrs "Latvijas Fakti" (2015), *Romi Latvijā. Pētījuma ziņojums 2015*, p. 61, available in Latvian at: https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Papildu/romi_latvija_petijums_LV.pdf.

⁷ Ministry of Culture (2014), *Informative Report on the Implementation of Roma Integration Policy Measures (Informatīvais ziņojums par romu integrācijas politikas pasākumu īstenošanu Latvijā)*, p. 12, https://www.km.gov.lv/uploads/ckeditor/files/Sabiedribas_integracija/Romi/Dokumenti/Info-zinojumi2014_230315.pdf.

European Commission (2015), *Special Eurobarometer 437: Discrimination in the EU in 2015*; Ombudsman (Tiesībsargs) (2020), *Diskriminācija izplatība nodarbinātības vidē Latvijā. Salīdzinošais pētījums, 2011. un 2020.gadā*, available in Latvian at: http://www.tiesibsargs.lv/uploads/content/diskriminacija_darba_vidē_2020_petijuma_rezultati_159437419_3.pdf. Survey methodology: CAWI (online survey), employees over 15 years of age, sample of 1 018 respondents, fieldwork conducted 18-30 March 2020 by Norstat Latvia, Dentsu Data Labs.

There have been no recent relevant studies or reports regarding ethnic minorities or discrimination on the ground of racial or ethnic origin, except for a report in 2010: 'Ethnic Minorities in the Latvian Labour Market, 1997–2009: Outcomes, Integration Drivers and Barriers'.⁹

According to Eurobarometer 493 (2019), 49 % of Latvians (compared with 42 % in 2015) agree that LGB people should have the same rights as heterosexual people, while 43 % disagree and 8 % do not know. Only 25 % (compared with 22 % in 2015) agree that there is nothing wrong in a sexual relationship between two persons of the same sex, while 68 % disagree, and 24 % (compared with 19 % in 2019) agree that same-sex marriage should be allowed throughout Europe, while 70 % disagree. 30 % of respondents think that discrimination on grounds of sexual orientation is widespread, while 43 % think it is rare.¹⁰

The only consultations with NGOs that take place on a regular basis are those addressing issues of disability and gender. Although a framework for dialogue with social partners does exist, the issue of discrimination has still only been addressed to a limited extent, and mostly on gender issues. There is very little public debate, and it has largely concentrated on issues concerning Russian-speakers and related issues, as well as in connection with Gay Pride events and, more recently, same-sex partnerships.

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

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

2. Main legislation

The cornerstone of the prohibition of discrimination is Article 91 of the Latvian Constitution,¹¹ which provides, *inter alia*, that human rights shall be observed without discrimination of any kind. Thus, the Constitution outlaws all discrimination, but does not expressly state the grounds on which discrimination is prohibited. The Constitution is regarded as having direct effect, that is, it directly binds all public bodies, but it does not have horizontal effect. This means that, while discrimination is illegal in the public sector even without any further laws, which are thus only needed to provide for sanctions and the enforcement of the principle of non-discrimination, the introduction of special laws to outlaw discrimination in the private sector is essential. The same applies to international treaties: the treaties binding in Latvia only bind public bodies.

Apart from Protocol No. 12 to the European Convention on Human Rights,¹² which the country has signed but not yet ratified, Latvia is a party to most of the important international agreements that are relevant for counteracting discrimination, such as the International Covenant on Civil and Political Rights¹³ and its Optional Protocol,¹⁴ the Covenant on Economic, Social and Cultural Rights,¹⁵ the Convention on the Elimination of

⁹ Hazans, M. (2010), 'Ethnic Minorities in the Latvian Labour Market, 1997-2009: Outcomes, Integration Drivers and Barriers', in Muižnieks, N. (ed.), *How Integrated is Latvian Society? An Audit of Achievements, Failures and Challenges*, University of Latvia Press, Riga, pp. 125-158.

¹⁰ *Special Barometer 493: Discrimination in the EU (including LGBTI) / Fieldwork May 2019*, pp. 22-24.

¹¹ Constitution of Latvia (*Satversme*), 15.02.1922.

¹² Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 04.11.1950, ETS 5.

¹³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16.12.1966, United Nations, Treaty Series, vol. 999.

¹⁴ UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights*, 19.12.1966, United Nations, Treaty Series, vol. 999.

¹⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16.12.1966, United Nations, Treaty Series, vol. 993.

All Forms of Racial Discrimination,¹⁶ the Framework Convention for the Protection of National Minorities,¹⁷ the Convention on the Rights of the Child,¹⁸ the UN Convention on the Rights of Persons with Disabilities¹⁹ and the Revised European Social Charter.²⁰ The Latvian Government has not recognised the competence of the Committee on the Elimination of Racial Discrimination, however. The ratified instruments constitute part of the domestic legal order, having been promulgated in the *Official Journal*, and they can be applied directly by domestic courts, unless their application depends on the enactment of a statute.

Anti-discrimination law is fragmented in Latvia: there is no one single comprehensive law. However, coverage has improved due to the adoption of amendments to existing laws. The main problem is that, since discrimination is not outlawed in the private sector unless expressly provided for by statute, and even though it is outlawed in the public sector due to the supremacy of the Constitution, the absence of a specific implementing law considerably complicates enforcement of the prohibition.

The most comprehensive prohibition is found in the Labour Law²¹ adopted in 2001, which was subsequently amended to address the remaining gaps. This law prohibits discrimination in the employment relationships that it covers and, since November 2006, its non-discrimination provisions have applied to state civil service relationships.

The Labour Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators²² are the only laws²³ to include sexual orientation as a prohibited ground. The Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security²⁴ and the Consumer Rights Protection Law are the four laws that expressly refer to disability. The four laws that refer to age as a prohibited ground of discrimination are the Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security and the Law on Patients' Rights.

A number of other laws contain non-discrimination clauses with exhaustive or open lists of prohibited grounds of discrimination, which never include all the grounds covered by the directives. The Law on Education contains a closed list limited to 'property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence'. Some laws do not contain any anti-discrimination clauses, for example the Law on Housing, although housing issues come under the amended Consumer Rights Protection Law.

The Criminal Law prohibits hate crimes and incitement to hatred on grounds of gender, age, disability and other circumstances, along with the prohibition of racially and religiously motivated crimes.²⁵ Sexual orientation is not expressly mentioned.²⁶

¹⁶ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21.12.1965, United Nations, Treaty Series, vol. 660.

¹⁷ Council of Europe, *Framework Convention for the Protection of National Minorities*, 01.02.1995, ETS 157.

¹⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

¹⁹ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24.01.2007, A/RES/61/106.

²⁰ Council of Europe, *European Social Charter (Revised)*, 03.05.1996, ETS 163.

²¹ Labour Law (*Darba likums*), 12.06.2001.

²² Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (*Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums*), 19.12.2012.

²³ There are several other laws that include sexual orientation as a prohibited ground of discrimination, but they are not linked to the transposition of the non-discrimination directives.

²⁴ Law on Social Security (*likums 'Par sociālo drošību'*), 07.09.1995.

²⁵ Criminal Law (*Krimināllikums*), 17.06.1998.

²⁶ Adjudicated cases have covered hate speech on grounds of sexual orientation and against migrants under 'other circumstances'. LR Supreme Court (LR Augstākā tiesa) (2018), *Hate Speech and Freedom of Expression: Court Practise in Cases under Criminal Law Articles 74.¹, 78., 150 (2012-2018)* (Naida runa un vārda brīvība: Tiesu prakse lietās par Krimināllikuma 74.¹, 78., 150. pantiem), p. 43.

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

3. Main principles and definitions

The Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Social Security,²⁷ the Law on Support to Unemployed Persons and Job Seekers²⁸ and the Consumer Rights Protection Law²⁹ contain definitions of direct and indirect discrimination and harassment which comply with the directives; they also prohibit instruction to discriminate. Protection against victimisation is provided under the Labour Law, the Consumer Rights Protection Law, the Law on Support to Unemployed Persons and Job Seekers, the Law on Social Security, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators and the Law on Education,³⁰ and in connection with complaints to the Ombudsman's Office.

The law is silent on the issue of discrimination by association and on presumed grounds or characteristics; the wording of the anti-discrimination provisions in Latvian laws referring to a person's (meaning the person who is invoking the provision) race, religious conviction etc. certainly make it easier to address discrimination based on assumed characteristics than discrimination based on association.

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

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

Provisions relating to exceptions in other laws ('differential treatment associated with any of the grounds shall only be acceptable in such cases if such treatment is objectively justified with a legitimate purpose, for the achievement of which the selected means are proportionate') such as the Law on Social Security, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Support to Unemployed Persons and Job Seekers, the Law on Education and the Consumer Rights Protection Law do not distinguish between direct and indirect discrimination, nor do they distinguish between the grounds covered by the directives and other grounds for differential treatment. It would appear that Latvian legislation provides for a wider range of exceptions for direct race discrimination than the Racial Equality Directive, extending beyond a general occupational requirement. The amendments to the laws concerning discrimination (including direct discrimination) have been adopted with the purpose of transposing the directives into national law but, in separate instances, they lack sufficient precision. In such cases, it remains for the courts to consult the text of the directives. Additionally, the Labour Law provides for an exemption for employment by religious organisations, which, on the face of it, is broader than the one provided for by the directive. The Labour Law sets out the obligation of the employer to provide reasonable accommodation for disabled people. There are no rules on multiple discrimination.

²⁷ The old definition of indirect discrimination narrowing to comparable situations remains in the law.

²⁸ Law on Support to Unemployed Persons and Job Seekers (*Bezdarbnieku un darba meklētāju atbalsta likums*), 09.05.2002.

²⁹ Consumer Rights Protection Law (*Patērētāju tiesību aizsardzības likums*), 18.03.1999.

³⁰ Law on Education (*Izglītības likums*), 29.09.1998.

4. Material scope

The Labour Law provides protection against all forms of discrimination (direct and indirect discrimination, harassment, instruction to discriminate and victimisation) in all aspects of employment relationships and in both the public and private sectors, including state civil service relationships (but excluding military service) and contract work carried out by self-employed persons. This includes the establishment of such relationships and concerns grounds such as gender, race, age, disability, religion and sexual orientation.³¹

Access to vocational guidance and training, as well as issues of education in both the public and private sectors, are covered by the Labour Law, which refers to 'occupational training', and by the Law on Education,³² which applies to both the public and private sectors. The problem with the latter law, however, is that it contains an exhaustive list of grounds which does not include age, sexual orientation or disability (although it could be argued that this can be subsumed under the 'health' heading). Education and training could also fall under the Consumer Rights Protection Law, but the list of its prohibited grounds is limited to gender, race, ethnic origin and disability. The Law on Support to Unemployed Persons and Job Seekers, which covers retraining, prohibits discrimination on the grounds of gender, race and ethnic origin.

The respective laws on membership of and involvement in organisations of workers or employers or those concerning professional organisations do not always contain anti-discrimination clauses. Whereas the provisions of the Labour Law apply in relation to the first of these two, professional organisations remain problematic and are not covered. The field of social protection, including social security and healthcare, is covered by the Law on Social Security, which lists gender, race, age, disability and religion,³³ although it does not contain express reference to sexual orientation; rather, it leaves the list open-ended.³⁴ This law defines social services as those provided by the state or municipality, hence it does not apply to the private sector.

Access to goods and services is covered by the Consumer Rights Protection Law. Its list of prohibited grounds is limited to gender, race, ethnic origin and disability, which is not contrary to the directives as such.

5. Enforcing the law

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

- courts of general jurisdiction;
- the Constitutional Court – legislation which is allegedly discriminatory on the ground of age has twice been challenged in it;
- submitting a complaint to the same public institution that has treated the person differently or to a higher institution;
- the State Labour Inspectorate if discrimination has occurred within the framework of a labour relationship – the inspectorate can impose a fine;
- the Ombudsman's Office, which is empowered to pursue amicable settlements – it can file a complaint in an administrative court if it is in the public interest, or it can bring a case to the civil court if the issue concerns a violation of equal treatment.

³¹ The complete list includes 'race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances'.

³² Listing 'property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence' as prohibited grounds.

³³ The list of prohibited grounds, with the exception of sexual orientation, is the same as in the Labour Law.

³⁴ There has been no case law yet confirming that sexual orientation is included among protected characteristics.

The normal avenue for redress would be a court of general jurisdiction. A law on state-sponsored legal aid in civil cases has been in force since 2005, yet its real impact has still to be evaluated. NGOs can submit a complaint or bring a case on behalf of natural persons who are the victims of discrimination. The Ombudsman's Office can also bring such a case. However, the amendments to the Civil Procedure Law adopted in December 2013 restrict representation at cassation court level, including on discrimination matters, to victims and advocates only, and this excludes NGOs, the Ombudsman and other legal practitioners.

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

On several occasions, the Supreme Court has criticised lower courts for failing to shift the burden of proof.³⁵ In cases that come under the Administrative Procedure Law, the exception of examination *ex officio* applies. In administrative proceedings (against state or municipal bodies), the institution has to prove circumstances it referred to as justification in its decision. This procedure substitutes for shifting the burden of proof.

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

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

The majority of discrimination cases brought before the courts concern the area of employment and predominantly relate to gender grounds. From 2005 to 2020 inclusive, in the known discrimination cases that resulted in a favourable outcome for the victim (of which there were over a dozen, 11 concerning discrimination on the ground of gender, three on disability,³⁶ one on ethnic origin³⁷ and one on age),³⁸ the amounts awarded ranged from EUR 428³⁹ to EUR 7 142. The highest award was granted in a conciliation case, while the median moral compensation awarded has been EUR 1 500.

Since Latvia's ratification of the UN CRPD, several court cases have arisen in relation to the reasonable accommodation of persons with disability in the realm of social protection⁴⁰ and access to public buildings in relation to healthcare services.⁴¹

The Administrative Procedure Law provides for compensation for financial loss or non-pecuniary damage that has been caused to an individual by an administrative act or by the actual action of an institution. The State Labour Inspectorate has imposed sanctions predominantly in cases involving job advertisements that are discriminatory on grounds of

³⁵ Supreme Court Civil Case Department (Augstākās tiesas Civillietu tiesu palāta), *R.S. v. Riga New St Gertrude Evangelical Lutheran Church* (*R.S. v. Rīgas Jaunā Svētās Gertrūdes evaņģēliski luteriskā draudze*), 11.04.2007; Supreme Court Senate, (Latvijas Republikas Augstākās tiesa), Case No. SKC-684/2012, *E.L. v. State Joint Stock Company International Airport Riga* [*E.L. v. Valsts akciju sabiedrība „Starptautiskā lidosta Rīga”*].

³⁶ Supreme Court Civil Case Department, *R.S. v. Riga New St Gertrude Evangelical Lutheran Church*; Kurzeme Regional Court (Kurzemes apgabaltiesas Civillietu tiesas kolēģija), case No. C40066110, *V.Trusēvičs v. SIA Bio-Venta* [*Bio-Venta Ltd.*], 21.09.2011.

³⁷ Jelgava Court (Jelgavas tiesa), *S. Kozlovskā v. SIA Palso*, Case No. C15066406, 25.05.2006.

³⁸ Supreme Court Senate (Augstākās tiesas Senāts), Case No. C32276312 (SKC-1702/2013), 29.11.2013.

³⁹ Latvia switched to using the euro as its national currency, replacing the lats, on 01.01.2014.

⁴⁰ Administrative Regional Court (Administratīvā apgabaltiesa), Case No. A420528911, *B. v. State Social Insurance Agency* (*B.V. pret Valsts Sociālās apdrošināšanas aģentūru*), 27.09.2013.

⁴¹ Administrative District Court (Administratīvā rajona tiesa), Case No. A420571712, 02.12.2013; Supreme Court Civil Case Department, *R.S. v. Riga New St Gertrude Evangelical Lutheran Church*.

gender, age or ethnicity. Sanctions have ranged from warnings to fines ranging from EUR 70 to EUR 535, but such small amounts cannot be considered dissuasive. The Supreme Court, in line with the jurisprudence of the Court of Justice of the European Union (CJEU), has clarified that there is no need to specifically prove the existence of moral damage in cases of discrimination, as moral damage is presumed from the very fact of discrimination in employment relationships.⁴²

6. Equality bodies

Since March 2007, the tasks of the specialised body have been performed by the Ombudsman's Office, which is entrusted with promoting the observance of human rights, including the promotion of equal treatment, although the grounds of discrimination are not listed and thus they are not all encompassed. The functions of the Office include inquiring into any individual complaint related to a human rights violation, starting investigations on its own initiative, analysing the observance of human rights and issuing surveys and reports.

The Office is authorised to review individual complaints, to acquire the necessary information and to pursue an amicable settlement. If this fails, the Office can advise the parties of its opinion and proposals in the form of recommendations and can also present its suggestions and recommendations to the relevant institution or official; however, it cannot enforce its recommendations, nor can it levy any fines. It has the right to bring a case to the Constitutional Court if the legislation concerned does not comply with a norm of higher legal force. Likewise, it can file a complaint in an administrative court if this is in the public interest, or it can bring a case to the civil court if violation of equal treatment is at issue. The Office also provides victims with legal advice and can help them to prepare a court case. The Ombudsman has never represented a client in a discrimination case in court, but it has facilitated the conclusion of two conciliation agreements.⁴³

The budget cuts during the economic crises inevitably affected the functioning of the body. In 2008, its budget was EUR 1 797 626,⁴⁴ but in 2010 it was only EUR 794 355, a decrease of 57 %. This resulted in cuts to personnel. At different times, there have been one to three staff members specialising in non-discrimination issues in the Office. In 2014, the Ombudsman's Legal Equality Department comprised three members of staff.⁴⁵ In early 2015, the section was closed down, and the staff were assigned to other departments,⁴⁶ which raises concerns over whether the Office fulfils the minimum requirements of the Racial Equality Directive in practice. In 2020, the Office's budget was EUR 1 570 195.⁴⁷ There is no separate budget line for the equality and diversity function. Data on complaints about discrimination and their outcome are not publicly available, but are available upon request.

⁴² Supreme Court Senate, Case No. C32276312 (SKC – 1702/2013), 29.11.2013.

⁴³ According to the information received from the Ombudsman's Office, both conciliation agreements concerned employment – in one case relating to the ground of gender (with a settlement of LVL 5 000 or approx. EUR 7 500) and in another case gender and age (LVL 800 or approx. EUR 1 100) – and both were concluded in 2008. The details of the case have not been made public, and the court decision confirming the agreement does not mention the Ombudsman. Case No. 1, Rīgas Ziemeļu rajona tiesa/Lēmums S.K. pret SIA "Ziemeļu nafta" Lietas nr. C32169607, 10.11.2008; Case No. 2, LR Ziemeļu apgabaltiesas Civillietu tiesas kolēģija Lēmums lietā Nr. 37056908, 20.11.2008.

⁴⁴ The budget was high also because of infrastructure costs due to a move to a new office, the hiring of new staff and the expansion of the mandate.

⁴⁵ Although, since early 2015, the Office has no longer had this section. See Ombudsman of the Republic of Latvia (LR Republikas Tiesībsargs), 'Personnel', available in Latvian at: <http://www.tiesibsargs.lv/lv/pages/par-mums>.

⁴⁶ LR Tiesībsargs (2015), 'Personnel', <http://www.tiesibsargs.lv/en/pages/about-us/darbinieki>.

⁴⁷ Ministry of Finance (2020), 'Tiesībsarga birojs', <https://www.fm.gov.lv/lv/1-privatpersonu-cilvektiesibu-aizsardziba-0>.

7. Key issues

Latvian anti-discrimination law remains scattered across many pieces of legislation, and there is no umbrella anti-discrimination law.

Differential treatment is not adequately prohibited in relation to vocational training outside employment relationships.

A three-month time limit in filing discrimination complaints before the courts in employment cases may be a significant barrier for victims of discrimination.

There continues to be no national coordination on non-discrimination issues. Since 2004, case law has remained limited concerning discrimination on grounds of race/ethnic origin (1), disability (3), age (3), religion (0), and sexual orientation (0).

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

INTRODUCTION

The national legal system

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

The hierarchical system of legal acts in Latvia is as follows: (1) the Constitution; (2) laws; (3) regulations of the Cabinet of Ministers; (4) binding regulations of local authorities. International and EU legal norms are applied in accordance with their ranking in the hierarchy of external regulatory enactments. In cases of conflicts between Latvian and international or EU statute of the same legal force, the international or EU law or provision must be applied.⁴⁸

Latvia is a multi-ethnic country, although the proportion of the different ethnic groups among its population has varied. In 2011, of a population of 2 067 887, 62.1 % were Latvians, 26.9 % Russians, 3.3 % Belarusians, 2.2 % Ukrainians, 2.2 % Poles, 1.2 % Lithuanians, 0.3 % Jewish, 0.3 % Roma, 0.1 % Estonians, 0.1 % Germans and 1.3 % others.⁴⁹ In 2020, Latvian citizens numbered 1 762 123 or 85.1 % of the population; of these, ethnic Latvians constituted 60.54 %. Some 10.1 % or 209 007 inhabitants are non-citizens,⁵⁰ of which ethnic Russians are the largest group. Therefore, issues relating to non-citizens are often treated as mainly concerning Russians or Russian-speakers, and the rights of citizens and non-citizens, as well as linguistic issues, remain sensitive. There are more than 73 000 third-country nationals; the largest group are citizens of Russia (52 271), many of whom are long-term residents in Latvia, followed by citizens of Ukraine (9 357) and citizens of Belarus (3 922). There are also 160 stateless persons living in Latvia.⁵¹

List of main legislation transposing and implementing the directives

Latvian anti-discrimination law remains scattered across many pieces of legislation. The main problem, however, is that, while most fields covered by the directives are covered in Latvia, the law often does not apply to all grounds – which results in incomplete protection. The older laws containing an equality clause never include all of the grounds required by the directives, and not all of them leave the list of grounds open. Furthermore, the laws that are supposed to implement the directives leave some grounds uncovered.⁵²

⁴⁸ Bebre, B., and Gjortlere, L. (2012), 'Update: Guide to Latvian Legal System and Legal Research', Riga Graduate School of Law, <http://www.nyulawglobal.org/globalex/Latvia1.html>.

⁴⁹ 2011 Population Census.

⁵⁰ Non-citizens are a special category of people – former USSR citizens who were resident in Latvia on 01.07.1991 and have not obtained citizenship of any other country, thus this term does not encompass foreign citizens and stateless persons. Office of Citizenship and Migration Affairs, Statistics of the Population Register (01.01.2021), Latvian population breakdown by nationality, available at: <https://www.pmlp.gov.lv/lv/media/2889/download>.

⁵¹ Office of Citizenship and Migration Affairs, Statistics of the Population Register. See <https://www.pmlp.gov.lv/lv/media/2889/download>.

⁵² Sexual orientation has remained a controversial topic, with Latvian legislation eventually brought into line with the directives through the inclusion of specific provisions in the Labour Law on 21 September 2006. The requirements of the Employment Directive 2000/78/EC were transposed via the Labour Law on 22.04.2005 and came into force on 08.05.2005, albeit there was no express reference to sexual orientation among the prohibited discrimination grounds. However, in 2005, even before this specific reference, in the

The main anti-discrimination laws transposing the directives are:

- The Labour Law⁵³ – adopted: 20.06.2001; grounds covered: race, skin colour, age, disability, religious, political or other conviction, national and social origin, property and marital status, sexual orientation or other circumstances; covers employment relationships proper (civil service and specialised civil service excepted).
- The State Civil Service Law⁵⁴ – adopted 07.09.2000; covers civil service relationships; grounds: not specified.
- The Law on Social Security⁵⁵ – adopted: 07.09.1995, in force: 05.10.1995; grounds covered: race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances; covers social services (state and municipal).
- The Consumer Rights Protection Law⁵⁶ – adopted: 18.03.1999; grounds covered: gender, race, ethnic origin, disability; covers access to and supply of goods and services.
- The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators⁵⁷ – adopted: 19.12.2012; grounds covered: gender, age, religious, political or other conviction, sexual orientation, disability, race and ethnic origin; covers access to self-employment and access to goods and services.
- The Law on Education – adopted: 29.10.1998; grounds covered: property and social status, race, ethnic origin, gender, religious and political belief, state of health, occupation and place of residence; covers access to education.⁵⁸
- The Law on the Ombudsman⁵⁹ – adopted 06.04.2006; grounds covered: not specified; latest amendments: 25.09.2014; covers legal status, functions and tasks of the Ombudsman, as well as the procedures by which the Ombudsman shall perform the functions and tasks specified by the law.
- The Law on Associations and Foundations⁶⁰ – adopted 30.10.2003; grounds covered: not specified; covers principles of the activity, organisational structure, liquidation and re-organisation of associations and foundations.

first case where discrimination based on sexual orientation was alleged in the area of employment, the court held that discrimination based on sexual orientation was prohibited. In any case, the Civil Procedure Law requires that Latvian legislation be applied to the extent that 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 cases concerning vertical relationships with the state. As the 2005 judgment showed, it was not even an issue whether this ground was prohibited or not. Ziemeļu District Court, Riga, Case No. C32242904047505, 25.05.2005. The case concerned a gay man who applied for a teacher's post in a secondary school.

In 2017, in a case of homophobic hate speech under the Criminal Law, the court ruled that sexual orientation came under 'other circumstances'. Talsi District Court, Case No. 11380026317, 10.01.2018.

⁵³ Labour Law, 20.06.2001, <http://likumi.lv/doc.php?id=26019>.

⁵⁴ State Civil Service Law (*Valsts civildienesta likums*), 07.07.2000, <http://likumi.lv/doc.php?id=10944>.

⁵⁵ Law on Social Security, 07.09.1995, <http://likumi.lv/doc.php?id=36850>.

⁵⁶ Consumer Rights Protection Law, 18.03.1999, <http://likumi.lv/doc.php?id=23309>.

⁵⁷ Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, 19.12.2012, <http://likumi.lv/doc.php?id=253547>.

⁵⁸ Law on Education, 29.10.1998, <http://likumi.lv/doc.php?id=50759>.

⁵⁹ Law on the Ombudsman (*Tiesībsarga likums*), 06.04.2006, <http://likumi.lv/doc.php?id=133535>.

⁶⁰ Law on Associations and Foundations (*Biedrību un nodibinājumu likums*), 30.10.2003, <http://likumi.lv/doc.php?id=81050>.

Table of legislation and protected grounds

	race	ethnic origin	religion	belief	disability	age	sexual orientation	other	open-ended list?
Labour Law	X		X	X	X	X	X since 2006	gender, skin colour, national and social origin, property and marital status, or other circumstances	Yes, other circumstances
State Civil Service Law	Grounds not specified								
Law on Social Security	X		X	X	X	X		colour, gender, health condition, national or social origin, property or family status or other circumstances	Yes, other circumstances
Consumer Rights Protection Law	X	X			X			gender	
Law on the Prohibition of Discrimination of Natural Persons-Economic Operators	X	X	X	X	X	X	X	gender	
Law on Education	X	X	X	X				Gender, state of health, occupation and place of residence	
Ombudsman Law	Grounds not specified								
Law on Associations and Foundations	Grounds not specified								

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

The principle of non-discrimination is enshrined in Article 91, which provides that 'All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind'. It refers to 'discrimination of any kind' without specifying the grounds. In preparing the Chapter on Fundamental Rights in 1998, the Latvian legislator initially considered including 12 prohibited discrimination grounds (race, sex, ethnic origin, language, age, religion or belief, political opinion, membership of a party, position of public service, property, social status and other circumstances). There was no support for the explicit inclusion of sexual orientation among the prohibited discrimination grounds. Hence, the decision was taken not to list any grounds, leaving the matter for the interpretation of the courts.⁶¹

According to legal doctrine,⁶² the catalogue of prohibited grounds should not be narrower than the catalogue in the Charter of Fundamental Rights of the European Union. Article 21 of the Charter lists sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Hence, the catalogue of included prohibited grounds should be understood as comprising all grounds in the initial historical version and the additional grounds contained in the EU Charter of Fundamental Rights.⁶³

As the Constitution stands highest in the hierarchy of legal norms, this permits an argument that a non-exhaustive list of grounds also applies in the cases of laws that only contain an exhaustive list of grounds in their non-discrimination clauses,⁶⁴ although in practice this would inevitably complicate matters by requiring weighty arguments to counter the inclusion of the 'one is the exclusion of another' argument.

The right to non-discrimination in the Constitution is also an autonomous right that may apply to any area regulated and protected by the state.

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

While this recognises the binding force of international treaties without giving express indication as to the place of international treaties in the hierarchy of norms, the Constitutional Court has adopted the doctrine that the norms of the Constitution have to be interpreted in the light of the international human rights standards that are binding

⁶¹ In an employment case in 2005, when the Labour Law did not include sexual orientation explicitly (it was included in 2006), 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. Ziemeļu District Court, Riga, Case No. C32242904047505, 25.05.2005. The case concerned a gay man who applied for a teacher's post in a secondary school.

⁶² Constitutional commentary on the *Satversme* for practitioners, Chapter VIII ('Fundamental human rights'), which benchmarks the core human rights provisions of the *Satversme* against the relevant international and EU legal frameworks and practices of the bench.

⁶³ Levits, E. (2016), 91. 'Visi cilvēki Latvijā ir vienlīdzīgi likuma un tiesas priekšā. Cilvēka tiesības tiek īstenotas bez jebkādas diskriminācijas', *Latvijas Republikas Satversmes komentāri*. VII nodaļa. Cilvēka pamattiesības, pp. 98-104, http://blogi.lu.lv/tzpi/files/2016/07/91_PANTS.pdf.

⁶⁴ For example, social status, race, ethnicity, gender, religious while Article 3 of the Law on Education only guarantees equal rights to receive education to citizens of Latvia, Latvian non-citizens and citizens of the EU Member States regardless of 'property and or political opinions, health condition, occupation and place of residence', not mentioning, for example, sexual orientation or age, by referring to Article 91 of the Constitution it is possible to regard these grounds as non-exhaustive.

upon Latvia.⁶⁵ The competence of the Court to review the compatibility of international treaties signed or concluded by Latvia with the Constitution, as well as to review the compatibility of national legal provisions with those international treaties concluded by Latvia that do not contradict the Constitution, must be noted in particular.

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

Moreover, in practice it has been accepted that international treaties can be relied upon, and applied directly – to the extent that direct application is possible and the treaties are self-executing – even in the absence of any implementing legislation. The European Convention on Human Rights and Fundamental Freedoms (ECHR) stands out as particularly important, as the Constitutional Court and administrative courts use international legal instruments, and courts of general jurisdiction rely on ECHR, or at least refer to it. Claimants in the Constitutional Court rely not only on the non-discrimination clause of the *Satversme*, but also on the provisions of international treaties binding on Latvia – primarily the ECHR. In certain cases, the Constitutional Court has examined whether Article 14 of the ECHR has been violated.⁶⁶ The reliance on the UN Convention on the Rights of Persons with Disabilities (UN CRPD) may increase in the future, as several cases where the courts have referred to it have emerged.⁶⁷ Importantly, the Constitutional Court has held that, where the Constitution provides for a higher standard of protection than the one provided for by the international agreements binding on Latvia, the higher standard is applied.

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

These provisions are directly applicable.

The Constitution is generally regarded as directly applicable. It was first in the 'compensation of losses' case⁶⁸ that the Constitutional Court held that constitutional norms can be applied directly. While the petitioner argued that there had been discrimination because a change in the law failed to provide for the compensation of losses in his case,

⁶⁵ Constitutional Court (Satversmes Tiesa), judgment in Case No. 2000-03-01, 30.08.2000, available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01_Spriedums_ENG.pdf. It has been argued that some international treaties, due to the subjects they deal with, may even be at the same level as the Constitution. See Ziemele, I. (1998), 'International Law in the Latvian Legal System', in Ziemele, I., *Realization of Human Rights in Latvia: Courts and Administrative Procedure* (in Latvian), Riga, pp. 43-44. Mārtiņš Mits, for example, 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 Mits, M. (1999), 'The *Satversme* in the Context of European Human Rights Standards', *Latvian Human Rights Quarterly*, 7-10/1999, p. 50). That position is no longer doubted and has been well established and affirmed by practice.

⁶⁶ See, for example, the Constitutional Court judgments in cases Nos. 2000-03-01, 30.08.2000, http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01_Spriedums_ENG.pdf, and 2001-02-0106, 26.06.2001, http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/02/2001-02-0106_Spriedums_ENG.pdf.

⁶⁷ Administrative District Court Case No. A420528911 (*B. v. State Social Insurance Agency (B. pret Valsts Sociālās apdrošināšanas aģentūru)*), 27.09.2013; Administrative District Court Case No. A420571712 (*B. v. Health Inspectorate (B. pret Veselības inspekciju)*), 02.12.2013.

⁶⁸ Constitutional Court, Case No. 2001-07-0103, 05.12.2001, http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-07-0103_Spriedums_ENG.pdf. In this particular case, the petitioner complained of the unconstitutionality of the Law on the Compensation of Losses Suffered as the Result of Illegal or Unsubstantiated Actions of Bodies of Investigation, Prosecutor's Office or Court, because the law, allegedly in contradiction with Article 92 of the Constitution, providing that 'Everyone, where their rights are violated without basis, has a right to commensurate compensation', failed to provide for the compensation of losses in his case. While the law governed the compensation of losses to, *inter alia*, persons acquitted by the court, it did not apply to cases such as the petitioner's case when the person found guilty had spent a longer time in pre-trial detention than the period of deprivation of liberty imposed on him by the sentence. The Constitutional Court held that the above-mentioned law only regulated 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 could appeal to the court of general jurisdiction, basing his or her claim directly on Article 92 of the Constitution. The court would have a duty to adjudicate the case.

the Constitutional Court held that Article 92 of the Constitution could be applied directly and that the absence of an implementing law cannot serve as a ground for the Court's refusal to accept the claim.

The provisions cannot be enforced against private actors (although they can be enforced against the state). Specific laws and judicial interpretation are required.

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

Thus, in the *Steel* case,⁶⁹ where the notion of 'illegal attack on dignity and honour' contained in Article 2352 of the Civil Law was at issue, the court relied on, *inter alia*, Article 89 of the Constitution and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to conclude that the respondent's actions had in fact been illegal.

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

Similarly, in the *Smagars* case,⁷⁰ the discrimination, even if nowhere expressly prohibited, was found to have been 'unacceptable in a democratic state based on the rule of law' and was also held to constitute an attack on dignity and honour. In the *Sants*' employment case in 2003,⁷¹ the court referred to the constitutional non-discrimination clause – which contains no listing of grounds – to infer that the Labour Law prohibited differential treatment based on sexual orientation, even if at the time of the adjudication of the case at first instance this ground was not expressly listed.

⁶⁹ Latgale District Court, Riga, Case No. 29240503, *George Ronney Steel v. Brivibas partija* (the Liberty party) and *SIA Latvijas Televizija* (Latvian Television Ltd.), 08.09.2003.

⁷⁰ Riga Regional Court, Case No. C04386004, 11.07.2005, in Latvian at: <http://cilvektiesibas.org.lv/site/record/docs/2012/02/06/RS11julijs.pdf>. The case concerned access to a night club by a person with disability (in a wheelchair).

⁷¹ Ziemeļu District Court, Riga, Case No. C32242904047505, 25.05.2005. The case concerned a gay man who applied for a teacher's post in a secondary school.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the **main** legislation transposing and implementing the two EU anti-discrimination directives, as listed in the Introduction.

The grounds commonly referred to in Latvian legislation are: race, ethnicity, national origin (understood in certain cases as ethnic origin and in other cases as citizenship), gender, language, party membership, religious or political 'or other' opinions – which encompasses belief – non-religious, property or social status, position occupied and origin, and sometimes also health condition,⁷² place of residence and occupation.

The Labour Law, one of the laws transposing the directives and addressing the issue of discrimination systematically, lists 'race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation⁷³ or other circumstances' (Article 7(2)).⁷⁴

Article 78 of the Criminal Law protects against the instigation of national, ethnic, racial or religious hatred, and Article 150 protects against the instigation of social hatred based on a person's gender, age, disability or any other features. Article 149.¹ provides a more general protection, making punishable discrimination on the basis of ethnic, national, racial or religious origin, as well as violations of any prohibition of discrimination provided for in other legal acts (thus depending on the existence of such acts).⁷⁵

Since 2013 (and not linked to the transposition of the two anti-discrimination directives), the Electronic Mass Media Law has prohibited incitement to hatred and discrimination on the grounds of gender, age, religious, political and other belief, sexual orientation, disability, race or ethnic origin, nationality and other circumstances in audio and audiovisual commercial messages (Article 35).⁷⁶

The Constitution prohibits any kind of discrimination, but it does not mention specific grounds; moreover, it only applies directly in the public sector and generally does not have horizontal effect, which means that there is no prohibition of discrimination in the private sphere unless a specific law is in place. A number of other laws contain the principle of non-discrimination, but only the Labour Law and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators specifically mention all of the

⁷² Law on Education, 29.10.1998; Law on Protection of the Rights of the Child (*Bērna tiesību aizsardzības likums*), 19.06.1998, <http://likumi.lv/doc.php?id=49096>.

⁷³ Sexual orientation has remained a controversial topic, which was demonstrated both at the time of the adoption of the Labour Law in 2001 – the most advanced law in terms of outlawing discrimination – and when the first amendments to it were adopted in 2004, with the aim of removing some of the remaining deficiencies and bringing the Labour Law into 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: on 15 June, the Parliament again chose to remove the express reference from the draft amendments; the President vetoed the resulting law, however, stating that it did not comply with Latvia's EU obligations. On the repeated vote on the law on 21 September 2006, despite the upcoming parliamentary election and a political climate that did not seem favourable, the law including a reference to sexual orientation was adopted by 46 votes for, 35 against and 3 abstentions, with 9 registered MPs failing to take part in the vote at all. Previously, on 15 December 2005, the Parliament had amended Article 110 of the Constitution to define marriage as a union between a man and a woman, effectively banning same-sex marriage.

⁷⁴ Ziemeļi District Court, Case No. C32242904047505, 25.05.2005. This judgment indicated that, at least until that time, sexual orientation had been considered to come under such 'other circumstances'.

⁷⁵ Criminal Law, 17.06.1998, <http://likumi.lv/doc.php?id=88966>.

⁷⁶ Electronic Mass Media Law (*Elektronisko plašsaziņas līdzekļu likums*), 12.07.2010, <http://likumi.lv/doc.php?id=214039>.

grounds covered by the two directives; moreover, some of these laws cover only specified grounds without leaving the list open.

2.1.1 Definition of the grounds of unlawful discrimination within the directives

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

a) Racial or ethnic origin

Race

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

In the Criminal Law (Article 78 on instigation of racial, ethnic and national hatred), the Latvian legislator has introduced an autonomous division of terms by separating the terms 'race', 'national origin' and 'ethnic origin',⁷⁷ instead of using an encompassing definition of 'race' provided by sources of international law such as ICERD. In court practice, the term 'race' is most often equated with a person's skin colour.

Ethnic origin

In the case of 'ethnic' origin (*tautība/etniskā piederība* in Latvian), the use of the term is not consistent. In criminal cases, 'ethnic' and 'national' [hatred] are often used as synonyms.⁷⁸ The confusion of terms is possibly related to the Russian word '*natsionalnost'*' (*национальность*; *tautība* in Latvian), which means 'ethnic origin' and was used in Soviet identity documents.⁷⁹

This issue is also evident in the only ethnic discrimination case to date, *Sanita Kozlovskā v. SIA Palso* in 2006, where the employer had indicated the accent (in Latvian) of the claimant – a Roma – as the reason for refusing to employ her, and the court held that the claimant had been discriminated against on the basis of her national origin (ethnicity). The decision refers to the claimant as having 'Gypsy ethnicity'.⁸⁰

b) Religion and belief

There is no definition of 'religion or belief' in Latvian legislation. Several domestic court judgments have acknowledged that the safeguards under Article 9 of the Convention and

⁷⁷ Incitement to national and racial hatred was introduced in Soviet legislation and was retained in the Latvian Criminal Code after the restoration of independence. Incitement to ethnic hatred was added through legislative changes in 2007. Previously, in 2006, racist motivation had been added as an aggravating factor. In 2014, the Parliament amended the Criminal Law, adding national/ethnic hatred to the aggravating circumstances. Adding the two motives – in addition to racist motivation – was recommended in the analyses of court cases under Article 78 in order to avoid different interpretations and to introduce the same terminology.

⁷⁸ Supreme Court (2012), *Court Practice in Criminal Cases Concerning Incitement to National Ethnic and National Hatred*, available in Latvian at: <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

⁷⁹ A fifth line in Soviet passports was '*natsionalnost'*'. See Simonsen, S.G. (2005), 'Between Minority Rights and Civil Liberties: Russia's Discourse Over "Nationality" Registration and the Internal Passport', *Nationalities Papers*, 33(2): pp. 211–229, <https://www.prio.org/Publications/Publication/?x=3202>.

⁸⁰ Jelgava Court, Case No. 15066406, 25.05.2006, http://cilvektiesibas.org.lv/media/attachments/29/01/2013/sk_palso.pdf.

Article 99 of the Constitution apply to the Hare Krishna movement (Vaishnavism) and other religions mostly in the context of a meat-free diet corresponding to religious precepts.⁸¹ 'Other beliefs' have included vegetarianism in a school setting.⁸² The court has upheld the denial of the registration of the 'Riga Pastafarian Congregation' as a religious organisation as it concluded that pastafarianism is not a religion.⁸³

c) Disability

Disability (the Latvian term being *invaliditāte*)⁸⁴ is defined in the Disability Law; it is a long-term or non-transitional (permanent) very severe, severe or moderate level of limited functioning, which affects a person's mental or physical abilities, ability to work, self-care and integration into society.⁸⁵ According to the law there are three possible degrees of disability, depending on the gravity of the impairment. The law specifies moderate disability as the loss of 25-59 % of a person's capacity to work, severe disability as the loss of 60-79 % of the capacity to work, and very severe disability as the loss of 80-100 % of the capacity to work. The purpose of the Disability Law is to determine the procedure for granting disability status and to provide for the necessary support services for persons with disabilities. The same definition is used for the purposes of non-discrimination legislation.⁸⁶ The amendments specifying loss of capacity came into force on 1 January 2013. The definition in Latvian law (Article 5(1) of the Disability Law) is narrower than the concept of disability in *Skouboe Werge and Ring*⁸⁷ (based on Article 1 of the UN CRPD), as it refers only to those persons who have been conferred one of the three degrees of disability by the State Medical Commission for the Assessment of Health Condition and Working Ability. According to the law, a status of predictable disability can also be conferred. This is a status of limited functioning caused by disease or injury that has lasted for six months and that could be expected to result in disability should targeted medical treatment and rehabilitation not be provided in the next six-month period. This may include cases of de facto disability. It is not known how many cases of predictable disability status have been conferred. The issue of whether the term covers any de facto disability may arise, and the CRPD's broader definition of 'disability' may provide guidance if a potential 'de facto' case reaches court.

On 29 August 2017, the UN Committee on the Rights of Persons with Disabilities published its concluding observations on the initial report by Latvia.⁸⁸ The observations pay special attention to Latvia's deficit-oriented approach to disability assessment, the mainstreaming of the full concepts of reasonable accommodation in all relevant national and municipal legislation and policies, the monitoring of disability discrimination, data collection, and the capacity of monitoring mechanisms. The Committee expressed concern about the deficit-oriented approach to disability assessment, which is based on the medical model.

⁸¹ Administrative District Court. Rēzekne Court House. Case No. A420375313, 19.12.2013; Supreme Court Senate Case No. SKA- 160/2010, A42446907, 06.05.2010.

⁸² A private school that was established on the basis of vegetarianism. Administrative Regional Court, Case No. AA43-0093-18/24, 29.03.2018.

⁸³ Administrative District Court, Case No. A420166915, 22.12.2016.

⁸⁴ In the limited number of discrimination cases on grounds of disability, the courts have referred to the applicant's degree of disability. See Kurzeme Regional Court (Kurzemes apgabaltiesas Civillietu tiesas kolēģija), case No. C40066110, *V.Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd.]*, 21.09.2011; Administrative Regional Court (Administratīvā apgabaltiesa), Case No. A420528911, *B. v. State Social Insurance Agency (B.V. pret Valsts Sociālās apdrošināšanas aģentūru)*, 27.09.2013.

⁸⁵ Disability Law (*Invaliditātes likums*) 25.05.2010, Article 5(1), see <http://likumi.lv/doc.php?id=88966>.

⁸⁶ Labour Law, Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, Law on Social Security, Consumer Rights Protection Law. In the three discrimination cases on grounds of disability, the courts have referred to the degree of disability conferred to the individual.

⁸⁷ CJEU, judgment of 11 April 2013, joined cases C-335/11 and C-337/11, EU:C:2013:222.

⁸⁸ UN Committee on the Rights of Persons with Disabilities (2017), 'Concluding Observations on the initial report of Latvia', CRPD/C/LVA/CO/1.

d) Age

There is no definition of 'age' in Latvian legislation. Thus far, the three age discrimination cases reviewed by domestic courts have related to older persons.⁸⁹

e) Sexual orientation

There is no definition of 'sexual orientation' in Latvian legislation, and there is no case law on the definition of 'sexual orientation.' The only court case on discrimination in employment on the ground of sexual orientation involved a gay man.

2.1.2 Multiple discrimination

In Latvia, multiple discrimination is not explicitly prohibited by law.

The following case law deals with multiple discrimination.

In the only case of multiple discrimination – the *Stūriņa* case⁹⁰ – this was found at the court's own initiative, and the line of reasoning was not well developed.

In the *Stūriņa* case, decided by Cēsu District Court on 5 July 2005, the court held that the claimant, who from 1997 to 2004 had regularly been employed by the municipality for the winter season at the heating plant, had been discriminated against on the basis of her gender and property status by not being employed again in the 2005 season, and multiple discrimination was found at the court's own initiative. The claimant had only argued gender discrimination, not property status-based discrimination. Instead of employing the claimant, the municipality had employed another person who had not even responded to the call for applications and who was already employed by the municipality. The municipality argued that 'the remuneration of the employees of the municipality is low', thus supposedly taking into account their low income ('property status'). However, this line of reasoning was not well developed, and it would be speculative to make any general conclusions about how the courts would handle multiple discrimination cases. In this particular case, although multiple discrimination was established, the court did not specifically mention that it had an impact on the amount of moral or material damages awarded.⁹¹

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Latvia, discrimination based on a perception or assumption of a person's characteristics is not expressly prohibited in national law.

There is no case law concerning discrimination by assumption.

b) Discrimination by association

In Latvia, discrimination based on association with persons with particular characteristics is not expressly prohibited in national law.

⁸⁹ Supreme Court Senate (Augstākās tiesas Senāts), Case No. C32276312 (SKC-1702/2013), 29.11.2013; Constitutional Court, Case No. 2003-12-01, 18.12.2003, http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2003-12-01_Spriedums.pdf.

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

⁹⁰ Cēsu District Court, Case No. C11019405, *Anga Stūriņa v. Straupe municipal council*, 05.07.2005.

⁹¹ Intersectionality was not alluded to in the court's ruling.

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

There is no case law concerning discrimination by association.

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

a) Prohibition and definition of direct discrimination

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

Various legal acts prohibit direct discrimination (as defined in the Labour Law): Article 29(1) and (5) of the Labour Law, Articles 2(1) and 4(2) of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, Article 3.¹(1) and (6) of the Consumer Rights Protection Law, Article 2.¹(1) and (3) of the Law on Social Security, and Article 2.¹(1) and (4) of the Law on Support to Unemployed Persons and Job Seekers. Article 3.¹(8) of the Law on Education refers to the definition in the Consumer Rights Protection Law.).

Article 29(5) of the Labour Law states that 'Direct discrimination exists if in a comparable situation the person,⁹² based on her gender, is, was or may be treated less favourably than another person'. Article 29(9) applies the protection against discrimination, including this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances. This definition (instead of the reference to gender only in the main clause directly listing the same grounds, with the exception of sexual orientation, in an open-ended provision) is also used in the Law on Social Security (Article 2.¹(3)). The same definition is used in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(2)) in relation to grounds of gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin.

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

While, technically, the Labour Law applies only to employment relationships⁹³ (including pre-contractual relationships, as indicated by both the reference in Article 29(1) to 'establishing employment relationship' and Article 34, dealing with the consequences of violating the prohibition of differential treatment when establishing an employment relationship) and to employment-related claims, thus by definition excluding self-employment and related claims, which are regulated under the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, it is not inconceivable – and, indeed, it is very likely, at least as long as there is no general anti-discrimination law or definitions in other laws apart from the Law on Social Security and the Consumer Rights

⁹² The term 'person' cannot be interpreted such as to exclude a group from protection from direct discrimination. In these cases, *argumentum a fortiori* should be applied, i.e. if a person cannot be treated less favourably, then it can be assumed that nor can a group.

⁹³ Since amendments were made to the State Civil Service Law on 2 November 2006, the provisions of the Labour Law concerning the prohibition of differential treatment have applied to civil service relationships, including specialised civil service relationships; the latter cover the police, border guards and individuals in diplomatic or consular service and certain other institutions.

Protection Law – that this definition could be used in other cases when the issue of direct discrimination is raised, especially since it would also follow from the international treaties that are binding on Latvia.

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

b) Justification for direct discrimination

Provisions authorising justification of discrimination do not distinguish between direct and indirect discrimination, or between the grounds covered by the directives and other grounds for differential treatment.

It would appear that Latvian legislation provides for a wider range of exceptions for direct race discrimination than the Racial Equality Directive, extending beyond a general occupational requirement.

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

The amendments to the laws concerning discrimination (including direct discrimination) have been adopted with the purpose of transposing the directives into national law, but in separate instances they lack sufficient precision. In such cases, it remains for the courts to consult the text of the directives.

The same provisions (an exception being the list of specific grounds), that 'differential treatment associated with any of the grounds shall only be acceptable in such cases if such treatment is objectively justified with a legitimate purpose, for the achievement of which the selected means are proportionate', are reiterated in the Law on Education (Article 3.¹(1) and (2) – 11 grounds, closed list), in the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(1) and (2) on race, ethnic origin and gender), in the Consumer Rights Protection Law (Article 3.¹(1) and (2) on race, ethnic origin, gender and disability), and in the Law on the Prohibition of Discrimination of Physical Persons-Economic Operators (Article 3(1)(1) and (2) – no reference to genuine occupational requirement). The differential treatment of economic operators who are persons with disability is permissible in cases of an unreasonable burden for the other party, and similarly in the context of goods and services (Article 3.1(2)).

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

a) Prohibition and definition of indirect discrimination

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

Various legal acts prohibit indirect discrimination (as defined in the Labour Law): Article 29(1) and (6) of the Labour Law, Articles 2(1) and 4(2) of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, Articles 3.¹(1) and (6) of the Consumer Rights Protection Law, Article 2.¹(1) and (4) of the Law on Social Security, and Article: 2.¹(1) and (4) of the Law on Support to Unemployed Persons and Job Seekers.

Article 3.¹(8) of the Law on Education refers to the definition in the Consumer Rights Protection Law.

The Labour Law contains a definition of indirect discrimination that complies with the definition used by the directives. Article 29(6) of this law provides that: 'Indirect discrimination exists if an apparently neutral provision, criterion or practice causes adverse consequences for persons belonging to one gender, except in cases where such provision, criterion or practice is objectively justified by a legitimate aim, the means for attaining which are proportionate.' Again, Article 29(9) applies the protection against discrimination, including under this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances. The same definition is in the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(2)) on gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin). This definition is also found in the Consumer Rights Protection Law (Article 3.¹(6) in relation to four grounds – gender, race, ethnic origin and disability) and in the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(4)).

The Law on Education (Article 3.¹(8))⁹⁴ refers to definitions used in the Consumer Rights Protection Law.⁹⁵ It is very likely that this definition would be used for interpreting the notion of indirect discrimination in other laws that contain no definition of it. The Law on Social Security (Article 2.¹(4)), however, retains the old definition: 'indirect discrimination exists if in a comparable situation an apparently neutral provision, criterion or practice causes or may cause adverse consequences to persons in connection with grounds of race, ethnicity, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, or other circumstances.'

b) Justification test for indirect discrimination

The provisions authorising justification of discrimination do not distinguish between direct and indirect discrimination, or between the grounds covered by the directives and other grounds for differential treatment. The test for justification is the same one as for direct discrimination: 'where such provision, criterion or practice is objectively justified by a legitimate aim the means for attaining which are proportionate'. The justification is appropriate for indirect discrimination cases, but it is too broad for direct discrimination cases.

Article 2.¹(4) of the Law on Social Security should be implemented in conjunction with Article 2.¹(1), which provides a non-exhaustive list of grounds of differential treatment which are considered to be discrimination (unjustified differential treatment on prohibited grounds). Thus, the justification test for indirect discrimination under Article 2.¹(4), consisting of a legitimate aim and the principle of proportionality, is linked to the grounds listed in Article 2.¹(1).

2.3.1 Statistical evidence

a) Legal framework

In Latvia, there is legislation regulating the collection of personal data.

The main law regulating data collection is the Personal Data Processing Law,⁹⁶ adopted on 21 June 2018, which replicates the provision in the General Data Regulation concerning the processing of special categories of personal data (sensitive data): data on racial or

⁹⁴ Law on Education, 29.10.1998.

⁹⁵ Law on Support to Unemployed Persons and Job Seekers, 09.05.2002, <http://likumi.lv/doc.php?id=62539>.

⁹⁶ Personal Data Processing Law (*Fizisko personu datu apstrādes likums*), 21.06.2018, <https://likumi.lv/ta/id/300099-fizisko-personu-datu-apstrades-likums>.

ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. Article 25(2) prohibits the processing of these data in principle, but permits it if at least one of the grounds referred to in Article 9(2) of the Data Regulation is present or if data processing is provided for in external laws and regulations in accordance with Article 9(4) of the Data Regulation.

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

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

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

It must also be noted that one court that regularly makes use of statistical data is the Constitutional Court. Both in a case where there was a challenge regarding the age limit for occupying the post of university professor⁹⁷ and in another case where the age limit for holding a position in the civil service⁹⁸ was challenged, the statistical evidence was important for the decision reached. In one case, it demonstrated the inappropriate character of the limitation, namely the inability to attain the aim sought, and in the other case, it demonstrated the lack of impact of the provision challenged. Hence for the courts of general jurisdiction, too, the idea of using statistical evidence would not be a complete novelty, and the reference to the experience of other countries might also play some role.

b) Practice

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

The general lack of case law precludes discussion of any reluctance to use statistical data concerning the Constitutional Court (see above, section (a)).

There is no case law in this area.

⁹⁷ Constitutional Court, Case No. 2002-21-01, http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01_Spriedums.pdf.

⁹⁸ Constitutional Court, Case No. 2003-12-01, <http://likumi.lv/doc.php?id=82289>.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

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

Various legal acts prohibit harassment (as defined by the Labour Law): the Labour Law (Article 29(1) and (4)), the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Articles 2(1) and 4(3)), the Consumer Rights Protection Law (Article 3.¹(1) and (7,8)), the Law on Social Security (Article 2.¹(1) and (5)), and the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(1) and (5)). Article 3.¹(8) of the Law on Education refers to the definition in the Consumer Rights Protection Law.

The Labour Law defines harassment as the 'subjection of a person⁹⁹ to such conduct unwanted by this person, including conduct of sexual character, which is related to the gender of the person, if the purpose or effect of this conduct is violating the dignity of the person or creating an intimidating, hostile, degrading or offensive environment' (Article 29(7)). The provision covers both harassment and sexual harassment. Again, Article 29(9) applies protection against harassment, including under this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances. This definition (with reference to prohibited grounds, which in the case of the Law on Social Security do not expressly include sexual orientation)¹⁰⁰ is further used in the Law on Social Security (Article 2.¹(5)), the Consumer Rights Protection Law (Article 3.¹(8) on gender, race and ethnic origin and disability), the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(6) on race, ethnicity and gender), and the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 4(4)).

In Latvia, harassment explicitly constitutes a form of discrimination.

Various legal acts (listed below) prohibit harassment (as defined by Labour Law) against a person or a group of persons as a form of discrimination. Protection against discrimination is provided in employment, including self-employment, social protection, social advantages, access to goods and services and education. Article 29(4) of the Labour Law specifically provides that harassment shall be considered as discrimination, as do Article 2.¹(5) of the Law on Social Security, Article 3.¹(7) of the Consumer Rights Protection Law, Article 2.¹(5) of the Law on Support to Unemployed Persons and Job Seekers and Article 4(3) of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators. The Law on Education refers to the definition and types of discrimination that are explained in Article 3.¹(8) of the Consumer Rights Protection Law.

One may argue that, because harassment is qualified by these laws as a form of discrimination, the prohibition of harassment can be regarded as implied in those anti-discrimination provisions contained in other laws that do not expressly refer to harassment, yet, in the absence of any harassment-related case law, this remains only a theoretical possibility.

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

⁹⁹ The term 'person' cannot be interpreted such as to exclude a group from protection from direct discrimination. In these cases, *argumentum a fortiori* should be applied, i.e. if a person cannot be treated less favourably, then it can be assumed that nor can a group.

¹⁰⁰ There is no case law to date on whether sexual orientation may be subsumed under 'other circumstances', hence judicial interpretation would be required. Under Article 150 of the Criminal Law, in a case involving homophobic speech, a district court ruled that 'other circumstances' included sexual orientation Talsi District Court, Case No. 11380026317, 10.01.2018.

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

b) Scope of liability for harassment

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

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

In the case of employers, Article 1782 of the Civil Law could additionally be applied, stating that the employer has to exercise due care when selecting his or her employees and must verify their ability to fulfil their duties, otherwise they may be held liable for the damages caused by them; in cases where the employer is the state, municipality or some other public legal person covered by the provisions of the Administrative Procedure Law, compensation for losses and for moral damages can be requested from the employer. The responsibility of the employer was at issue in the *Smagars* case,¹⁰¹ where the respondent argued that the employer could only be held responsible for pecuniary damages caused by its employees, not for moral damages; however, the court held that the anti-defamation provision of the Civil Law did not exclude legal persons from its scope.

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

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

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

In Latvia, instructions to discriminate explicitly constitute a form of discrimination.

Article 29(4) of the Labour Law¹⁰² expressly states that 'instruction to discriminate shall also be considered discrimination'. Therefore, the relevant provisions on prohibition of discrimination are also applicable to instruction to discriminate.

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

¹⁰¹ Riga Regional Court, Case No. C04386004, 11.07.2005.

¹⁰² Prohibited grounds of discrimination are listed in Article 29(1) of the Labour Law.

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

The term 'instruction to discriminate' is applied poorly in the case law, but nevertheless covers all cases in which discrimination took place based on a hierarchy in relations in every sphere where discrimination as such is prohibited (employment, including self-employment, education, social protection, social advantages, access to goods and services).

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

b) Scope of liability for instructions to discriminate

In Latvia, the instructor and the discriminator are liable.

Since the Labour Law (Article 29(4)) as well as the Law on Social Security (Article 2.¹(2)), the Consumer Rights Protection Law (Article 3.¹(7)), the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(5)) and the Law on the Prohibition of Discrimination of Natural Persons–Economic Operators (Article 4(3)) specify instruction to discriminate as a separate form of discrimination, it can be argued that, in such cases, both the instructor and the direct perpetrator would probably be held liable for two separate offences. However, there is no case law to confirm this interpretation. Similarly, in the cases that might come under the Criminal Law provisions, there would be two offences of discrimination and of incitement. The instructor and the discriminator would be liable according to their share of liability as established in the course of criminal proceedings.

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

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

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

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Latvia, the duty on employers to provide reasonable accommodation for people with disabilities is included in the law. It is defined.

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

There are no further detailed provisions that would allow the disproportionality of the burden to be assessed. On 5 May 2020, the Government raised the maximum level of costs that employers can get reimbursed¹⁰³ for providing reasonable accommodation when hiring

¹⁰³ Cabinet of Ministers Regulations No. 262, Amendments to Cabinet of Ministers Regulations No. 75 of 25 January 2011, Regulations on the Organisation of Active Employment Measures and Preventive Unemployment Reduction Activities and Order of Financing and Principles of the Selection of Those

unemployed persons with disabilities¹⁰⁴ from EUR 711¹⁰⁵ to EUR 1 000. As in the past, adjustments can be made in line with the recommendations of an occupational therapist.

A contribution (of at least the amount of the official minimum salary) may be made to the salary of disabled person for up to 12 months; and provision may be made to cover the services of a sign language interpreter (EUR 10.50 per hour, in proportion to the hours worked by the person with disability, but for no more than 40 hours per week), occupational therapists or other specialists whose services are provided to facilitate the employment of the disabled person,¹⁰⁶ thus helping to alleviate the burden on the employer.¹⁰⁷

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

At the end of 2017, the Ombudsman's Office issued guidelines to employers on reasonable accommodation for persons with disabilities (mobility disability, vision or hearing impairments (total and partial loss), and autism spectrum disorder).¹⁰⁸ The guidelines include examples of reasonable accommodation in offices, in services and commerce and in factories, agriculture, forestry and fisheries, and information on the most popular professions for employees with various different types of disabilities. The guidelines build on contributions by five Latvian NGOs working with people with specific disabilities. The guidelines do not indicate whether they relate to people officially recognised as persons with disabilities under the Disability Law or to all people with disabilities.

b) Case law

In 2011 a court ruled that the employer had breached the equality principle (under Article 7(3) of the Labour Law) by failing to fulfil their obligation to provide reasonable accommodation (in the specific case, adjustment of the workplace and the provision of parking space closer to the workplace could not be considered a disproportionate burden to the employer).¹⁰⁹ There is no other case law in this area.

There have been no cases where the availability of financial assistance from the state has been taken into account in assessing whether there is a disproportionate burden.

Implementing Measures (*Grozījumi Ministru kabineta 2011. gada 25. janvāra noteikumos Nr. 75 "Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem"*), 05.05.2020, Article 1.2, <https://www.vestnesis.lv/op/2020/87.6>.

¹⁰⁴ These persons have to be recognised as falling within one of the three groups in the disability assessment procedure.

¹⁰⁵ This amount was set in 2009.

¹⁰⁶ These persons have to be recognised as falling within one of the three groups in the disability assessment procedure.

¹⁰⁷ Cabinet of Ministers Regulations No. 75 on the procedure for the organisation and financing of active employment measures and preventive activities reducing unemployment and the selection principles of implementers of measures (*Ministru kabineta noteikumi Nr. 75 Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem*), 25.01.2011, available in Latvian at: <http://likumi.lv/ta/id/225425>.

¹⁰⁸ Ombudsman's Office (Tiesībsargs) (2017), *Adjusted Work Environment for Employees with Disability (Pielāgota darba vide darbiniekiem ar invaliditāti. Informatīvais materiāls darba devējiem)*, p. 133, available in Latvian at: http://www.tiesibsargs.lv/uploads/content/publikacijas/vadlinijas_dd_vides_pielagosana_1515490591.pdf.

¹⁰⁹ Kurzeme Regional Court, Case No. C40066110 (*V. Trusēvičs v. SIA Bio-Venta*), 21.09.2011.

c) Definition of disability and non-discrimination protection

The very concept of disability may be problematic, since Latvian law requires official recognition of disability, and hence the issue may arise whether it covers only those disabilities that have received official qualification and as a result of which the person's status as disabled has been officially recognised, or whether it covers any de facto disability. The definition is not stated in the Labour Law, however, and the Labour Law must be read in conjunction with the Disability Law. The commentary to the Labour Law refers to the definition in the Disability Law concerning provisions relating to the dismissal of persons with disability.¹¹⁰ Commentaries to laws are part of the legal doctrine, but they are considered only as a recommendation.

The requirement for official recognition of disability can be problematic and can amount to insufficient implementation unless the courts, when confronted with the issue, interpret the notion of disability in a compatible way.

The definition issue, of course, would have an impact on the issue of reasonable accommodation. Thus far, only one court case on dismissal on grounds of disability,¹¹¹ where it was established that the employer had breached the equality principle by failing to provide for reasonable accommodation, concerned an employee who had been officially conferred the status of disabled person.'

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Latvia, failure to meet the duty of reasonable accommodation in employment for people with disabilities is not recognised as a form of discrimination.

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

e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Latvia, there is no explicit legal duty to provide reasonable accommodation for people with disabilities outside the employment field. However, such a duty may arise under CRPD obligations.

The Law on Education, however, does mention special education¹¹² adapted to the needs of persons with special needs or health problems (Article 42).

¹¹⁰ Free Trade Union Confederation of Latvia (Latvijas Brīvo arodbiedrību savienība) (2020), *Darba likums ar komentāriem (Labour Law with commentary)*, Rīga, p. 306.

¹¹¹ Kurzeme Regional Court, Case No. C40066110 (*V. Trusēvičs v. SIA Bio-Venta*), 21.09.2011.

¹¹² This also applies to mainstream education.

Regulations No. 710¹¹³ on the Provision of General Basic Education and General Secondary Education Institutions According to Special Needs¹¹⁴ set out the provisions that are required from general education institutions concerning the integration of students with special needs in mainstream schools. All provisions are divided into institutional facilities (i.e. where there are additional rehabilitation measures, provision of teaching assistants, additional pedagogical staff and educational programmes) and the utilities of premises (accessible environment etc.). However, no concepts of reasonable accommodation or disproportionate burden are used. On 1 November 2018, amendments were adopted to Article 12(4) of the Disability Law, providing for the right of persons studying in universities and colleges to receive a state-funded assistant service in mobility support and self-care. The provisions came into force on 1 September 2019.¹¹⁵

There has been only one court case concerning reasonable accommodation beyond employment. The individual concerned, who had a psychosocial disability, was prohibited from receiving the old-age pension (*vecuma pensija*) due to the late submission of documents. The court insisted that reasonable accommodation should be provided in the form of additional time for submitting the required documents; otherwise, the limitation on the person's social guarantees would not be proportionate and would amount to discrimination on the ground of disability. The court referred to Article 109 of the Latvian Constitution and Article 28 of the CRPD as the legal basis for its decision.¹¹⁶

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

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

Some instances of reasonable accommodation on the ground of religion are provided for in the Labour Law: if an employee's working day is switched to a Saturday, the employee can arrange, with the agreement of the employer, to work on another day because of their religious beliefs (Article 113(4) and (5)).¹¹⁷ However, this does not amount to a duty as it remains at the discretion of the employer.

¹¹³ Cabinet of Ministers Regulations No. 710 on the Provision of General Basic Education and General Secondary Education Institutions According to Special Needs (*Ministru kabineta noteikumi Nr.710 Noteikumi par vispārējās pamatizglītības un vispārējās vidējās izglītības iestāžu nodrošinājumu atbilstoši izglītojamo speciālajām vajadzībām*), 16.10.2012, available in Latvian at: <http://likumi.lv/doc.php?id=252163>.

¹¹⁴ 'Special needs' is used in respect to education and, apart from children with disabilities, the term also covers some children who do not have a disability as defined by the Law on Disability.

¹¹⁵ Amendments to the Disability Law, 01.12.2018, <https://likumi.lv/ta/id/303002-grozījumi-invaliditates-likuma>.

¹¹⁶ Administrative Regional Court, Case No. A420528911, *B. v. State Social Insurance Agency*, 27.09.2013.

¹¹⁷ Labour Law, Article 113(4) and (5), 20.06.2001, <http://likumi.lv/doc.php?id=26019>.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

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

Since the main law transposing the directives – the Labour Law – does not refer to citizenship requirements, it can generally be said that the protection against discrimination applies to all persons regardless of their citizenship on the basis that they have a labour contract.¹¹⁸

However, there are some laws where citizenship or status in Latvia is a precondition for the guarantee of equal rights or access to certain services, notably the Law on Education, which restricts its protection to citizens and non-citizens of the Republic of Latvia as well as to different categories of persons to whom residence permits have been issued. In the case of illegal migrants, the right to education exists during the period for voluntary repatriation, as well as during detention. Access to social security is limited to Latvian citizens, non-citizens, third-country nationals and stateless persons to whom a personal ID number has been issued; persons in possession of temporary residence permits only (under Article 3 of the Law on Social Services and Social Assistance) are excepted. A similar provision on the possession of a permanent residence permit as a precondition for acquiring the status of an unemployed person was invalidated by the Constitutional Court in relation to the spouses of Latvian citizens, who can only obtain a permanent residence permit after a certain number of years, when the intention of the spouses is clearly to stay permanently, which thus differs from the cases of other persons who receive a temporary residence permit.¹¹⁹ The Law on the Ombudsman provides that a person with dual nationality cannot be appointed as Ombudsman; the same prohibition applies to the President of the State.

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

a) Protection against discrimination

In Latvia, the personal scope of anti-discrimination law covers natural persons for the purpose of protection against discrimination. The personal scope of anti-discrimination law also covers legal persons for the purpose of protection against discrimination, except in the private sector.

The prohibition of discrimination stems from Article 91 (non-discrimination) of the Constitution which does not distinguish between legal and natural persons when it comes to protection against discrimination, and which is directly applicable. However, the Constitution cannot be enforced against private actors unless a specific law is in place.

In the case of some laws, the personal scope covers only natural persons. These laws are the Labour Law (Articles 3, 29(1) and 29(9)), the Law on Education (Articles 1(12), 2, 3 and 3.¹) and the Consumer Rights Protection Law (Articles 1(3) and 3.¹).

According to the legal doctrine, prohibition against discrimination is also possible in relation to legal persons and associations or groups of persons without legal status, if it is possible according to the essence of the specific criteria. Prohibition of discrimination on grounds of religion can also refer to a church or congregation (whether registered or unregistered),

¹¹⁸ Irregular migrants would be excluded as they do not have official work permits.

¹¹⁹ Constitutional Court, Case No. 2001-11-0106, 25.02.2002, http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/09/2001-11-0106_Spriedums_ENG.pdf.

and prohibition of discrimination on grounds of political belief can refer to a political party, association or group.¹²⁰

b) Liability for discrimination

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

The personal scope of the Labour Law covers natural or legal persons for the purpose of liability for discrimination, following Article 7(1) and (2), which does not divide or separate subjects, and Article 4(1), according to which an employer may be a natural or legal person. The personal scope of the Consumer Protection Law covers natural or legal persons for the purpose of liability for discrimination, allowing a service provider or trader to be a natural or legal person (Articles 1(3) and (4) and 3.¹). The personal scope of the Law on Education covers natural and legal persons for the purpose of liability for discrimination, allowing the provider of an education programme be a legal or natural person (Articles 1(5), (7) and (16¹) and 3.¹).

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

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

National law covers the public sector and the private sector to different degrees, depending on the field. The Labour Law (on access to employment – Articles 7, 29, 33, 34, 48 and 95) applies to both the public and private sectors. The guarantees in the Law on Social Security (Article 3.¹) cover social protection in the public sphere, but not services provided in the private sphere (e.g. the private medical sphere). Social advantages, for example those provided by private foundations outside the framework of an employment relationship, are not explicitly covered, although they are covered by the Consumer Rights Protection Law (Article 3.¹), to the extent that they can be considered to be a service that is publicly offered. The Law on Education applies to both the public and private spheres.

b) Liability for discrimination

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

National law covers the public sector and the private sector to different degrees, depending on the field. The Labour Law (on access to employment) applies to both the public sector (Articles 2(1), 7(1) and 7(2) and the provisions of special laws in the corresponding public field) and the private sector (Articles 2(1), 7(1) and 7(2)). The guarantees in the Law on Social Security (Article 2.¹ in conjunction with the Administrative Procedure Law and Article 204.¹⁷ of the Code of Administrative Offences) cover social protection in the public sphere, but not services provided in the private sphere (e.g. the private medical sphere). Social advantages, for example those provided by private foundations outside the framework of an employment relationship, are not explicitly covered by those guarantees, although they are covered by the Consumer Rights Protection Law (Article 3.¹ in conjunction with the

¹²⁰ 91. 'All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.' Levits, E. (2016), *Commentaries to the Republic of Latvia Constitution*. Chapter VII. Fundamental Human Rights (91. 'Visi cilvēki Latvijā ir vienlīdzīgi likuma un tiesas priekšā. Cilvēka tiesības tiek īstenotas bez jebkādas diskriminācijas'), *Latvijas Republikas Satversmes komentāri*. VII nodaļa. Cilvēka pamattiesības, p. 114, http://blogi.lu.lv/tzpi/files/2016/07/91_PANTS.pdf.

Administrative Procedure Law and Article 204.¹⁷ of the Code of Administrative Offences), to the extent that they can be considered a service that is publicly offered. In conjunction with the Administrative Procedure Law and the Code of Administrative Offences (Article 204.¹⁷) and also with the Civil Procedure Law, the Law on Education (Article 3.¹) applies to the public and private spheres respectively.

3.2 Material scope

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

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

The anti-discrimination provision in Article 29(1) of the Labour Law specifically mentions establishing an employment relationship and promotion. Article 29(9) explicitly protects against differential treatment based on the grounds of race, age, religious conviction, disability and sexual orientation. The Labour Law – and hence its guarantees – apply to both the public and private sectors, including the state civil service and specialised civil service. An equality guarantee also applies in relation to access to self-employment or contract work on the grounds of race or ethnic origin, gender, religious conviction, age, disability or sexual orientation, as provided for by Article 2(1) 1,2 of the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators. Article 2(1) (2) of the Law specifies that access to self-employment (economic activity) in the meaning of the Law includes commencement or expansion of an activity of any other kind in the field of self-employment.

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

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

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

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

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

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

Access to vocational guidance and training in both the public and private sectors¹²¹ (with the exception of military service as described above) in the context of employment relationships is covered by Article 29(1) of the Labour Law with reference to 'occupational training'. Race, age, religious conviction, disability and sexual orientation are explicitly covered.

No explicit guarantee concerning access to vocational guidance, vocational training or education exists specifically within the spheres of military service, self-employment¹²² or contract work; however, to the extent that the Law on Education¹²³ applies – and it also applies to vocational training, which is regarded as a form of education – it applies to both the public and private sectors, and also to vocational training provided by, for example, technical schools and universities. The problem, however, is that this law contains a closed list of grounds which does not include age, disability or sexual orientation, but only 'property and social status, race, ethnicity, gender, religious or political opinions, health condition,¹²⁴ occupation and place of residence.' To some extent, however, it could be argued that the protection against disability-based discrimination can be subsumed under the heading of 'health condition'.

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

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

3.2.4 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))

¹²¹ On 1 November 2018, amendments were adopted to Article 12(4) of the Disability Law, providing for the right of persons studying in universities and colleges to receive the services of a state-funded assistant for mobility support and self-care. These provisions came into force on 1 September 2019. Amendments to the Disability Law, 01.12.2018, <https://likumi.lv/ta/id/303002-grozijumi-invaliditates-likuma>.

¹²² There is no explicit reference to vocational guidance and training for self-employed persons under the 2012 Law on the Prohibition of Discrimination of Natural Persons-Economic Operators.

¹²³ Law on Education, 29.10.1998, Article 3.

¹²⁴ In the autumn of 2002, there was a case in which a teacher, following the instructions of her superior, did not let an HIV-positive pupil enter a class. The case was well publicised and highlighted the issue of the protection of sensitive data. Disciplinary action was taken against the teacher.

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

The Law on Trade Unions emphasises the non-discrimination aspect: the right of anyone to establish and join a trade union without any discrimination, a person's trade union membership and their wish to join or not to join a trade union may not serve as a basis for restricting that person's rights (Article 4).¹²⁵

Article 2(2) of the Law on Organisations of Employers and their Associations¹²⁶ provides that a natural or legal person who employs at least one person on the basis of a contract can become a member of an employers' organisation, but it does not contain any non-discrimination clause.

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

As regards professional organisations, the Law on the Bar¹²⁷ does not contain any equality clause at all, but Latvian citizenship is a condition for access to the Bar.

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

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

In addition to constitutional guarantees of equality, Article 109 of the Constitution provides that everyone has the right to social security in old age, for work disability, for unemployment and in other cases provided for by law, while Article 111 states that the state shall protect human health and guarantee a basic level of medical care for everyone. Article 2 of the Law on Social Security¹²⁸ refers to 'prohibition of differential treatment' as one of the principles of the provision of social services, and Article 2.¹(1) specifies that, in the provision of social services, differential treatment based on a person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances is prohibited. Sexual orientation is not specified as a prohibited ground in this law, but it could be argued that it comes under 'other circumstances'.¹²⁹ The law states: 'Social services in the meaning of this law are measures ensured by the state or municipality as monetary or material support or other services to promote the full realisation of a person's social rights' (Article 13). Access to social housing is covered under social protection.

Article 16 of the Medical Treatment Law¹³⁰ provides that everyone has the right to receive urgent medical care, as provided for by the Cabinet of Ministers, while Article 17 of that law states that the right to medical care guaranteed by the state is enjoyed by Latvian citizens, non-citizens, foreign citizens and stateless persons who are registered in the population register and have received a personal ID number, as well as by imprisoned and detained persons. There is no express guarantee of equality. However, given the definition

¹²⁵ Law on Trade Unions (*Arodbiedrību likums*), 06.03.2014, <http://likumi.lv/doc.php?id=265207>.

¹²⁶ Law on Organisations of Employers and their Associations (*Darba devēju organizāciju un to apvienību likums*), 29.04.1999, <http://likumi.lv/doc.php?id=24467>.

¹²⁷ Law on the Bar (*Advokatūras likums*), 27.04.1993, <http://likumi.lv/doc.php?id=59283>.

¹²⁸ Law on Social Security, 07.09.1995.

¹²⁹ There is no relevant case law yet.

¹³⁰ Medical Treatment Law (*Ārstniecības likums*), 12.06.1997.

of social services, it appears that the equality guarantee contained in the Law on Social Security applies also in the sphere covered by this law.

Thus, it can be observed that, while in some cases the explicit guarantee of equality is missing in particular laws, and in other cases it might not encompass all grounds, the guarantee contained in the Law on Social Security, which is not limited to racial or ethnic origin, but extends to other grounds in an open-ended way, covers the whole field of social protection as long as it relates to the public sphere. Services provided by the private sector (private medical care, for example) are covered by the Consumer Rights Protection Law (Article 3.¹) on grounds of race or ethnic origin and disability.

a) Article 3(3) exception (Directive 2000/78)

There is no Article 3(3) exception in Latvian national legislation.

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

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

In addition to the constitutional guarantee of equality, Article 3 of the Law on Social Services and Social Assistance¹³¹ provides that Latvian citizens, non-citizens, foreign citizens and stateless persons who have received a personal ID number – except persons who have received temporary residence permits, but including persons with subsidiary status – have the right to social services and social security.

Article 2.¹(1) of the Law on Social Security provides that social services – broadly defined as ‘measures ensured by state or municipality as monetary or material support or other services to promote the full realisation of a person’s social rights’ – shall be provided without discrimination on the basis of a person’s race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances, as long as they are provided by state or municipal institutions.

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

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

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

The Law on Education applies to both the public and private spheres and contains a closed-list non-discrimination clause, which does not include all the grounds listed by the directives,¹³² specifically age, disability and sexual orientation. Disability, however, may be

¹³¹ Law on Social Services and Social Assistance, 31.10.2002.

¹³² Articles 3 and 3.¹(1) of the Law on Education provide that: ‘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

subsumed under 'health condition', although this would require judicial interpretation. In reality, access to education remains a problem for disabled children and adults.

In 2016, the Parliament amended Sections 30(4) and 48(5) of the Law on Education to specify that, for a person to be allowed to work as the head of an educational institution or a teacher, they must not violate the prohibition of discrimination.¹³³ The explanatory report of the amendments¹³⁴ does not provide information about the rationale for such amendments, which were drafted in conjunction with the controversial teacher 'loyalty requirements' (to the Constitution and the state of Latvia)¹³⁵ that are predominantly aimed at minority teachers working in bilingual schools.¹³⁶ The new amendments concerning potential discrimination by educational workers replicate those in Article 3.¹(7) of the Law on Education.

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

Many schools and university buildings remain inadequately accessible for a person in a wheelchair. According to a 2020 survey of persons with disabilities, 27 % of educational institutions remain inaccessible.¹³⁷

According to the Ministry of Education, there were 15 437 pupils with special educational needs in 2019/2020. Of those, 63.9 % study in general education schools and follow either general education programmes (3 194), special education programmes (5 484) or special classes (1 800), while the rest study in special education schools (5 579). The inclusion and integration of pupils with special educational needs in mainstream schools has risen by nearly 30 % from 34.76 % in 2013/2014 to 63.9 % in 2019/2020.

In 2014 Parliament approved the Guidelines for Education Development 2014-2020,¹³⁸ and the Government approved the Implementation Plan (2015-2017).¹³⁹ A successive Plan for

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.'

¹³³ Amendments to the Law on Education (*Grozījumi Izglītības likumā*), 23.11.2016, available in Latvian at: <http://likumi.lv/ta/id/287247-grozijumi-izglitibas-likuma>. The amendments state that the person must not discriminate against others. This can refer not only to court decisions (criminal, civil or administrative), but also to disciplinary decisions by an administrative body that have not been appealed or annulled. There have been no such decisions against teachers made by either administrative bodies or courts.

¹³⁴ Cabinet of Ministers (2016), 'Letter to the Saeima concerning Proposals to the Law on Education for the 2nd Reading', p. 48, available at: <http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/AC0F4589AC2AAEE4C225806E003CC83F?OpenDocument>.

¹³⁵ LETA (Latvian Information Agency) (2016), 'Saeima endorses controversial teacher loyalty amendments to the Education Law', 23.11.2016, <http://www.leta.lv/eng/home/important/4AF60C80-AFB1-4C4C-A8A0-B59C56A0DE0C/>.

¹³⁶ LSM.LV (2016), 'Russian Teachers fear Witch Hunt Over Loyalty Law', 20 October 2016, <http://www.lsm.lv/en/article/society/society/russian-teachers-fear-witch-hunt-over-loyalty-law.a206305/>; 23 November 2016, <https://eng.lsm.lv/article/politics/saeima/saeima-passes-controversial-teachers-loyalty-amendments.a211421/>. The draft amendments on 'teacher loyalty' were conceived by a radical nationalist party following an incident in which an activist working as a teacher in a bilingual school (with Russian as the main language of instruction) openly stated his disloyalty to Latvia in a radio interview, causing suspicions as to what he was teaching children. Hence, a set of rules were established for the dismissal of teachers who are found to be disloyal to the state of Latvia. The Minister of Education stated that 'schoolchildren must be protected against the bad luck of meeting a half-deranged nationalist, a religious fanatic and a Kremlin agent of influence. The estimates were that there were 10 such teachers among 3000. The loyalty requirements were found to be in line with Constitution by the Constitutional Court.'

¹³⁷ Cabinet of Ministers (Ministru kabinets) (2020), *Assessment of the implementation of the UN Convention on the Rights of Persons with Disabilities*, <http://petijumi.mk.gov.lv/node/3249>.

¹³⁸ *Guidelines for Education Development 2014-2020*, <http://likumi.lv/doc.php?id=266406>.

¹³⁹ *Implementation plan (2015-2017) of Guidelines for Education Development 2014-2020*, <https://likumi.lv/ta/id/274936-par-izglitibas-attistibas-pamatnostadnu-2014-2020-gadam-istenosanas-planu-2015-2017-gadam>.

2018-2020 was developed by the Ministry of Education and Science.¹⁴⁰ The Guidelines underline the importance of inclusive education and personalised approaches for learners with special needs. A new reform of the special education system is underway, and aims to develop a comprehensive support system for the education of learners with special needs in mainstream classrooms. Regulations regarding the functioning and evaluation of 12 special education development centres were adopted in March 2016.¹⁴¹ These centres, in addition to implementing special educational programmes, provide early diagnosis of special needs, methodological and pedagogical assistance to educators, develop educational or methodological support materials, provide counselling for students with special needs, organise informative educational events and cooperate with higher education institutions on research.¹⁴² However, in practice, the success and sustainability of mainstreaming support may depend to a larger extent on the level of resources and expertise that can be developed within each mainstream school.

Amendments to the General Education Law, adopted on 21 June 2018, which determine that special education institutions shall implement special education programmes for pupils with mental development disorders, mental health disorders, serious mental development disorders or several serious developmental disorders, as well as education programmes for pupils with sight or hearing impairments, came into force on 1 September 2020. Pupils with physical development (mobility) impairment, somatic symptom disorders, speech disorders and learning difficulties will be integrated in general education schools.¹⁴³

National minorities

In Latvia, the focus in minority education has almost exclusively been on the language of instruction. In 1991, the independent Latvian state inherited a segregated schooling system from the Soviet system, in which Russians and other minorities attended schools with Russian as the language of instruction, while Latvians went to Latvian-language schools, but with Russian as a mandatory part of the curriculum.

The primary school reform included the development of acceptable models to be implemented from 1999, entailing a gradual introduction of Latvian or bilingual classes in Russian-language schools, while retaining a significant amount of teaching time in Russian.¹⁴⁴

Since 2004, the language ratio in schools implementing minority education programmes at upper secondary level has been 60 % Latvian and 40 % in the minority language. Subjects can be taught in Latvian, in the minority language or bilingually. The minority education reform was introduced to facilitate integration and, at the same time, maintain minority identity.

There have been several complaints before the Constitutional Court alleging discrimination on grounds of language following the adoption of legal amendments (in 2005, 2019 and 2020).

In 2005, the Constitutional Court ruled in a case relating to the minority education reform in secondary schools, which specified the minimum proportion of lessons to be taught in

¹⁴⁰ There has been no assessment of the 2018-2020 plan yet.

¹⁴¹ Regulations No. 197, Regulations on the criteria and procedure for granting the special education institution the status of a special education development centre (*Noteikumi par kritērijiem un kārtību, kādā speciālās izglītības iestādei piešķir speciālās izglītības attīstības centra statusu*), 29.03.2016, <https://likumi.lv/ta/id/281256-noteikumi-par-kriterijiem-un-kartibu-kada-specialas-izqlitibas-iestadei-pieskir-specialas-izqlitibas-attistibas>.

¹⁴² Special Education Development Centre, <http://www.izm.gov.lv/images/aktualitates/2018/Mjas-lapa.pdf>.

¹⁴³ Amendments to the General Education Law (*Grozījumi Vispārējās izglītības likumā*), adopted on 21.06.2018, <https://likumi.lv/ta/id/300102-grozijumi-visparejas-izqlitibas-likuma>.

¹⁴⁴ RAXEN_CC National Focal Point Latvia, Latvian Centre for Human Rights (2004), *Minority Education in Latvia*, https://fra.europa.eu/sites/default/files/fra_uploads/275-EDU-Latvia-final.pdf.

Latvian. It ruled that it complies with the Constitution and meets the needs for integration, provided that the authorities respect flexibility in the application of the regulations and ensure monitoring of the quality of education. The Court pointed out that there 'must be a mechanism which could evaluate changes in the quality of the education process and the control quality mechanism must be impartial, professional and regular as well as based on scientific conclusions and methods'.¹⁴⁵

In 2018 and 2019, opposition MPs submitted several complaints to the Constitutional Court related to the amendments to the Education Law, the General Education Law, the Law on Higher Education and several Government regulations concerning the increased proportion of instruction in Latvian in basic education (Grades 1-9) in minority schools, the transition to instruction in Latvian in upper secondary education (Grades 10 to 12 in both public and private schools implementing minority education programmes),¹⁴⁶ and the increase in the proportion of Latvian being used in kindergartens and tertiary education (private higher educational establishments).¹⁴⁷ The new amendments envisage differential treatment of learners belonging to national minorities and those whose native language is not one of the EU official languages, compared with learners belonging to national minorities whose native language is one of the EU official languages. The amendments also envisage differential treatment of learners belonging to national minorities who attend schools implementing minority education programmes, as compared with learners belonging to national minorities who attend schools implementing minority education programmes in accordance with the international agreements that are binding upon Latvia.

The Constitutional Court adopted four judgments in this regard: on 23 April 2019 (for secondary education at public schools),¹⁴⁸ on 13 November 2019 (for secondary education at private schools),¹⁴⁹ on 11 June 2020 (for kindergartens),¹⁵⁰ and on 19 June 2020 (for higher education at private universities).¹⁵¹ Amendments concerning kindergartens and secondary education in public and private schools were found to be in line with the Constitution, or the discrimination argument was not addressed. In several judgments, the Constitutional Court held that, in Latvia, those learners whose mother tongue is a language other than the official language are not in comparable conditions with learners whose mother tongue is the official language.¹⁵²

Concerning the use of the official language in private universities, part of the legal provisions that were disputed in court were declared to be unconstitutional and, at the

¹⁴⁵ Decision of the Constitutional Court of the Republic of Latvia in Case No. 2004-18-0106, 13 May 2005, http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106_Spriedums_ENG.pdf.

¹⁴⁶ 50 % of instruction in Latvian and 50 % in the minority language in Grades 1-6; 80 % in Latvian and 20 % in the minority language in Grades 7-9; transition to instruction in Latvian in Grades 10-12, with the exception of subjects concerning the minority language, identity and culture. The amendments concern both public and private schools. The amendments are coming into force in different phases and for different grades from 2019 to 2021. Prior to the March 2018 amendments, education in the state language was mandatory only in state schools. Under the Law of 22 March 2018 amending the Education Law, the mandatory proportions regarding the use of Latvian are also applied to private schools of basic and secondary education.

¹⁴⁷ In state and private higher education institutions, instruction is possible only in Latvian and other EU official languages. Other languages which are not official languages of the EU (e.g. Russian and Ukrainian) can be the language of instruction only for language and culture studies.

¹⁴⁸ Constitutional Court Case No. 2018-12-01, 23.04.2019, [2018-12-01-12.-Saeimas-dep_latviešu-valoda-valsts-skolās_ENG.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/07/2018-12-01-12.-Saeimas-dep_latviešu-valoda-valsts-skolās_ENG.pdf) ([tiesa.gov.lv](https://www.tiesa.gov.lv));

¹⁴⁹ Constitutional Court, Case No. 2018-22-01, 13.11.2019, https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/09/2019-20-03_Judgment.pdf#search=2019-20-03.

¹⁵⁰ Constitutional Court, Case No 2019-20-03, 19 June 2020, https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/09/2019-20-03_Judgment.pdf#search=2019-20-03.

¹⁵¹ Constitutional Court, Case No 2019-12-01, 11.06.2019, https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/07/2019-12-01_Judgement.pdf.

¹⁵² See Judgment of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para. 21.1; Judgment of 19 June 2020, Case No. 2019-20-3, Para. 21)

same time, the Court decided to separate part of the case in a new case, in which it decided to refer a request for a preliminary ruling to the Court of Justice of the European Union.¹⁵³

At the request of the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe, in June 2020 the Venice Commission issued an opinion on recent amendments to the legislation on education in minority languages in Latvia.¹⁵⁴ It recommends amending Cabinet Regulation No. 716 in order to return to the previous 'bilingual approach' in play-based lessons, to be applied to the whole period of pre-school education; taking the necessary legislative and other measures to ensure that state schools offer a minority education programme whenever there is sufficient demand for it; exempting private schools from the mandatory proportions for using the Latvian language that are applied to state schools implementing minority education programmes; and constantly monitoring the quality of education received by pupils attending minority education programmes.

a) Trends and patterns regarding Roma pupils

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

Since 2016, there have been no specialised Roma classes in Latvia. Seven educational institutions had Roma classes in 2003/2004, but these were gradually closed by 2014/2015, partly as a result of recommendations by international treaty bodies.

Since 2009, the Ministry of Education has been collecting data about the educational achievements of Roma pupils, including on their involvement in education programmes, on support measures that have been provided and on school drop-out rates. According to the Ministry, 856 Roma children attended school in 2019/2020.¹⁵⁵ In 2016/2017, the drop-out rate of Roma children from schools was 7.5 %, ¹⁵⁶ while in 2013/2014 it was 15.9 %.¹⁵⁷ The share of Roma with special educational needs is disproportionally higher than the national share. In 2013/2014, 26 % of Roma children were involved in special primary education¹⁵⁸ programmes; in 2016/2017, the share had increased to 34 %.¹⁵⁹ There is no information available as to the number of Roma children of mandatory school age who are not attending school. Roma account for less than 1 % of Latvia's population.

In 2016/2017 there were two Roma pupils with physical development (mobility) impairment, seven with somatic symptom disorders, 32 Roma students with speech development difficulties and 93 with learning difficulties.

¹⁵³ Constitutional Court, Case C-391/20, request for a preliminary ruling, <https://curia.europa.eu/juris/showPdf.jsf?text=2020-33-01&docid=232207&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1525667>. The questions put to the CJEU concern the freedom of establishments (Art. 49 TFEU), freedom to provide services (Art. 56 TFEU) and the freedom to conduct business.

¹⁵⁴ Venice Commission (2020), *Latvia – Opinion on the recent amendments to the Legislation on Education in Minority Languages*, Opinion No. 975/2020, 18 June 2020, Council of Europe, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)012-e).

¹⁵⁵ Ministry of Education (2017), 'Monitoring of Educational Attainment of Roma Children in 2016/2017 from the period 2013/2014', Education Department presentation, 12.04.2016.

¹⁵⁶ The main reasons cited are that families have emigrated and that children have reached the age of 18.

¹⁵⁷ Ministry of Education and Science (2014), 'Monitoring of the Quality of Education of Roma Children Conducted by the Ministry of Education and Science in Cooperation with Regional and City Education Boards in 2013-2014' ('Izglītības un zinātnes ministrijas sadarbībā ar novadu un pilsētu izglītības pārvaldēm veiktais romu skolēnu izglītības kvalitātes monitorings 2013./2014.mācību gadā').

¹⁵⁸ Primary education is mandatory in Latvia.

¹⁵⁹ Ministry of Education (2017), 'Monitoring of Educational Attainment of Roma Children in 2016/2017 from the period 2013/2014', provided to the Latvian Centre for Human Rights following a request.

Due to the changes in the General Education Law, adopted on 21 June 2018,¹⁶⁰ pupils with physical development (mobility) impairments, somatic symptom disorders, speech disorders and learning difficulties are to be integrated in general education schools.¹⁶¹ According to the Ministry of Education, from 2020/2021 around 130 Roma students are to be integrated¹⁶² in general education institutions implementing primary (grades 1-9) or secondary (grades 10-12) education programmes.¹⁶³

At the same time, the number of Roma in special education programmes for pupils with mental disorders remains disproportionately high – 16.5 % among Roma pupils.¹⁶⁴ The next phase of data collection is envisaged in 2021/2022.

Data from the Population Census 2011 shows that only 9.3 % of Roma have secondary education, and only 0.8 % or 40 Roma have university education. Among 4 888 Roma over the age of 15, 31.7 % had primary education and 23.3 % had elementary education (four years of school), while 18.5 % had less than elementary-level education (four years of school).¹⁶⁵ The next Population Census will take place in 2021.

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

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

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

The Consumer Rights Protection Law prohibits discrimination in relation to access to and supply of goods and services based on a person's gender, race or ethnic origin or disability. Although, on 19 June 2012, the Government approved amendments to the law, adding age, religious conviction and sexual orientation to the prohibited discrimination grounds, the amendments were stalled in the Parliament (Article 3.¹(1)). However, as far as consumer rights protection is concerned, reference to Article 91 of the Constitution¹⁶⁶ can resolve the deficiency of the lack of reference to specific grounds.

Article 2.¹ of the Law on Social Security specifies that, in the provision of social services (by state and municipal services), differential treatment based on a person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances is prohibited. Sexual orientation is not specified as a prohibited ground in this law, but it could be argued that it comes under 'other circumstances'. There is no relevant case law yet.

The Law on the Prohibition of Discrimination of Natural Persons-Economic Operators prohibits discrimination in the public and private spheres in relation to the supply of goods and services necessary for the performance of self-employed activities on the basis of a person's gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin (Article 2(2)).

¹⁶⁰ See p. 62.

¹⁶¹ Amendments to the General Education Law, adopted on 21.06.2018, <https://likumi.lv/ta/id/300102-grozijumi-visparejas-izglitiba-likuma>.

¹⁶² According to the Ministry of Education, the next phase of data collection on Roma is envisaged in 2021/2022.

¹⁶³ Letter to the Roma Advisory Council of the Ministry of Culture to the Ministry of Education, 10 April 2019.

¹⁶⁴ Ministry of Education (2017), 'Monitoring of Educational Attainment of Roma Children in 2016/2017 from the period 2013/2014', Education Department presentation, 12.04.2016.

¹⁶⁵ Letter from the Central Statistical Bureau to the Latvian Centre for Human Rights No. 0708-10/222, 10.02.2012.

¹⁶⁶ *Latvijas Republikas Satversme*, Latvijas Vēstnesis, Rīga, 1996.

Amendments to the Law on Aviation (Article 120(3)) on administrative offences in passenger air transportation provides that, in the event of any violation of the right of persons with disabilities or persons with reduced mobility to use air transportation services, a warning shall be issued, or a fine ranging from 90 fine units [EUR 450] to 600 fine units [EUR 3 000] shall be imposed on the legal persons concerned.¹⁶⁷

On 30 October 2020, the European Commission sent a letter of formal notice to Latvia for incorrect implementation of EU rules on equal treatment between men and women in access to and the supply of goods and services (Council Directive [2004/113/EC](#)). In the Commission's view, neither the Consumer Rights Protection Law nor the Law on the Prohibition of Discrimination of Physical Persons-Economic Operators provides for the protection of physical persons in situations where goods are supplied and services are provided by a non-professional goods supplier or service provider, i.e. an individual who publicly offers goods or services outside their professional capacity.

Article 3(1) of the Law on the Prohibition of Discrimination of Physical Persons-Economic Operators comprises all goods suppliers and service providers irrespective of whether the person supplies goods or provides services in their professional or private capacity (e.g. selling immovable property or operating a transport vehicle) to the extent that access to the specific good or service is public and is offered outside the scope of private and family life (e.g. without advertising in a newspaper or a publicly accessible website or offering the service to friends and family). The provision protects goods suppliers and service providers (self-employed persons) from discrimination in access to economic activity and as purchasers in order to enable their economic activity. Currently the Consumer Rights Protection Law provides consumer protection against discrimination on grounds of gender and other characteristics, although it applies only to those cases when specific goods or services are provided by persons acting in their professional capacity.

By the end of 2020, the Ministry of Welfare had prepared amendments to the law to correctly transpose Article 3(1) of the directive.¹⁶⁸

The phrase 'economic activity operators' will be substituted with 'legal transaction party':

'Article (1) The purpose of the law is to determine the prohibition of differential treatment in the private and public spheres in relation to legal transaction parties, including physical persons, who have registered as self-employed persons in the Taxpayers Register.

(2) A legal transaction party, for the purposes of this law, is a physical person that independently and publicly, including beyond their professional activity:

- 1) offers or seeks to offer goods or services to another physical person for remuneration
- 2) purchases or seeks to purchase goods or services from a person mentioned in Article 1.'

The amendments will concern all grounds listed in the Consumer Rights Protection Law – gender, race or ethnic origin or disability.

a) Distinction between goods and services available publicly or privately

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

¹⁶⁷ Law on Aviation (*Likums par aviāciju*), 05.10.1994, <https://likumi.lv/ta/id/57659-par-aviaciju>.

¹⁶⁸ Ministry of Welfare (2021), Initial Impact Assessment of the draft amendments to the Law on the Prohibition of Discrimination of Natural Persons – Economic Operators (*Fizisko personu - saimnieciskās darbības veicēju - diskriminācijas aizlieguma likuma grozījumu projekta sākotnējās ietekmes novērtējuma ziņojums (anotācija)*, <http://tap.mk.gov.lv/lv/mk/tap/?pid=40500991>.

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

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

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

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

a) Trends and patterns regarding housing segregation for Roma

In Latvia, there are patterns of Roma having their access to better housing restricted.

According to a comprehensive Roma survey in 2015, fewer Roma (42.5 %) own a dwelling than the national average (58.8 %); 18.6 % of Roma rent their homes (national average 12.6 %); and 35.6 % of Roma reside in municipal or state housing. A range of factors restrict Roma access to better housing, including low and irregular income, as well as a lack of savings – only 9.4 % have savings exceeding EUR 250. Prejudice against Roma as tenants and neighbours and various other factors also play a role. Roma housing is unsatisfactory and worse than that of other residents of Latvia. The majority of Roma live in households that lack one of the basic amenities (e.g. plumbing, a flushing toilet, a shower or a bathroom) and the state of their dwellings is poor, sanitation being the key problem. In 55.9 % of the housing where Roma live, there is no shower or bathroom, 42.1 % of the housing does not have flushing toilets, and a quarter of the Roma surveyed (26 %) do not have access to any water supply at home. At the same time, Roma actively use the support offered by municipalities and NGOs – predominantly municipal housing benefit.¹⁶⁹ Issues related to municipal housing come under social protection.

¹⁶⁹ Latvijas Fakti Market and Social Research Centre (2015), *Romi Latvijā (Roma in Latvia)*, pp. 95-122. The research was conducted as part of the file at: http://ec.europa.eu/justice/newsroom/files/summaries_selected_2013_ag_prog_ad_en.pdf. Different people. Diverse experience. One Latvia II project, JUST/2013/PROG/AG/4978/AD.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

The only statute that refers to occupational requirements is the Labour Law. Article 29(2) provides that 'differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition for performance of the relevant work or for the relevant employment'. Article 29(9) applies this also to differential treatment based on a person's race, colour, age, disability, religious, political or other opinions, national or social origin, property or family status, sexual orientation and other circumstances. There is no further explanation of such preconditions. In the only case – the case of *Kozlovska v. SIA Palso*¹⁷⁰ – where the court does refer to an 'objective precondition', there is no real discussion of it, since the employer claimed that he had indicated that the person's 'accent' determined the refusal to employ at the request of the claimant, and that the real reasons behind this had been a lack of required secondary education and an appearance that was unsuitable for the available position. Thus, the employer did not actually argue that the absence of a certain accent was an objective and substantiated precondition. The court concluded that there was no dispute as to the claimant's knowledge of the Latvian language – which would have been an objective precondition – and that the respondent had not shown that the absence of an accent was such a precondition.

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

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

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

The Labour Law includes a provision stating that 'in a religious organisation differential treatment based on a person's religious belief is admissible where, taking into account the ethos of the organisation, a particular religious belief is an objective and substantiated precondition for the work or activity in question' (Article 29(10)). According to the wording of the law, this only applies to a religious organisation, thus excluding other beliefs, and the measures seem to create a broader exception than the one provided for in Article 4(2) of Directive 2000/78, yet it remains to be seen how this will be interpreted by the courts. This provision is a counterpart of Article 14(1) of the Law on Religious Organisations, which provides that religious organisations elect or appoint their religious personnel in accordance with their regulations,¹⁷¹ while other employees are employed and dismissed in accordance with the law regulating employment. In other aspects of employment, the Labour Law applies.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

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

¹⁷⁰ Jelgava Court, Case No. 15066406, 25.05.2006.

¹⁷¹ The Law on Religious Organisations does not contain any other provision whereby this exception cannot lead to discrimination on a ground other than religion/belief.

discrimination clauses in the Labour Law are applicable to the military and other specific occupations. However, the legislation does maintain age and capability requirements.

Article 12(2) of the Military Service Law,¹⁷² which concerns the right of the military to work, states that legislative provisions governing legal labour relations are not applicable in the case of the military, except for those measures that prohibit differential treatment and rights being accorded to pregnant women, women breast-feeding a child and women during a post-natal period of up to one year, in so far as they do not contravene the law. Persons who do not comply with health requirements cannot be recruited and employed in military service. (Article 16(2)5).

The Military Service Law¹⁷³ provides for age limits of 27, 35 or 40 years, depending on seniority, for admission to military education establishments. The maximum age limits for professional military service range from 36 to 60 years, depending on seniority in active service, and from 55 to 65 in the case of reserves (limited extensions are possible), whereas a person can be admitted to professional military service if they are able to serve at least five years before reaching the prescribed age limit.

On the State Civil Service Law, the equality guarantees contained in the Labour Law also apply to the civil service and specialised civil service. The Law on Career Service Levels of Officials with Special Service Ranks in the Ministry of the Interior and the Prisons Administration, which prescribes the service of the police, firefighters, the state border guard and the internal security service, stipulates that the norms concerning the prohibition of differential treatment in the State Civil Service are applicable in the case of these specific professional services (Article 3(2)).¹⁷⁴

Access to all of these occupations is restricted to Latvian citizens. Article 28 of the Law on Fire Safety and Fire-fighting¹⁷⁵ provides that only persons aged between 18 and 40 are accepted into the state fire safety and fire-fighting service. A person may perform their service until the age of 50,¹⁷⁶ although this can be extended until the age of 60 if the person so wishes, and following an evaluation of their physical and professional abilities. The law also requires that the applicant's physical condition and state of health meet the requirements of the service. The Law on the Police sets 50 years as the maximum age for service in the police and allows unlimited extensions for the higher echelons, as well as limiting the age range for entering police service to between 18 and 35. The physical and health requirements allowing persons to fulfil police duties are also contained in the law.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

¹⁷² Military Service Law (*Militārā dienesta likums*), 30.05.2002, available in Latvian at: <http://likumi.lv/doc.php?id=155885>.

¹⁷³ Military Service Law, 30.05.2002.

¹⁷⁴ Law on Career Service Levels of Officials with Special Service Ranks in the Ministry of Interior and the Prison Administration (*Iekšlietu ministrijas sistēmas iestāžu un ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums*), 15.06.2006.

¹⁷⁵ Fire Safety and Fire-fighting Law (*Ugunsdrošības un ugunsdzēsības likums*), 24.10.2002.

¹⁷⁶ There have been no discussions on raising the age limit. There have been individual claims challenging the refusal to allow for a continuation of service beyond the age of 50. In one case involving a 50-year-old firefighter, the Firefighters Department decided not to extend the labour contract. The Supreme Court agreed that general restrictions to firefighters are legitimate for those posts involving practical work at the scene, as this work requires very good physical fitness, which is not compatible with senior age. The Court found, however, that the Firefighter's Department had not assessed the possibility of employing the claimant in an administrative or other post that did not require good physical fitness. Moreover, less qualified employees (of the same age and older) had not lost their posts in the department. Although the department has wide discretion in deciding whether to extend labour contracts with employees over 50, the Court concluded that, in the given case, the decision not to prolong the contract was not sufficiently justified. See Supreme Court Senate, Case No. SKA-237/2010, A42654808, 17.03.2010.

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

There are no provisions in national laws that would rely specifically on the exception contained in Article 3(2) of the directives yet, in a number of cases, nationality – usually in relation to the person's status in Latvia and the requirement that persons be issued an ID number, which sometimes excludes persons in possession of only a temporary residence permit – is a condition for access to certain professions or benefits. Thus, all employment in the civil service and specialised civil service, as well as in military service, is restricted to Latvian citizens. Furthermore, the Law on the Bar restricts access to practice in the legal profession to Latvian citizens and – since 2004 – to EU nationals who have been admitted to the Bar in other Member States. In some cases, however, a difference of treatment exists which may be hard to justify. Thus, Article 1 of the transition provisions of the Law on State Pensions provides for different calculations of pensions for Latvian citizens and Latvian non-citizens, as well as for foreigners and stateless persons who worked outside Latvia before 1991: for citizens, the years worked are taken into account when calculating their pensions, but this is not the case for persons in other categories. This issue is particularly important for Latvian non-citizens, yet, unfortunately, when this provision was challenged in the Constitutional Court,¹⁷⁷ the Court, based on the fact that non-citizens were not mentioned in this provision, which only expressly deals with citizens, foreigners and stateless persons, considered it as a legislative omission that it could not decide upon. The issue was later addressed through the ECtHR case *Andrejeva v. Latvia*, which concluded that the differential treatment of a specific non-citizen compared with citizens was discrimination by nationality.¹⁷⁸ On 17 February 2011, the Constitutional Court adopted a judgment dismissing the claim of five non-citizens regarding their complaint about the allegedly discriminatory old-age state pension system of Latvia.¹⁷⁹ The case concerned a provision in the amended Law on State Pensions, dating from 2008, concerning the working period and length of obligatory military service accrued outside the territory of Latvia before 31 December 1990 not having been included into the length of insurance, which has had a considerable effect on the amount of people's pensions.

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

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

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

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

¹⁷⁷ Constitutional Court, Case No. 2001-02-0106, 26.06.2001, http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/02/2001-02-0106_Spriedums_ENG.pdf.

¹⁷⁸ *Andrejeva v. Latvia*, No. 55707/00, 18 February 2009, <http://hudoc.echr.coe.int/eng?i=001-91388>.

¹⁷⁹ Constitutional Court, Case No. 2010-20-0106, 17.02.2011, http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/03/2010-20-0106_Spriedums_ENG.pdf.

In 2008, the Ombudsman challenged Ryanair concerning the fact that, at that point, it was impossible for persons who were not EU/EEA citizens to register for flights online, thus entailing an additional fee for registering at the airport. The Ombudsman considered this to be indirect ethnic discrimination, as the requirement affected Latvia's non-citizens, who formed a significant part of the population and were predominantly representatives of ethnic minorities. The Ombudsman referred to EU Directive 2000/43 and to the Consumer Rights Protection Law, which prohibited indirect discrimination on the ground of ethnicity in access to goods and services. Later, the Ombudsman's Office announced that it had terminated the investigation, because Ryanair had admitted that its services violated the principle of equal treatment, and it had informed the Office that it was undertaking measures to ensure non-discrimination in the immediate future.¹⁸⁰

The use of the terms 'nationality', 'ethnic origin' and 'national origin' is not always consistent. In court practice, 'ethnic' and 'national origin' have been used as synonyms in criminal cases, with 'national origin' being understood as referring to nationality.¹⁸¹ Given the widespread Soviet practice of using 'nationality' ('*natsionalnost*' in Russian) in identity documents,¹⁸² the term may also sometimes be equated with 'ethnic origin.'

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

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

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

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

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

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

b) Justification of direct discrimination on the ground of age

In Latvia, national law provides a justification for direct discrimination on the ground of age.

There is no special test in Latvian legislation for the justification of age-based discrimination; the general 'objective and substantiated precondition' test contained in Article 29(2) of the Labour Law applies also to age-based differential treatment in employment relationships covered by this law. Article 37 of the Labour Law sets out

¹⁸⁰ The opinion of the Ombudsman is available (in Latvian) at: http://www.tiesibsargs.lv/img/content/atzinums_par_aviokompanijas_ryanair_pakalpojumu_sniegšanas_no_teikumu_atbistibu_diskriminacijas_aizlieguma_principam.pdf.

¹⁸¹ Supreme Court (2012), *Court Practice in Criminal Cases Concerning Incitement to Ethnic and National Hatred*, available in Latvian at: <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

¹⁸² A fifth line in Soviet passports was '*natsionalnost*'. See Simonsen, S.G. (2005), 'Between Minority Rights and Civil Liberties: Russia's Discourse Over "Nationality" Registration and the Internal Passport', *Nationalities Papers*, 33(2), pp. 211–229, <https://www.prio.org/Publications/Publication/?x=3202>.

restrictions on work by minors, while Article 32(3) prohibits the indication of age limitations in a job advertisement, except in cases where, in accordance with the law, persons of a certain age may not perform the particular job. However, there is no relevant case law yet, and thus there has been no interpretation of the 'objective and substantiated precondition' test by the courts.

c) Permitted differences of treatment based on age

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

Age-based restrictions apply to access to certain professions including the military or police service (age restricted to between 18-35 years; see under 4.6.3 below), to membership of the judiciary (30 years), and to membership of the Bar (25 years). On retirement ages and Constitutional Court cases where age limits were challenged, see 4.6.4 below.

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

d) ~~Fixing of ages for admission or entitlement to benefits of occupational pension schemes~~

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

Article 17(3,4) of the Law on Private Pension Funds¹⁸³ prohibits employers – once they have decided to contribute to a pension plan – from discriminating on grounds of race, skin colour, gender, age, disability, religious, political or other affiliation, national or social origin, material or family situation, sexual orientation of the person or other circumstances.

The beneficiary can accede to the benefits of the pension plan after reaching the age provided for by the plan; however, that age cannot be under 55 years, with the exception of certain professions as decided by the Cabinet of Ministers, and pension plan participants who have been conferred disability degree I for life.¹⁸⁴

4.6.2 Special conditions for younger or older workers

In Latvia, there are no special conditions set by law for older workers in order to promote their vocational integration

There are no special conditions for the integration of such persons or their protection, although an exception is provided in Article 108 of the Labour Law: in cases of redundancies, one of the groups of persons who are prioritised to remain employed are persons for whom less than five years remain until reaching the age of retirement.

4.6.3 Minimum and maximum age requirements

In Latvia, there are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training.

¹⁸³ Private Pension Fund Law (*Privāto pensiju fonda likums*), adopted 19.12.2019, in force from 13.01.2020, <https://likumi.lv/ta/en/en/id/311721-private-pension-fund-law>.

¹⁸⁴ Cabinet of Ministers Regulations No. 466, adopted 28.07.2020, in force from 01.08.2020, <https://www.vestnesis.lv/op/2020/146.6>.

However, there are some age limits in place. In certain training programmes, for example military or police training programmes, age restrictions apply. The Military Service Law¹⁸⁵ provides for age limits of 27, 35 or 40 years, depending on seniority, for admission to military education establishments; the maximum age limits for professional military service range from 36 to 60 years, depending on seniority, in active service, and from 55 to 65 in the case of reserves (limited extensions are possible), whereas a person can be admitted to professional military service if they are able to serve at least five years before reaching the prescribed age limit. There are no other maximum age limits aside from those applicable to the military forces and under the Law on the Police (under Article 8.2, citizens can be assistants to police officers until they reach the age of 65).

Article 7 of the Law on Career Service Levels of Officials with Special Service Ranks in the Ministry of the Interior and the Prison Administration provides for access to employment for certain services (police service, prison staff, border guards, etc.) from 18 to 40 years, however persons over 40 may also be hired provided they have a 10-year service in the military, prison service or Ministry of the Interior.¹⁸⁶

The State Civil Service Law does not provide for a minimum age, although it contains an equivalent higher education requirement. The maximum age for the civil service is the retirement age (see section 4.6.4 below). The Law on the Judiciary sets a minimum age of 30 years, while the law regulating advocates sets a minimum age of 25 years for access to this profession. The Law on the Public Prosecutor's Office sets the minimum age at 25.

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

4.6.4 Retirement

a) State pension age

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

In Latvia, an individual can collect a pension and still work.

According to Article 11 of the Law on State Pensions,¹⁸⁷ the right to a state pension applies when a person has reached 62 years of age. Since 1 January 2014, the pension age has gradually started to be raised to 65, to be completed by 2025. In certain professions, for example in the military or in certain services of the Ministry of the Interior, depending on the term of service, the right to a pension begins earlier. However, it is not mandatory for a worker who has reached the state pension age to receive the pension. Indeed, the person can both work and receive the full amount of the state pension,¹⁸⁸ so there is no reason not to collect the pension.

¹⁸⁵ Military Service Law, 30.05.2002.

¹⁸⁶ Law on Career Service Levels of Officials with Special Service Ranks in the Ministry of the Interior and the Prison Administration, 15.06.2006.

¹⁸⁷ Law on State Pensions (*Par valsts pensijām*), 02.11.1995.

¹⁸⁸ Prior to the judgment of the Constitutional Court invalidating the relevant provision, the person who continued to work could only receive part of her pension (around EUR 100 at that time). A second similar case, No. 2009-43-01, was decided by the Constitutional Court on 21 December 2009, invalidating the provision of the 'crisis law' under which persons who continued to work could only receive 30 % of the state pension (albeit not on the basis of the anti-discrimination article of the Constitution); the judgment is available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-43-01_Spriedums_ENG.pdf.

b) Occupational pension schemes

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

Occupational pension schemes are a new and still rather limited phenomenon in Latvia, hence they have never been an issue, and there is no information available on the arrangements governing them. Article 17 (6) of the Law on Private Pension Funds provides that the beneficiary can accede to the benefits of the pension plan after reaching the age provided for by the plan; however, that age cannot be under 55 years, with the exception of certain professions as decided by the Cabinet of Ministers, and pension plan participants who have been conferred disability degree I for life.¹⁸⁹

After reaching the required age, the person has to choose whether to receive the pension or to continue membership in the plan. According to the formulation of the law, these two possibilities seem to be mutually exclusive.

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred.

In the case of occupational pension schemes, an individual most likely cannot collect their pension and still work.

c) State-imposed mandatory retirement ages

In Latvia, there are some state-imposed mandatory retirement ages, mainly in the civil service.

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

These provisions of the State Civil Service Law were challenged in the Constitutional Court in 2003. The Court held, however, that they did not violate the prohibition of differential treatment. It established that the relevant article of the law had a legitimate aim – to facilitate access to the civil service by young people (such a legitimate aim being supported by CJEU jurisprudence).¹⁹⁰ Since this seems to be established practice in other EU Member States, no significant further debate on the compatibility of this arrangement with the directives has followed. In a case in 2014, where a civil servant was dismissed upon reaching the civil service retirement age, the Supreme Court Senate reiterated the conclusions of the 2003 Constitutional Court decision mentioned above. The Court also referred to Recital 25 of the preamble to Directive 2000/78/EC and to Article 6 of the Directive, establishing a distinction between differences in treatment and prohibited discrimination on grounds of age.¹⁹¹

The age limit of 65 for occupying the post of university professor or associated professor, as well as the highest administrative positions in universities and scientific institutions, was

¹⁸⁹ Cabinet of Ministers Regulations No. 466, adopted 28.07.2020, in force from 01.08.2020, <https://www.vestnesis.lv/op/2020/146.6>.

¹⁹⁰ Constitutional Court, Case No. 2003-12-01, 18.12.2003, http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2003-12-01_Spriedums.pdf.

¹⁹¹ Supreme Court of Latvia Administrative Case Department, *B. v. State Revenue Service (B. pret Valsts ieņēmumu dienestu)*, Case No. A420322813, 27.08.2014.

invalidated as discriminatory by the Constitutional Court's decision¹⁹² of 20 May 2003 although, even in this case, the prohibition on occupying the posts concerned was not absolute: the Law on Higher Educational Establishments provided for the possibility of continuing to work on the basis of an individual contract, to be concluded at the discretion of the university rector, or of receiving the status of professor emeritus. Since the Constitutional Court decision, the age limit has no longer applied.

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

d) Retirement ages imposed by employers

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

The setting of retirement ages by an employer has never been an issue either. Since there is generally no state-imposed retirement age, it seems safe to argue that the guarantee contained in Article 6 of the Labour Law, stating that 'provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments [that is, laws or secondary legislation], erode the legal status of an employee, are void and can be declared as such by courts of general jurisdiction', would apply to any retirement age or age when the termination of the employment contract becomes possible, as set out by contract or collective bargaining or unilaterally by the employer.

e) Employment rights applicable to all workers irrespective of age

The Labour Law does not entitle the employer to give notice to the person who has reached retirement age. Hence, protection against age-based differential treatment and against dismissal is not limited to pre-pension age, but continues after its attainment and indeed applies independently of age, although in practice there is a widespread feeling that those persons who have reached pension age would be the first targets for dismissal based on considerations of social justice. The share of unemployed persons among those aged between 55 and 74 has increased from 14.6 % in 2013 to 21.2 % in 2018.¹⁹³

f) Compliance of national law with CJEU case law

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

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

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

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

¹⁹² Constitutional Court, Case No. 2002-21-01, 20.05.2003, http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01_Spriedums.pdf.

¹⁹³ Central Statistical Bureau of Latvia (2019), NBG250. Bezdarbnieki pēc vecuma un dzimuma (The unemployed by age and gender).

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

b) Age taken into account for redundancy compensation

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

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

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

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

4.8 Any other exceptions

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

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

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

a) Scope for positive action measures

In Latvia, positive action is neither permitted nor prohibited in national law in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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

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

However, the State Employment Service runs a project on active employment measures for certain groups of unemployed persons. Among the eligible categories are persons aged over 55 years and persons belonging to ethnic minorities who need to consolidate their knowledge of the state language or their professional knowledge or experience in order to increase their chances of obtaining a permanent job. Within the framework of the project, 50 % (up to the official minimum salary) of the salary of the person is paid by the state for up to 12 months. Similarly, there is a traineeship project for unemployed young people aged 18 to 29, with a monthly wage contributed for up to six months and a monthly subsidy of 50 % of the official minimum salary paid to the supervisor of two unemployed youths.

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

According to Cabinet of Ministers Regulations No. 75, employers hiring unemployed persons with disabilities¹⁹⁴ can be reimbursed:

- by up to EUR 1 000 (raised in 2020 from EUR 711, as set in 2009);
- through a contribution (of at least the amount of the official minimum salary) to the salary of a disabled person for up to 12 months;
- to cover the services of a sign language interpreter (EUR 10.50 per hour, proportionate to the hours worked by the person with disability, but for no more than 40 hours per week);
- through occupational therapists or other specialists provided for the employment of the disabled person;
- through a monthly subsidy of 60 % of the official minimum salary,¹⁹⁵ paid to the supervisor of the disabled employee, which helps to alleviate the burden on the employer.¹⁹⁶

b) Quotas in employment for people with disabilities

In Latvia, national law does not provide for a quota for the employment of people with disabilities.

¹⁹⁴ These subsidies only apply if the individual has been officially recognised as disabled under the Disability Law.

¹⁹⁵ Raised from 50 % to 60 % in 2019.

¹⁹⁶ Cabinet of Ministers Regulations No. 75 on the procedure for the organisation and financing of active employment measures and preventive activities reducing unemployment and the selection principles of implementers of measures, 25.01.2011, available in Latvian at: <http://likumi.lv/ta/id/225425>.

6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

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

A number of remedies are available to persons who consider themselves wronged by differential treatment; however, none of them is specifically aimed at ensuring equal treatment. All procedures are binding, except for those of the Ombudsman, who can issue non-binding recommendations. In cases of discriminatory practices by public institutions, the persons affected may appeal to the same public institution that has treated them differently, or to a higher institution, the administrative court or the public prosecutor's office.

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

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

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

- Courts of general jurisdiction

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

The payment of court expenses, as well as of the state levy, is waived in cases based on an employment relationship and in cases that have been initiated by the prosecutor (Article 43(1), Paragraphs 1 and 5, of the Civil Procedure Law; Article 218 of the Labour Law). This does not include lawyers' fees, however, as, since the adoption of the law on legal aid provided for by the state¹⁹⁷ in 2005, a mechanism has existed whereby persons in need can be granted free legal assistance in criminal and civil cases. Cabinet of Ministers Regulations No. 558 set out conditions for receiving legal aid, according to which the

¹⁹⁷ State-insured Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), 17.03.2005.

person's particular situation, property status and income level do not suffice for partial or full protection of their rights. Free legal aid is to be provided to persons whose status is defined as low-income or indigent, and a person who seeks such aid is required to submit documents attesting to their income level, property status and particular situation.

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

- State Labour Inspectorate

The State Labour Inspectorate (SLI) was established by the Law reinstating the legal force of the statute of 28 April 1939 On Labour Inspection,¹⁹⁸ and its work is regulated by the State Labour Inspectorate Law.¹⁹⁹ 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 appeal to the Inspectorate with their complaints, which the inspectorate investigates. The SLI is mandated to investigate administrative offences in employment relations, as envisaged by Article 161 (Violation of Prohibition of Discrimination in Employment Relations of the Labour Law) and can issue a warning or a fine from 28 to 70 fine units²⁰⁰ (EUR 140 to EUR 350) in respect of physical persons and from 70 to 140 fine units (EUR 350 – EUR 700) in respect of legal persons.²⁰¹ Thus, employers who discriminate against a person on the grounds of that person's race, ethnic origin, gender, age, disability, sexual orientation or religion or belief in refusing to conclude a labour contract, in dismissing the person or during the term of the person's contract can be punished under this article. The fines are paid into the state budget. The majority of cases concern discriminatory job advertisements.

- Consumer Rights Protection Centre, National Electronic Mass Media Council – advertising

A person can appeal to the Consumer Rights Protection Centre (CRPC) and National Electronic Mass Media Council (NEMMC) in cases of discriminatory advertising in their respective fields. CRPC and NEMMC are mandated to investigate administrative offences that violate the Law on Advertising, Article 4(1) of which prohibits discrimination against a person due to his or her race, skin colour, gender, age, religious, political or other convictions, national or social origin, financial status or other circumstances. CRPC and NEMMC can impose fines of up to EUR 14 000,²⁰² which are paid into the state budget.

CRPC and NEMMC are also mandated to investigate administrative offences that violate the Electronic Mass Media Law (e.g. Articles 21(3), 26(1) (3) and 35(1) (7)), for which general provisions on administrative liability are applicable.²⁰³

¹⁹⁸ Law on the Restoration of the Force of the Republic of Latvia Law on Labour Inspection 28.04.1939, (*Par Latvijas Republikas 1939. gada 28. aprīļa likuma «Par darba inspekciju» spēka atjaunošanu*), 04.05.1993: <http://m.likumi.lv/doc.php?id=60213>.

¹⁹⁹ State Labour Inspection Law (*Valsts darba inspekcijas likums*) 13.12.2001, <http://likumi.lv/doc.php?id=177910>.

²⁰⁰ One unit equals EUR 5.

²⁰¹ Amendments to the Labour Law (*Grozījumi Darba likumā*), adopted 17.10.2019 (in force from 01.07.2020), <https://likumi.lv/ta/id/26019-darba-likums>.

²⁰² As of 1 July 2015.

²⁰³ Amendments to the Electronic Mass Media Law (*Grozījumi Elektronisko plašsaziņas līdzekļu likumā*), Chapter XV on Administrative Offences in Relation to Electronic Mass Media and Competence in Administrative Violation Procedure (Arts. 76-82), adopted 04.06.2020, in force 16.06.2020, <https://likumi.lv/ta/id/214039-elektronisko-plasazinas-lidzeklu-likums>.

- Education Quality State Inspectorate

A person can appeal to the Education Quality State Inspectorate if they have been discriminated against by an educational institution. The Inspectorate's work is regulated by the Statute on the Education Quality State Inspectorate of 23 April 2013.²⁰⁴ The decision of the Inspectorate can be appealed to the director of the Inspectorate and further challenged in an administrative court.

Following the adoption of the Administrative Liability Law, there is no specific anti-discrimination provision in the Education Law that allows for administrative fines to be imposed, so general provisions on administrative liability are therefore applicable.²⁰⁵

- Health Inspectorate

A person can appeal to the Health Inspectorate if they have been discriminated against regarding access to healthcare or if they have not received healthcare services of adequate quality due to discrimination. The Inspectorate's work is regulated by the Statute on Health Inspection of 5 February 2008²⁰⁶ Until 2020, courts could impose fines from EUR 142 to EUR 714 for breaches of Article 204.¹⁷ (Violation of Prohibition of Discrimination in the Code of Administrative Offences) in healthcare. There was no public information about any cases when such a fine had been imposed. The decision of the Inspectorate can be appealed to the director of the Inspectorate and further challenged in an administrative court.

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

- Ombudsman (the Ombudsman's Office)

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

The Ombudsman then has to attempt to resolve conflicts through conciliation. If this fails, the Ombudsman advises the parties of his opinion and proposals in the form of recommendations, and also presents his suggestions and recommendations for the prevention of human rights violations to the relevant institution or official; however, the Ombudsman's Office cannot enforce its recommendations,²⁰⁷ nor can it apply any fines. After the examination of the complaint it can bring a case in an administrative court if this is in the public interest. Given its mandate, it could be presumed that resolving any cases of discrimination would be in the public interest – or subject to a civil case – only in cases where differential treatment is at issue.

The Ombudsman also has the authority to initiate an abstract review case in the Constitutional Court concerning the conformity of legal provisions with norms of higher force and the conformity of national legal provisions with the international treaties that are binding on Latvia; it has no authority to bring concrete review cases where the rights of a

²⁰⁴ Regulation on the Education Quality State Service (*Izglītības kvalitātes valsts dienesta nolikums*), 23.04.2013, <https://likumi.lv/doc.php?id=256415>.

²⁰⁵ Amendments to the Education Law (*Grozījumi Izglītības likumā*).

²⁰⁶ Cabinet of Ministers Regulations No. 76, Regulations on Health Inspection (*Ministru kabineta noteikumi nr. 76, Veselības inspekcijas nolikums*), 05.02.2008, <https://likumi.lv/doc.php?id=170578>.

²⁰⁷ This was amply demonstrated by a 1997 case, in which a person was forced to leave the police service because of their sexual orientation. Although the National Human Rights Office was of the opinion that discrimination based on sexual orientation had occurred, the matter was not resolved, as the authorities involved disagreed with the findings of the Office.

specific individual have been violated. For more information, see under Section 7 (Specialised bodies).

- The Constitutional Court

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

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

Constitutional complaints remain widely used, but there have been few discrimination cases. There have been no complaints of discrimination on the grounds of racial or ethnic origin or sexual orientation. Age discrimination has been alleged in two cases, discrimination on grounds of nationality was alleged in one case, discrimination on grounds of gender in another, and discrimination on grounds of disability in several more. In the first of these cases, the provisions of the Law on Higher Educational Establishments and of the Law on Scientific Activity, which set an age limit for occupying administrative positions in scientific institutions, higher educational establishments and higher academic positions, were successfully challenged, although the court did not decide the case based on a discrimination argument,²⁰⁸ while in the second case a similar challenge to the age limit in the civil service failed.²⁰⁹ There have been several complaints alleging discrimination on grounds of language (in 2005 and 2019) related to the increase in the proportion of instruction in the Latvian language in minority education programmes and the gradual transition to instruction in Latvian in both state and private schools implementing minority education programmes in grades 10 to 12. Amendments were found to be in line with the Constitution, or the discrimination argument was not addressed.²¹⁰

b) Barriers and other deterrents faced by litigants seeking redress

The payment of court expenses and the state levy are waived in cases based on an employment relationship and in those that have been initiated by the prosecutor (Article 43(1), Paragraphs 1 and 5, of the Civil Procedure Law; Article 218 of the Labour Law). However, this does not include lawyers' fees because, under the law on legal aid provided

²⁰⁸ Constitutional Court, Case No. 2002-21-01, 20.05.2003, http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-21-01_Spriedums.pdf.

²⁰⁹ Constitutional Court, Case No. 2003-12-23, 18.12.2003.

²¹⁰ Constitutional Court, Case No. 2018-12-01, [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01_Spriedums.pdf#search=23.04.2019 Constitutional Court, Case Nr. 2018-22-01,13.11.2019](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01_Spriedums.pdf#search=23.04.2019%20Constitutional%20Court,%20Case%20Nr.%202018-22-01,13.11.2019), https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/11/2018-22-01_Spriedums.pdf#search=.

for by the state²¹¹ that was adopted in 2005, a mechanism has existed whereby persons in need can be granted free legal assistance in criminal and civil cases. Cabinet of Ministers Regulations No. 558 set conditions for receiving legal aid, according to which the person's particular situation, property status and income level do not suffice for partial or full protection of their rights. Free legal aid is to be provided to persons whose status is defined as low-income or indigent, and the person who seeks such aid is required to submit documents attesting to their income level, property status and particular situation. However, the wide gap between those who can claim state legal aid and those who can afford to pay private lawyers' fees may be one of the key reasons why few cases are brought to the court, and those that are heard are brought predominantly by NGOs and selected legal professionals.

Strict time limits – three months for bringing a discrimination claim before a court in employment cases as opposed to a two-year limit in other cases of labour disputes – may serve as a barrier for victims of discrimination. In a case alleging gender discrimination in 2018, the Supreme Court decided that the claim for compensation for non-pecuniary damage was dependent on establishing discrimination in the first place, which was subject to a three-month limit, hence the claim for non-pecuniary damages fell under the same limit.²¹²

As many individuals feel compelled to hide their lesbian, gay or bisexual (LGB) status, this may have an impact on their willingness to initiate an action for discrimination. According to the Eurobarometer for 2019, 65 % of respondents in Latvia (compared with an EU average of 34 %) would not feel comfortable if their child was in a romantic relationship with a person of the same sex as their child. 75 % of respondents in Latvia would feel uncomfortable if two men showed affection in public, while 62 % (compared with a 29 % EU average) would feel uncomfortable if two women did so. 43 % (compared with an EU average of 20 %) disagree with the statement that LGB persons should have the same rights as heterosexual people.²¹³ However, a landmark decision by the Constitutional Court granting parental leave to a same-sex couple in 2020²¹⁴ and a pending case concerning inheritance tax involving a same-sex couple may lead to a greater willingness to bring discrimination claims before the courts.

One issue that needs to be addressed is that of disability-related accessibility to these remedies. According to a 2020 survey of persons with disabilities, 30 % of respondents cite improvements in access to public and municipal buildings compared with 2015.²¹⁵ In 2020, the Ministry of Welfare organised training for public and municipal bodies for conducting self-assessment concerning accessibility to public and municipal buildings and buildings where state and municipal services are provided. A total of 2 249 buildings were assessed between June and October 2020, including their accessibility to persons with mobility, sight, hearing and mental disabilities. The results of the survey will be released in 2021.²¹⁶

²¹¹ State-insured Legal Aid Law, 17.03.2005.

²¹² Supreme Court Senate Civil Cases Department, C31247015 (SKC-79/2018), 06.06.2018, <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/355573.pdf>. A female applicant claimed that she had been discriminated against on gender grounds because her male colleague had a higher salary – around EUR 850 more than she earned, even though they were working in the same position. The first instance court and the court of appeal both ruled that the claim for damages was inadmissible, as the applicant had missed a three-month time limit that applied to discrimination claims. The appeal court did, however, consider the claim for non-pecuniary damages to be admissible, arguing that it fell within a two-year deadline in relation to other dispute cases involving the Labour Law.

²¹³ European Commission (2019), *Eurobarometer on Discrimination 2019: The social acceptance of LGBTI people in the EU*, https://ec.europa.eu/info/sites/info/files/ebs_493_data_fact_lgbti_eu_en-1.pdf.

²¹⁴ Constitutional Court, Case No. 2019-33-01, 12.11.2020, https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/12/2019-33-01_Spriedums.pdf.

²¹⁵ BSSI (2020), Final Report.

²¹⁶ Ministry of Welfare (2020), Self-assessment of Environmental and Information Accessibility, 03.09.2020, <https://www.lm.gov.lv/lv/vides-pieejamibas-pasnovertejums-2020>.

There are no rules on the provision of information in Braille, and the only context in which sign language interpretation must be provided by the state is that of court proceedings.

c) Number of discrimination cases brought to justice

In Latvia, statistics on the number of cases related to discrimination that have been brought to justice are not available.

d) Registration of national court decisions on discrimination

In Latvia, court decisions on discrimination are not registered as such by national courts.

The exception is the Supreme Court database on case law concerning the Labour Law, which includes discrimination cases. These are not classified by ground.²¹⁷ There were several cases before the Supreme Court on gender discrimination in 2012,²¹⁸ and on gender discrimination and age discrimination in 2013.²¹⁹ There has been no case law from 2014 to 2020 on the grounds of race, ethnic origin, disability, religion or belief, sexual orientation or age.²²⁰

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

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

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

According to Article 10(3) of the Law on Associations and Foundations, those organisations and foundations whose aims are the protection of human rights and individual rights have the right to bring a case before state institutions and courts on behalf of a victim (with their consent) in matters related to discrimination.²²¹ These include civil and administrative cases.

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

In accordance with the amendments to the Civil Procedure Law (in force since 4 January 2014),²²² however, the right to legal representation at the instance of cassation is now reserved to the person participating in the case or their advocate (defence counsel). This excludes the possibility of legal representation by other persons with a law degree (e.g. NGO staff), who are not participants in the case and do not have the status of an advocate, including in civil claims relating to discrimination cases. The amendments were adopted allegedly to strengthen the role of advocates in civil cases to ensure the quality of claims. However, they may impact on access to justice for certain vulnerable groups, including victims of discrimination, as cases of discrimination have predominantly been brought before the courts by NGOs or legal practitioners who are not advocates. These amendments contravene the non-regression clauses of the equality directives.

²¹⁷ Supreme Court, Case Law (*Judikatūra*), available at: <http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/tezes-darba-lietas-2003-2012/3darba-likums/>.

²¹⁸ Supreme Court Senate, Case No. SKC-684/2012, *E.L. v. State Joint Stock Company International Airport Riga*; Supreme Court Senate, Case No. SKC-684/2012, <http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/senate/chronological-order/2012/>.

²¹⁹ Supreme Court Senate, Case No. SKC-2504/2013, 06.12.2013.

²²⁰ Supreme Court Case Law Database; see <http://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/civillietu-departaments/klasifikators-pec-lietu-kategorijam/darba-tiesibas/darba-likums/c-dala-darba-likums-28-129pants?lawfilter=1>.

²²¹ Law on Associations and Foundations, 30.10.2003, Article 10(3).

²²² Amendments to the Civil Procedure Law (*Grozījumi Civilprocesa likumā*), 19.12.2013, available in Latvian at: <http://likumi.lv/doc.php?id=263490>.

This contravenes an earlier Constitutional Court judgment. In 2003 the Court ruled on the constitutionality of several provisions of the Civil Procedure Law requiring parties before the court of cassation to be represented by an advocate. The applicant claimed that she, like the majority of people, could not afford to pay for the services of an advocate. The Constitutional Court recognised that, aside from advocates, there were other persons with sufficient skills to provide qualified legal representation, such as judges and prosecutors (in the cases determined by law), holders of a PhD in law, specialist NGOs providing legal assistance and state-funded institutions providing legal assistance free of charge, as well as persons with a university education in law who had passed the examinations for the relevant knowledge and skills. Thus, the Court believed that there were other, less stringent means for achieving the legitimate aim, especially in the provision of qualified legal representation in the cassation court. It also ruled that the measures in relevant laws on the recognition of a person as needy were insufficient to provide legal assistance to those who need it free of charge.

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

- b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

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

Article 183 of the Administrative Procedure Law provides for *amicus curiae* ('Views of Associations of Persons') as an association of persons which is considered a recognised representative of interests in some sectors and from which expert opinions may be expected, which may petition the court in writing to permit it to submit its opinion regarding the facts or rights in the relevant sector. This procedure applies to administrative courts. If the court considers that the opinion of the relevant association of persons may assist the court in taking an objective decision in the matter, it shall determine questions on which the association of persons may submit its opinion. Such questions must relate to the matter to be adjudicated. The association of persons may not give a factual or legal assessment in the specific administrative case.²²³

- c) *Actio popularis*

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

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

- d) Class action

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

While there is nothing to prevent engagement in respect of several complaints, there is also nothing to specifically authorise this, thus the law is silent on this issue and the issue of possible class actions remains unresolved; since class actions have so far been foreign

²²³ Administrative Procedure Law (*Administratīvā procesa likums*), 25.10.2001, <http://likumi.lv/doc.php?id=55567>.

to the Latvian legal system, it seems safe to state that, in the absence of legislative action, they remain impossible.

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

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

Article 29(3) of the Labour Law provides for a shift (or sharing) of the burden of proof in cases concerning all types of discrimination related to an employment relationship covered by this law. It reads as follows: 'if in the case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for the performance of the relevant work or the relevant employment', and thus complies with the requirements of the respective articles of the two directives and Directive 97/80/EC in so far as employment relationships are concerned. Article 29(9) provides that the provisions of the article (thus including those on the burden of proof) also apply to the prohibition of differential treatment based on the race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances of an employee. Article 9 specifically applies the shared burden of proof to victimisation cases, while harassment and instructions to discriminate come under Article 29. With the amendments of the Labour Law on 1 November 2018, Article 29(3¹) now provides for a shift in the burden of proof in cases of direct or indirect discrimination on grounds of language. Article 32(2²) now provides for the shift in the burden of proof in cases of job advertisements with allegedly unjustified foreign language proficiency requirements. 'If in the case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on language, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the employee's language proficiency, or that a specific language proficiency is an objective and substantiated precondition for the performance of the relevant work or the relevant employment.'²²⁴ These amendments were adopted primarily to restrict the allegedly unjustified requirement for Russian language proficiency in many private sector jobs. The amendments were forwarded by a right-wing nationalist alliance during the parliamentary pre-election period.

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

The shift in the burden of proof is not included in the Law on Social Security *expressis verbis*, hence the areas of social protection and social advantages are still not covered.

²²⁴ Amendments to the Labour Law, 01.11.2018, in force from 28.11.2018, available in Latvian at: <https://likumi.lv/ta/id/303008-grozijumi-darba-likuma>.

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

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

The shift in the burden of proof does not apply in any other sphere. The Civil Procedure Law requires that each party prove the facts that he or she is referring to. The Criminal Procedure Law (Article 19.1) provides that the burden of proof is on the prosecution and that any doubts shall be 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. It is true that, in one such case – a case on the requirement on persons wishing to acquire the status of unemployed to possess a permanent residence permit – the Constitutional Court, while refusing to satisfy the complaint as it was, nevertheless distinguished a particular category of persons (spouses of Latvian citizens whose presence in Latvia may be presumed not to be intended to be temporary) and found that such a requirement was unconstitutional in relation to them. It should be noted that the claimant had not referred separately to this category of persons, and this had only been referred to by the respondent. This shows that, to some extent, the Court might act on its own initiative, but it cannot be required or relied upon to do so, and there is certainly no provision on a shift in the burden of proof in cases alleging discrimination.

So far, the shift in the burden of proof has been applied in a number of cases involving access to employment and coming under the terms of the Labour Law – in three gender-based discrimination cases, one race-based discrimination case and one case on sexual orientation.²²⁵

In practice, in court hearings, claimants themselves have not infrequently had to prove that they have been discriminated against, in accordance with the general procedure of adversarial argumentation. This is evidenced by Supreme Court judgments where lower courts have been criticised for failing to shift the burden of proof in discrimination cases (in 2007 on employment and disability²²⁶ and in 2012 on employment and gender).²²⁷ There have also been cases where the Court has formally referred to the provision on the burden of proof, yet the claimant was still required to prove the claim. However, after several consecutive Supreme Court judgments in 2012 and 2013 on the reversal of the burden of proof,²²⁸ one would hope that it is now an established principle in discrimination cases.

²²⁵ Jelgava Court, *S. Kozlovskā v. SIA Palso*, Case No. C15066406, 25.05.2006; Ziemeļu District Court, Riga, *M.S. v. Kultūru vidusskola*, Case No. C32242904047505, 25.05.2005.

²²⁶ Supreme Court Civil Case Department, *R.S. v. Riga New St Gertrude Evangelical Lutheran Church*, 11.04.2007.

²²⁷ Supreme Court Senate, No. SKC-684/2012, *E.L. v. State Joint Stock Company International Airport Riga*.

²²⁸ Supreme Court Senate, Cases Nos. SKC-684, 06.06.2012; SKC-1548, 03.05.2013; SKC-1482, 03.05.2013.

It can be concluded that the requirements of the two directives concerning the burden of proof are currently complied with in relation to all grounds in cases related to employment relationships, including civil service relationships, access to goods and services and education, and that they are generally complied with in administrative cases, which would include state-provided social security cases. However, the effectiveness of the principle of 'objective investigation' in discrimination cases will only become apparent with case law. The shift of the burden of proof does not apply to social advantages and social protection.

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

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

Article 9(1) of the Labour Law provides for protection against victimisation:

'Infliction of a punishment on an employee²²⁹ as well as the creation of direct or indirect unfavourable consequences to the employee, due to the fact that the employee within the framework of a labour relationship avails himself of his rights in a permissible manner, shall be prohibited.'

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

Even if Article 9(2) does not expressly mention discrimination or differential treatment but only the 'adverse consequences', the *Abramova* case,²³⁰ which was decided before the entry into force of the current Labour Law, gives grounds to think that the courts might be prepared to view victimisation in the context of discrimination, while Article 29(8) of the Labour Law, establishing the right to compensation, refers both to differential treatment and to the creation of adverse consequences.

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

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

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

It must be noted that, both under the Labour Law and under the amendments to the Law on Social Security (Article 34(2)), the wording of the victimisation clause, by referring to 'his (or her) rights', seems to confine the prohibition against victimisation to the actual victim of the discrimination, with witnesses and other persons assisting the complainant thus being excluded. Similarly, victimisation is prohibited by the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators (Article 6), the Consumer Rights Protection Law (Article 3.¹(10)), the Law on Support to Unemployed Persons and Job Seekers (Article 2.¹(8)), the Law on Education (Article 3.¹(4)), and the Law on Patients' Rights (Article 3(4)).

²²⁹ The term 'person' cannot be interpreted such as to exclude a group from protection from direct discrimination. In these cases, *argumentum a fortiori* should be applied, i.e. if a person cannot be treated less favourably, then it follows that nor can a group.

²³⁰ Latgale Regional Court, Case No. 2-268 A/01.11.2000, *Abramova v. 'Latgales druka'*, 01.11.2000. Discrimination was found to have taken place on the ground of victimisation due to the defence of the claimant's rights, despite the fact that this ground was not listed in the exhaustive list of grounds prohibiting discrimination in Article 1 of the old Labour Code.

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

All the areas included in Directives 2000/43 and 2000/78 are covered by the laws listed above that prohibit victimisation and by Article 92 of the Constitution, which provides for 'the right to commensurate compensation to persons whose rights have been infringed without a basis'.

It can be concluded that a prohibition of victimisation exists in the framework of employment relationships, including civil service relationships, under the terms of the Labour Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators in its provisions covering self-employment, and the Law on Support to Unemployed Persons and Job Seekers. Similarly, victimisation is prohibited in relation to social protection (the Law on Social Security), access to goods and services (the Consumer Rights Protection Law) and education (the Law on Education), and in the Law on Patients' Rights. There is also protection from victimisation in relation to complaints to the Ombudsman's Office, within the respective spheres of application and in relation to the grounds covered (which are incomplete).

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

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

In the context of anti-discrimination, specific sanctions are contained in the Labour Law, the Consumer Rights Protection Law, the Law on the Prohibition of Discrimination of Natural Persons-Economic Operators, the Law on Education, the Criminal Law. Since the replacement of the Code of Administrative Offences by a new Law on Administrative Liability in 2019 (in force from 1 July 2020), administrative sanctions have been included in various sectoral laws.

Criminal sanctions

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

Article 48, lists aggravating circumstances for a criminal offence, including 'racist, national, ethnic or religious' motivation (Paragraph 1, Clause 14).

Article 78(1) envisages criminal liability for 'incitement of national, ethnic, racial and religious hatred' and deals exclusively with 'incitement' (i.e. no violence and no group or institutional aspect) and lays out the options of a fine, community service, short-term custody or imprisonment for up to three years.

Article 78(2) covers acts committed by 'a group of persons, or a state official or a responsible employee of a company or an organisation' or using an 'automated data processing system' (i.e. the internet), and provides for a punishment of deprivation of liberty for up to five years, community service or a fine. Paragraph 3 covers the same crime of incitement if it is 'associated with violence or threats' or is committed by an 'organised group' and provides for up to 10 years' imprisonment, with or without probationary supervision for a term of up to three years.

Article 149.¹ imposes²³¹ criminal liability:

- (1) For a person who commits discrimination due to racial, national, ethnic or religious belonging or for the violation of the prohibition of any other type of discrimination, if substantial harm is caused thereby, the applicable punishment is the deprivation of liberty for a period of up to one year or temporary deprivation of liberty, or community service, or a fine.
- (2) For the criminal offence provided for in Paragraph one of this Section, if it has been committed by a public official, or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if it is committed using an automated data processing system, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or community service, or a fine.

Article 150 criminalises 'Incitement of social hatred and enmity':

- (1) acts aimed to incite hatred or enmity on the grounds of a person's gender, age, disability or any other feature,²³² if substantial harm was caused by such act, shall be punished with imprisonment for up to one year,²³³ short-term imprisonment, community service or a fine;
- (2) the same acts, if committed by a state official or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if they are committed using automated data processing systems, shall be punished with imprisonment of up to three years, short-term imprisonment, community service or a fine;
- (3) the same acts, if associated with violence or threats, or if committed by an organised group, shall be punished with imprisonment of up to four years, short-term imprisonment, community service or a fine.

Administrative sanctions

A new Law on Administrative Liability was adopted in October 2018 and came into force on 1 July 2020. It replaced the old Soviet-era Code of Administrative Offences and has significantly changed the existing system of administrative sanctions.

The new law introduces a new aggravating circumstance if the offence is motivated by racial, religious or ethnic hatred or hatred on the grounds of any other explicitly identifiable characteristics.²³⁴ It relates to administrative misdemeanours, and targets private individuals, legal persons and public officials. The old code provided for administrative offences and penalties, while the new law regulates definitions, types of punishment and procedures for prosecuting offences. The new law introduces fine units. Specific offences are listed in laws that regulate separate sectors.

After the coming into force of the new Law on Administrative Liability on 1 July 2020 and subsequent amendments to the Labour Law, the SLI can issue a warning or impose fines on employers – in the case of physical persons from 28 to 70 fine units (EUR 150 to EUR 350), or from 70 to 140 units (EUR 300 to EUR 700) in the case of legal persons.²³⁵

²³¹ Official translation available at: <https://likumi.lv/ta/en/en/id/88966-the-criminal-law>.

²³² Cases under 'any other feature' from 2014 to 2018 have included incitement to hatred against sexual minorities and migrants.

²³³ Amendments to the Criminal Law (*Grozījumi Krimināllikumā*), 08.06.2017, in force from 01.01.2018, <https://likumi.lv/ta/id/291734-grozijumi-kriminallikuma>.

²³⁴ Law on Administrative Liability (*Administratīvās atbildības likums*), 25.10.2018, Section 21 part 5, <https://likumi.lv/ta/id/303007-administrativas-atbildibas-likums>.

²³⁵ Amendments to the Labour Law, adopted 17.10.2019, <https://likumi.lv/ta/id/310460-grozijumi-darba-likuma>.

According to the Advertising Law (Article 20(1)), the Centre for Consumer Rights Protection can impose fines of up to EUR 14 000 for the violation of the Advertising Law, which prohibits discriminatory advertising on grounds of race, skin colour, gender, age, religious, political or other convictions, national or social origin, financial status or other circumstances (Article 4(2)(1)).²³⁶ The amendments made in 2019 to Article 120(3) of the Law on Aviation regarding administrative offences in passenger air transportation provide that, in the event of any violation of the right of persons with disabilities or persons with reduced mobility to use air transportation services, a warning shall be issued, or a fine ranging from 90 fine units [EUR 450] to 600 fine units [EUR 3 000] shall be imposed on the legal persons concerned.²³⁷

Civil remedies

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

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

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

Similarly, Article 92 of the Administrative Procedure Law provides that 'Everyone is entitled to claim compensation for financial loss or personal harm, including moral harm, which has been caused to him or her by an administrative act or an actual action of an institution'. The amount of compensation for financial loss caused by an administrative act of an institution is set out in the Law on Reparation of Damages caused by State Administrative Institutions.²³⁸

Generally, non-pecuniary damages is a field under development in Latvian law; until the adoption of the Law on Reparation of Damages caused by State Administrative Institutions, the only case when Latvian law allowed for non-pecuniary damages was that provided for in Article 1635 of the Civil Law in cases of mutilation, unlawful deprivation of liberty, defamation²³⁹ and rape.

Individuals may seek a halt to the discriminatory practices (of either a representative of the public authorities or a private person) before the court, as well as reinstatement, provision of goods and services, etc. Potentially, an individual might request that reasonable accommodation is made in addition.

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

As far as the disciplinary liability of civil servants is concerned, there are no provisions specifically relating to cases of discrimination. For discriminatory activities, a civil servant

²³⁶ Advertising Law (*Reklāmas likums*) adopted 20.12.1999 (in force from 24.01.2000).

²³⁷ Law on Aviation (*Likums par aviāciju*), 05.10.1994, <https://likumi.lv/ta/id/57659-par-aviaciju>.

²³⁸ Law on Reparation of Damages caused by State Administrative Institutions (*Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums*), 15.02.2018. at: <https://likumi.lv/doc.php?id=110746>.

²³⁹ In the *Muhina* case (Supreme Court Senate Case No. SKC-297, *Muhina v. Central Prison*, 08.02.2002), the Court was not prepared to award moral damages to Muhina based on Article 2352.a (defamation) as, in the opinion of the Senate, the provisions of the Labour Code then in force were *lex specialis* in the field of equal treatment in labour relationships, and the refusal to employ Muhina could not be regarded as an injury to her honour or dignity, as Article 2352.a only applied to cases where untrue information had been disseminated.

may be punished on the basis of general provisions, such as Article 17 of the Cabinet of Ministers Regulations on Disciplinary Punishments of Civil Servants, which sets out the liability for unreasonable failure in the obligations of a civil servant.

If the actions concerned have 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 of the Regulations that relates to cases of discrimination is Article 30, which allows for the punishment of a civil servant for impolite or intolerant attitudes towards individuals or colleagues. 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.

b) Compensation – maximum and average amounts

There is no maximum amount for damages under the Civil Law, yet Article 14 of the Law on Reparation of Damages caused by State Administrative Institutions sets the amount of non-pecuniary damages at up to EUR 7 000, or EUR 10 000 in cases of grave non-pecuniary damage, or EUR 30 000 if harm has been caused to life or grave harm has been caused to health.²⁴⁰ The Labour Law, the Consumer Rights Protection Law and the Administrative Procedure Law provide for compensation in discrimination cases.

It has to be noted that Latvian law does not provide for punitive damages.

In the two defamation cases brought under the Civil Law and related to defamation and incitement to racial discrimination, the damages awarded were EUR 4 800 (LVL 3 000) to each of the claimants in the *Los Amigos* case,²⁴¹ and a symbolic EUR 50 (LVL 30) in the *Steel* case.²⁴² In the *Smagars* case,²⁴³ which concerned disability-based discrimination in providing access to a public place, the amount of damages awarded was around EUR 4 800 (LVL 3 000).

Between 2005 and 2017, there were over a dozen known discrimination cases before the courts that resulted in a favourable outcome for the victim (at least 13 concerning discrimination on the ground of gender, two on the ground of disability, one on age and one on race discrimination). The overwhelming majority of those cases related to the realm of employment. In 2005 (in a case concerning employment, gender and property status), the court awarded EUR 1 500 (LVL 1 000).²⁴⁴ Three of the cases were conciliation agreements confirmed by the courts. In 2008, claimants were awarded EUR 7 142 (LVL 5 000) (in a case relating to gender (pregnancy, dismissal)), and EUR 1 142 (LVL 800) (in a case on gender in relation to a job interview). In one case in 2007, the claimant was awarded EUR 4 285 (LVL 3 000) (disability and dismissal). In 2010, a claimant was awarded EUR 428 (LVL 300) (gender and recruitment). In 2011, one claimant was awarded EUR 1 428 (LVL 1 000) by the appeal court (in a case relating to employment and disability) as compensation for non-material damages. Five cases in 2010-2011 (on gender) concerned a recalculation of unemployment benefits, and were tried by administrative courts. Although the courts established indirect discrimination, leading to a

²⁴⁰ Law on Reparation of Damages caused by State Administrative Institutions, 15.02.2018, <https://likumi.lv/doc.php?id=110746>.

²⁴¹ Supreme Court, Case PAC-244, 09.04.2003.

²⁴² Latgale District Court, Riga, Case No. C29240503, 08.09.2003, <http://providus.lv/article/spriedums-civillieta-sakara-ar-dzordza-stila-prasibu-pret-politisko-organizaciju-brivibas-partija-un-valsts-bezpelnas-sia-latvijas-televizija>.

²⁴³ Riga Regional Court, Case No. C04386004, 11.07.2005, <http://cilvektiesibas.org.lv/site/record/docs/2012/02/06/RS11julijs.pdf>.

²⁴⁴ Cēsu District Court, Case No. C11019405, *A.S. v. Straupe Parish Council (Straupes pagasta padome)*, 05.07.2005, http://cilvektiesibas.org.lv/site/record/docs/2012/02/06/Spriedums_Cesis.pdf.

recalculation of unemployment benefits, it is not known whether the claimants also sought moral compensation. In 2013, in a gender discrimination case, the court awarded compensation for non-material damages of EUR 2 845 (LVL 2 000).²⁴⁵ In another gender discrimination case, the court awarded EUR 6 260 (LVL 4 400).²⁴⁶ In 2014, in a gender discrimination case, the appeal court awarded the claimant EUR 1 000 (LVL 702.65), and in an age discrimination case EUR 1 422 (LVL 1 000).²⁴⁷ In 2015, in a discrimination case on grounds of disability (dismissal), the claimant was awarded EUR 1 422.²⁴⁸ In 2017, in a discriminatory dismissal case on grounds of disability, the claimant was awarded EUR 1 000.²⁴⁹ There is no publicly available information on discrimination cases decided in 2016, 2018, 2019 and 2020.

There have been several court cases where, on establishing the fact of discrimination, the court has nevertheless required proof of damages by the claimant in seeking moral damages. In 2013, the Supreme Court Senate, referring to CJEU jurisprudence, underlined that there is no need to specifically prove the existence of moral damage in cases of age discrimination, as moral damage is presumed from the very fact of age discrimination in the employment relationship.²⁵⁰

c) Assessment of the sanctions

The number of court cases concerning discrimination on grounds of ethnicity, religion, disability, age or sexual orientation resulting in compensation for the victim remains limited. The majority of cases concern gender discrimination in the sphere of employment. The average amount of moral compensation awarded in known discrimination cases is EUR 1 428. The highest compensation awarded through a conciliation agreement was EUR 7 142, in 2008. Such a small amount of compensation can hardly be considered effective, proportionate and dissuasive. Cases of forward-looking remedies, such as ordering the Health Inspectorate to issue an administrative act to order certain health service providers to ensure access to their premises for persons with disabilities, remain rare.

To date, there has been no case when Article 149.¹ of the Criminal Law has been applied. In the case of administrative sanctions, the State Labour Inspectorate has imposed fines mostly in cases of discriminatory job advertisements indicating preferences for a specific gender or age. One advertisement specifically indicated a preference for a certain ethnicity. The sanctions imposed have ranged from a warning to a fine between EUR 70 and EUR 535. The majority of fines range from EUR 200 to EUR 300, which cannot be considered dissuasive. The Consumer Rights Protection Centre has imposed fines for discriminatory advertising (relating to race/ethnic origin and sexual orientation)²⁵¹ in several cases – of EUR 2 250,²⁵² EUR 8 000²⁵³ and EUR 2 278.

²⁴⁵ Supreme Court Senate, Case No. SKC-2846-13, 18.12.2013.

²⁴⁶ Zemgale District Court, Riga, Case No. C31404213 (archive No. C-4042-13/9), 20.11.2013.

²⁴⁷ Latgale Regional Court, Case No. C12102213 (archive No. CA-0121-1), 30.04.2014.

²⁴⁸ Liepāja Court, Case No. C20 2558 14, *Pāvilosta Regional Local Government v. [anonymised]*, 22.10.2015.

²⁴⁹ Riga Regional Court Civil Cases Court Collegium (Rīgas apgabaltiesas Civillietu tiesas kolēģija), Judgment of 22 December 2016, Case No. C33533415.

²⁵⁰ Supreme Court Senate, Case No. C32276312 (SKC – 1702/2013), 29.11.2013.

²⁵¹ An advertisement was placed in a newspaper in Daugavpils in 2007 offering 'a 50 % discount to Russian speakers and no legal services to the representatives of sexual minorities.'

²⁵² Consumer Rights Protection Centre (Patērētāju tiesību aizsardzības centrs), Decision No. E04-DAU- 154, 14.08.2007: <http://cilvektiesibas.org.lv/media/record/docs/2012/02/06/reklama.pdf>.

²⁵³ Consumer Rights Protection Centre, Decision No. E03-RIG 132, 17.04.2007: <http://cilvektiesibas.org.lv/media/attachments/29/01/2013/FAMARDESI1.pdf>.

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

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

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

- b) Political, economic and social context of the designated body

Following the Ombudsman's re-election by the Parliament for a second term in March 2017 (he was previously elected in 2011), there is modest political support for the Ombudsman. However, this is not specifically related to the equality mandate.

The general financial crisis in Latvia from 2009 to 2012 and the Ombudsman's Office's weakness due to internal conflict inevitably affected the Office and its effectiveness. Its budget was dramatically cut by 56 % from EUR 1 797 626²⁵⁴ in 2008 to EUR 794 355 in 2010. In 2011, the budget was slightly raised to EUR 813 597, and in 2012 it was raised again to EUR 1 007 911. In 2015 the Office's budget was EUR 1 144 522, and in 2016 it was EUR 1 329 113.²⁵⁵ From 2017 to 2020 the budget increased from EUR 1 374 956²⁵⁶ to EUR 1 570 195.²⁵⁷ Although the budget has been increased since the financial crisis, it has never reached the pre-crisis level. There is no separate budget line for the Office's equality and diversity function.

The number of employees went down from 51 at the end of 2008 to 35 in 2012. In 2020, the number of employees was 51.

- c) Institutional architecture

In Latvia, the designated body forms part of a body with multiple mandates.

The Ombudsman's Office is a body with multiple mandates. It is a national human rights institution (NHRI), a designated equality body and a good governance ombud. It is also responsible for monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities²⁵⁸ and for the monitoring of forced expulsions under the EU's Return Directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals).²⁵⁹ Should Latvia ratify the Optional Protocol to the Convention against Torture (OPCAT), it will become a national preventive

²⁵⁴ The budget was high also because of infrastructure costs due to a move to a new office, the hiring of new staff and the expansion of the mandate.

²⁵⁵ Ombudsman of the Republic of Latvia (2016), *Annual Report*, p. 261: 'The real annual expenditure is lower than the budget initially allocated by the Government', http://www.tiesibsargs.lv/uploads/content/lapas/tiesibsarga_2016_gada_zinojums_1489647331.pdf.

²⁵⁶ Ministry of Finance (2017), Budget of the Office of the Ombudsman: Protection of human rights of private individuals, available in Latvian at: http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/.

²⁵⁷ Ministry of Finance (2020), 'Tiesībsarga birojs', <https://www.fm.gov.lv/lv/1-privatpersonu-cilvektiesibu-aizsardziba-0>.

²⁵⁸ See *On the Convention on the Rights of Persons with Disabilities (Par Konvenciju par personu ar invaliditāti tiesībām)*, Section 2, <https://likumi.lv/ta/id/205248-par-konvenciju-par-personu-ar-invaliditati-tiesibam>.

²⁵⁹ Immigration Law (*Imigrācijas likums*), Section 50.⁷, <https://likumi.lv/doc.php?id=68522>.

mechanism.²⁶⁰ The Ombudsman's Office also considers that the Ombudsman is an ombudsperson for children.²⁶¹

At the end of 2014, three members of staff out of 42 worked in the Legal Equality Department, one of whom was a consultant on Roma issues – and specifically on issues of discrimination. In March 2015, the Legal Equality Department was closed down, and the staff were assigned to other departments.²⁶² The argument made by the Office is that the right to non-discrimination is free-standing, and therefore non-discrimination has been integrated in other departments. According to the Ombudsman, 'figuratively speaking, discrimination does not walk alone around the town.'²⁶³

In 2020, the number of staff was 51. In 2017, the position of a consultant on Roma issues, who was hired in 2011, was terminated. The Ombudsman's Office Regulations of 12 February 2016 includes independent legal assistance to victims of discrimination among the tasks of the three departments – the departments of civil and political rights, social, economic and cultural rights and children's rights.²⁶⁴

The Ombudsman's budget is envisaged to fulfil one function: the protection of the human rights of private individuals.²⁶⁵ There is no separate budget line for the equality and non-discrimination mandate.²⁶⁶ Although the Ombudsman's Office claims that all legal staff deal with non-discrimination issues, there are no staff members working exclusively on non-discrimination issues, hence there is no longer any specialisation on non-discrimination issues. Thus, information about the percentage of staff resources and budget dedicated to the equality mandate is unavailable.

Aside from the monitoring of compliance with the CRPD, the equality/anti-discrimination mandate is of a considerably lower priority than children's rights, the good governance mandate and topical issues under the NHRI mandate. This is even more evident after the closure of the Legal Equality Department, which also suffered from low capacity when several leading non-discrimination experts left the Office in 2011.

The Ombudsman's Office equality mandate has limited visibility, except for the activities related to the monitoring and implementation of the UN Convention on the Rights of Persons with Disabilities.

d) Status of the designated body – general independence

i) Status of the body

²⁶⁰ Ombudsman of the Republic of Latvia (2017), 'Cabinet of Ministers is Assessing Whether to Assign the Function of National Preventive Mechanism to the Ombudsman' ('Ministru kabineta vērtē iespēju tiesībsargam piešķirt Nacionālā preventīvā mehānisma funkciju'), 27.04.2017, <http://www.tiesibsargs.lv/news/lv/ministru-kabineta-verte-iespeju-tiesibsargam-pieskirt-nacionala-preventiva-mehanisma-funkciju>.

²⁶¹ Ombudsman of the Republic of Latvia (2013), 'Ombudsman participates in the Annual Conference of European Child Ombudsmen Network' ('Tiesībsargs piedalās Eiropas Bērnu ombudu tīkla ikgadējā konferencē'), available in Latvian at: <http://www.tiesibsargs.lv/news/lv/tiesibsargs-piedalas-eiropas-bernu-ombudu-tikla-ikgadeja-konference>.

²⁶² Ombudsman of the Republic of Latvia (2015), 'Staff' ('Darbinieki'), <http://www.tiesibsargs.lv/en/about-us/darbinieki>.

²⁶³ Jurista vārds (2017), 'Does the Ombudsman's Work Makes Sense and Achieve Results?' ('Vai tiesībsarga darbam ir jēga un rezultāts'), 7 February 2017, No. 6 (960).

²⁶⁴ Ombudsman of the Republic of Latvia (2016), Regulations No. 1 of 12 February 2016 on the Ombudsman's Office (*Tiesībsarga biroja nolikums*), http://www.tiesibsargs.lv/uploads/content/legacy/tiesibsarga_biroja_nolikums_12_02_2016_1482829503.pdf.

²⁶⁵ Ministry of Finance (2017), 'Budget of the Office of the Ombudsman. Protection of human rights of private individuals', available in Latvian at: http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/.

²⁶⁶ Written response by the Ombudsman's Office to the LCHR (by email), 28 February 2018.

The Ombudsman is appointed by the Saeima for a period of five years, and he/she can be re-appointed once. Until the end of 2020, there were no restrictions on the tenure. Following amendments to the Ombudsman Law, the number of MPs required to nominate a candidate for Ombudsman has been raised from 5 to 10.

The Ombudsman can be dismissed from office following a conviction or – by a vote of the Parliament – for acts incompatible with the status of Ombudsman, or for failing to carry out their duties (Article 5). The work of the Ombudsman's Office is financed from the state budget (Article 19(1)), and the Ombudsman must report to the Parliament and the President of the State about its activities once a year (Article 15(1)). The Ombudsman is independent in their activities and is governed only by law (Article 4). The Ombudsman appoints the deputy Ombudsman (Article 16(1)). There are no barriers to the recruitment and management of staff.

In 2010, in a case concerning the budget planning procedure of several independent institutions, the Constitutional Court concluded that the 'Ombudsman's Office does not pertain to administrative institutions of the State subject to the Cabinet of Ministers, as established in Article 58 of the *Satversme* of the Republic of Latvia. Unlike the State president, the courts and the State Audit Office, the status of the Ombudsman has not been enshrined in the *Satversme*. However, taking into account the independence of the Ombudsman, the legislator has granted the Ombudsman's Office similar rights in the field of budget planning as those conferred to constitutional institutions mentioned in Section 19(5) of the Law on Budget and Financial Management. The Ombudsman's Office is an independent State institution that ensures the execution of functions of the Ombudsman.'²⁶⁷

In 2015 the Ombudsman's Office received 'A' status accreditation from the International Coordinating Committee of National Human Rights Institutions Sub-Committee on Accreditation.²⁶⁸ This 'A' status was renewed in December 2020.²⁶⁹

ii) Independence of the body

'The Ombudsman shall be independent in his or her activities and shall be governed exclusively by the law. No one has the right to influence the Ombudsman in the performance of his or her functions and tasks. The Office of the Ombudsman may not be combined with membership of a political party' (Article 4).

There is no public evidence that the Ombudsman has not been independent in his activities. The Ombudsman's choice of priorities – children's rights issues and socio-economic issues, particularly after the economic crises in Latvia – have enjoyed public support. The Office of the Ombudsman has exercised independence, neutrality and objectivity in its written opinions. In 2015, the Ombudsman sent a letter to the Saeima proposing an amendment to the Constitution (*Satversme*) to strengthen the independent status of the Office.²⁷⁰ Despite support for the amendments by leading constitutional law experts in Latvia, there has been no further development in the Parliament. The Ombudsman claimed that the

²⁶⁷ Constitutional Court, Case No. 2010-06-01, 25.11.2010, http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/01/2010-06-01_Spriedums_ENG.pdf.

²⁶⁸ Ombudsman of the Republic of Latvia (2015), 'Ombudsman's Office of the Republic of Latvia receives "A" status accreditation', 8 July 2015, <http://www.tiesibsargs.lv/en/homepage/ombudsmans-office-of-the-republic-of-latvia-receives-a-status-accreditation/>.

²⁶⁹ GANHRI Sub-Committee on Accreditation Report, December 2020, p.17, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf>.

²⁷⁰ Ombudsman of the Republic of Latvia (2015), Letter No 1-8/4 of 28 January, https://www.tiesibsargs.lv/uploads/content/legacy/Tiesibsarga_institucija_Satversme_TS_vestule_Saeimai_28012015.pdf; Draft Law 'Amendments to the Constitution of the Republic of Latvia' (*Grozījumi Latvijas Republikas Satversmē*), https://www.tiesibsargs.lv/uploads/content/legacy/Tiesibsarga_institucija_Satversme_TS_vestule_Saeimai_28012015_Likumprojekts_grozijumi_Satversme.pdf.

proposals would strengthen the Office's neutrality and protect against political changes. During the economic crises, several politicians considered the closure of the Office to save financial resources.

e) Grounds covered by the designated body

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

f) Competences of the designated body – and their independent exercise

i) Independent assistance to victims

In Latvia, the Ombudsman's Office does have the competence to provide independent assistance to victims.

The remit of the Ombudsman includes promoting the protection of the rights and lawful interests of individuals; promoting compliance with the principles of equal treatment and the prevention of any kind of discrimination, including in the private sphere; evaluating and promoting compliance with the principles of good administration in the state administration; detecting deficiencies in legislation and its application regarding issues related to the observance of human rights and the principle of good administration, as well as promoting the rectification of such deficiencies; and promoting public awareness and understanding of human rights (Article 11(5)), of the mechanisms for the protection of such rights and of the activities of the Ombudsman.

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

- 1) accept and examine the submissions, complaints and proposals of private individuals;
- 2) initiate a verification procedure for the clarification of circumstances;
- 3) request that institutions,²⁷¹ within the scope of their competence and within the time limits provided for by the law, clarify the necessary circumstances of the matter and inform the Ombudsman thereof;
- 4) upon examination of the verification procedure or after the termination thereof, provide the institution with (non-binding) recommendations and opinions regarding the lawfulness and effectiveness of their activities, as well as compliance with the principle of good administration;
- 5) in accordance with the procedures specified by this Law, resolve disputes between private individuals and institutions, as well as disputes in respect of human rights between private individuals;
- 6) facilitate conciliation between the parties to the dispute;
- 7) in resolving disputes in respect of human rights issues, provide opinions and recommendations to private individuals regarding the prevention of human rights violations; and
- 8) provide persons with consultations regarding human rights issues.

In particular, the Ombudsman may, upon termination of a verification procedure and upon establishment of a violation, defend the rights and interests of a private individual in an administrative court, if this is necessary for the public interest (Article 13(9)). Furthermore – and of direct relevance to discrimination cases – the Ombudsman may, upon termination of a verification procedure and the establishment of a violation, apply to a court in such

²⁷¹ Article 2 of the Law on the Ombudsman states: 'An institution within the meaning of this Law shall be a body of a public person, an institution or an official, as well as a person that implements the tasks of State administration.'

civil cases where the nature of the action is related to a violation of the prohibition of differential treatment (Article 13(10)). The Ombudsman can initiate a verification procedure – not only in response to a complaint submitted to him, but also on his own initiative.

As regards private sector bodies, the Ombudsman has the right to request documents, explanations and other information from any private individual regarding the issues of fundamental importance in a verification procedure (Article 13 (5)). In requesting information, the Ombudsman shall determine the amount of such information required and will specify a reasonable time period for the provision of the information. (Article 27 (1)).

Assistance to victims is exercised in an independent manner in practice. The Ombudsman has the right rather than a duty to represent victims of discrimination in court.²⁷² There seems to be no consistent follow-up to discrimination cases, and there is very limited public information about the outcome of such cases. The response to discrimination cases by the Office is reactive – it is very rare for the Ombudsman to pro-actively start a verification case on its own initiative or to initiate contact with victims.

ii) Independent surveys and reports

In Latvia, the Ombudsman's Office does have the competence to conduct independent surveys and publish independent reports. According to Article 12(10) of the Law on the Ombudsman, the Ombudsman shall conduct research and analyse the situation in the field of human rights, as well as providing opinions regarding human rights issues. In his activities, the Ombudsman is independent and is governed only by law. The Ombudsman conducts independent surveys and reports in an independent manner in practice. Of the six prohibited discrimination grounds under the equality directives, disability has received the greatest attention, predominantly in connection with monitoring compliance with and implementing the CRPD, and particularly concerning accessibility issues. Activities include surveys, research on access to goods and services (such as healthcare institutions and banks) and access to the labour market, an annual conference focusing on the issues identified during the year, and an annual NGO award for promoting the rights of persons with disabilities. Some research and surveys have also included discrimination on grounds of gender, while the other grounds (race, ethnic origin, religion and age) have received very limited attention.

Surveys on the implementation of the CRPD are conducted on a different theme on an annual basis. They can be considered effective, as they address disability issues consistently. There are a limited number of surveys and reports on other prohibited grounds of discrimination (mainly gender),²⁷³ although the effectiveness of these reports varies.

From 2007 to 2010, there were no surveys organised by the Ombudsman, even in the initial period when the allocated budget was significant. T

Since 2015, the Ombudsman's Office has published several surveys relating to different issues under the CRPD. In November 2015, it published the findings of a survey on the implementation of the CRPD.²⁷⁴ The survey, conducted in 2014, included persons with

²⁷² The Ombudsman has not represented a victim of discrimination in court in any area since 2007. The current Ombudsman has claimed that the emphasis is placed on mediation. Nevertheless, there are no data to confirm that.

²⁷³ A *Report on the Situation of Gays and Lesbians in Latvia* was commissioned in 1999 by the Ombudsman's predecessor, the National Human Rights Office, and remains the only report on the situation of LGB persons by the equality body to date. See http://www.tiesibsargs.lv/uploads/content/legacy/1999_geju_un_lesbiesu_tiesibu_stavoklis_latvija_1500965450.pdf.

²⁷⁴ According to the findings, 21.1 % of respondents perceived discriminatory attitudes on the part of state institutions, 18.8 % found such attitudes among municipal institutions and public transport drivers, 17.3 %

disabilities (266), members of the general public (1 033), desk research and responses from 119 municipalities. It covered a wide range of issues, including public attitudes towards persons with disabilities, state/municipal support, awareness of avenues of redress in cases of discrimination, participation in public life, assessment of quality of life, access to information and environment accessibility.²⁷⁵

From June to October 2016, the Ombudsman, in cooperation with the NGO Apeirons, conducted a study on 'Access to Higher Education by Persons with Disabilities'.²⁷⁶ The aim of the study was to assess the real situation and opinions of people with disabilities about access to higher education in Latvia.²⁷⁷ According to the survey, 22.5 % of persons with disabilities said that teaching materials were not available in alternative forms (adjusted for the needs of persons with disabilities); 21.6 % said that higher education establishments do not ensure environmental accessibility; and 8.1 % said that environmental accessibility is not ensured in libraries. Results of the higher education establishments' survey showed that 77 % have improved their accessibility on their own initiative. The monitoring of buildings identified that 43 % are not accessible to persons with physical disabilities, while 21 % are partially accessible, and that 2 % are not accessible to persons with visual impairment while 94 % are partially accessible. The study also identified that access to some buildings is not in line with the relevant construction requirements. Examples include the incorrect construction of wheelchair ramps and the insufficient marking of stairs and touch buttons in elevators.²⁷⁸

In 2017, the Ombudsman conducted a survey of employers and their experiences in employing persons with disabilities.

In 2016, the Office of the Ombudsman published research findings on 'Practical Problems Concerning the Identification of Hate Speech and Hate Crimes in Latvia'. The aim of the research was to assess the effectiveness of the legal framework (Criminal Law) in Latvia in cases of hate crimes or hate speech and, if necessary, to improve legal regulations and provide recommendations to the police and the judiciary on addressing any shortcomings.²⁷⁹

The grounds of race, religion, sexual orientation and age have received little attention.

encountered them among the surrounding community, 16.9 % in the workplace and healthcare institutions, 13.5 % from public utility providers and 10.9 % from law enforcement and educational authorities. The survey also found that 79 % of Latvian residents condemned discriminatory attitudes towards persons with disabilities, and 14 % tended not to support such attitudes. At the same time, the highest figures on social distance among people in Latvia concerned people with disabilities as work colleagues or classmates. 60 % of respondents would feel discomfort if working or studying with persons with psychosocial disabilities, 54 % expressed discomfort with persons with intellectual disabilities, and 20 % did so with persons with other forms of disabilities. 46 % of respondents would feel discomfort in relation to people with psychosocial disabilities, 34 % with people with intellectual disabilities, and 10 % with having people with other forms of disabilities as neighbours.

²⁷⁵ Ombudsman of the Republic of Latvia (2015), materials from the 'Aspects of the Implementation of the UN Convention of the Rights of Persons with Disabilities in Latvia' conference, available in Latvian at: <http://www.tiesibsargs.lv/sakumlapa/konferences-ano-konvencijas-par-personu-ar-invaliditati-tiesibam-aspekti-latvija-materiali>.

²⁷⁶ Ombudsman's Office (2016), 'Accessibility of Higher Education for Persons with Disability' ('Augstākās izglītības pieejamība personām ar invaliditāti'), conference presentation, 6 December 2016, available in Latvian at: http://www.tiesibsargs.lv/files/content/Konference_Izglitibas_pieejamiba_2016/I_sesija_Tiesibsarga_monitoring_Anete_Ilves.pdf.

²⁷⁷ The survey involved 446 people with disabilities as participants, and 46 higher educational establishments and 164 buildings, libraries and student dormitories were inspected.

²⁷⁸ Ombudsman's Office (2016), 'Accessibility of Higher Education for Persons with Disability' ('Augstākās izglītības pieejamība personām ar invaliditāti'), conference presentation, 6 December 2016.

²⁷⁹ Ombudsman's Office (2016), *Problematic Aspects in the Identification and Investigation of Hate Speech and Hate Crimes in the Republic of Latvia*, http://www.tiesibsargs.lv/uploads/content/naida_noziegumu_un_naida_runas_izmeklesana_lv_2016_14860_44199.pdf.

In 2020 the Ombudsman published a survey headed 'On the prevalence of discrimination in employment. Comparative report 2011 and 2020'.²⁸⁰ Compared with the previous survey, considerably fewer persons were prepared to provide information about their ethnic origin (16 % in 2020, 36 % in 2011), family status (16 % in 2020, 39 % in 2011), health status or disability (24 % in 2020, 65 % in 2011) or sexual orientation (1 % in 2020, 8 % in 2011). As to perceived grounds of discrimination, respondents consider age (58 %) as the most widespread ground of discrimination, followed by state of health (36 %), gender (33 %), ethnic origin (31 %), language proficiency (26 %), sexual orientation (13 %), race (9 %) and skin colour (9 %). Russian speakers stress ethnic origin and language proficiency more frequently than other respondents. In the event of discrimination, the majority of respondents would turn either to the State Labour Inspectorate (rising from 30 % in 2011 to 47 % in 2020), to the institution/organisation²⁸¹ (increasing from 10 % in 2011 to 25 % in 2020), to their trade union (rising from 7 % in 2011 to 18 % in 2020), or to the Ombudsman's Office (i.e. the equality body) (up from 6 % in 2011 to 11 % 2020). In 2011, 33 % would not turn anywhere for help, but by 2020 this had gone down to 12 %.

iii) Recommendations

In Latvia, the Ombudsman's Office does have the competence to issue independent recommendations on discrimination issues (Law on the Ombudsman, Article 12(7) and (8)).

The recommendations issued by the Ombudsman are independent. Recommendations can generally be seen in the Ombudsman's public opinions on specific cases and there is no evidence of interference with the function. Recommendations may be addressed to state and municipal bodies, and in some cases to private actors.

According to the Ombudsman, in 2016, 67 % of the Office's recommendations were fulfilled,²⁸² however there is no breakdown of data across different mandates. The state budget chart does not specify who the recommendations were addressed to or which areas they covered. There is limited public information about the content of recommendations concerning discrimination and the extent to which they are followed up. Descriptions of isolated individual cases are included in the annual report, which does not provide an overall picture about recommendations in the exercise of the non-discrimination mandate. Thus, the effectiveness of the scale/level and quality of implementation of activities under this competence is questionable.

iv) Other competences

According to Article 11(5) of the Law on the Ombudsman, the Ombudsman is tasked with the promotion of public awareness and an understanding of human rights, the mechanisms for the protection of such rights and the activities of the Ombudsman. In 2012, in co-operation with the NGO Apeirons (working with people with disabilities), the Ombudsman conducted an awareness-raising campaign called 'There could be work', aimed at highlighting the appropriate information to include in a CV and the mistakes made by job applicants. The campaign included a survey, posters and information about the Ombudsman's role in relation to discrimination.²⁸³ In 2018, the Ombudsman published a

²⁸⁰ Ombudsman (Tiesībsargs) (2020), *Diskriminācija izplatība nodarbinātības vidē Latvijā. Salīdzinošais pētījums, 2011. un 2020.gadā*, available in Latvian at: http://www.tiesibsargs.lv/uploads/content/diskriminacija_darba_vide_2020_petijuma_rezultati_159437419_3.pdf. Survey methodology: CAWI (online survey), employees over 15 years of age, sample of 1 018 respondents, fieldwork conducted 18-30 March 2020 by Norstat Latvia, Dentsu Data Labs.

²⁸¹ Where an alleged discrimination case occurred.

²⁸² Ministry of Finance (2017), 'Budget of the Office of the Ombudsman: Protection of human rights of private individuals', available in Latvian at: http://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/_budzets2017/tiesibsarga_birojs/14-1-privatpersonu-cilvektiesibu-aizsardziba/. The chart highlights the percentage of recommendations implemented as a key indicator of the result of the Ombudsman's work.

²⁸³ See http://www.tiesibsargs.lv/uploads/content/legacy/Te_vareja_but_darbs_plakati%20%281%29.pdf.

brochure on 'Unwelcome Conduct of a Sexual Nature in the Work Environment' for employers and employees.²⁸⁴

g) Legal standing of the designated body

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

According to Article 12 of the Law on the Ombudsman, the Ombudsman may, upon termination of a verification procedure and upon establishment of a violation, defend the rights and interests of a private individual in an administrative court, if this is necessary for the public interest. Upon termination of a verification procedure and the establishment of a violation in civil cases, the Ombudsman may also apply to a court where the nature of the action is related to a violation of the prohibition of differential treatment. Thus, the Ombudsman has a right, rather than a duty, to bring discrimination complaints before the court. The Ombudsman has never brought any discrimination cases before the court, although it has facilitated conciliation in two gender discrimination cases. The only discrimination case brought before the court on behalf of a victim (a Roma woman), was brought by the Ombudsman's predecessor, the National Human Rights Office, in 2006.

In Latvia, the Ombudsman cannot bring discrimination complaints (on behalf of non-identified victims) to court.

The Ombudsman has the right to bring discrimination complaints *ex officio* to court. However, he has never done that in practice.

The Ombudsman has the right to go to court, however this may be problematic in practice, as any appeal to the Ombudsman does not defer the procedural deadline, which in discrimination cases is three months. Therefore, victims frequently bring discrimination complaints to the court and the Ombudsman in parallel.

The Ombudsman can intervene in legal cases concerning discrimination, including as *amicus curiae*, but only in administrative cases, and the initiative must come from the Ombudsman's Office. According to Article 183 of the Administrative Procedure Law, an association of persons, which is a recognised representative of interests in a specific field and can be expected to deliver competent opinions, may request that it be allowed to submit in writing its opinion on facts or rights in a specific field to the court. If the court deems that the opinion of the association of persons will help the court adopt an objective decision in the case, it determines the questions on which the association can submit its opinion. No *amicus curiae* is provided for under the civil procedure.

h) Quasi-judicial competences

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

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

²⁸⁴ Ombudsman's Office (2018), *Unwelcome Sexual Conduct in the Work Environment (Nevēlama seksuāla rakstura rīcība darba vidē)*, http://www.tiesibsargs.lv/uploads/content/legacy/nevelama_seksuala_rakstura_riciba_web_1531743161.pdf.

In 2009, the first Ombudsman himself publicly admitted that 'local authorities, ministries and other institutions tend to ignore the opinion of the Ombudsman.'²⁸⁵ However, according to information provided in the Annual State Budget Law on indicators regarding the results of the work of the Ombudsman in 2015, 67.6 % of the Ombudsman's recommendations in that year were followed. In 2016 the figure was 70.7 %, 63.2 % of recommendations were followed in 2017, and 78.6 % in 2018.²⁸⁶ In 2019, according to the Ombudsman, 89 % of recommendations were followed.²⁸⁷ The projected figure for 2018 to 2021 is 72 %.²⁸⁸ However, there is no detailed data disaggregated by mandate on the extent to which the Ombudsman's recommendations are followed, including in discrimination cases.

Appealing to the Ombudsman does not preclude a person from subsequently – or simultaneously – bringing a court case. However, the Ombudsman is perceived more as an alternative to the court, and is used by people who cannot afford to bring a court case.

Although such an approach would normally mean that the time limits for bringing the case to court would be missed,²⁸⁹ in the *Kozlovskā* case²⁹⁰ the court held that, in cases where a person first turned to the former National Human Rights Office, and the time limit had been missed for this reason, the time limit provision had to be interpreted broadly so as not to deny the person the protection of their rights. The finding of the Ombudsman is not binding on the court, so the court is free to follow or not follow it, if any of the parties brings it to the court's notice.

i) Registration by the body of complaints and decisions

In Latvia, the Ombudsman's Office registers the number of complaints and decisions (including initiated verification (investigation) cases, refusals to initiate an investigation case, closed/completed cases, and consultations). The numbers of initiated investigation cases by ground of discrimination are available only upon request. Except for selected cases, discrimination complaints by field, type of discrimination, outcome, etc. are not available to the public.

In March 2015, the Ombudsman's Office stopped collecting statistics on discrimination. According to the Office, 'considering that violations of the prohibition of discrimination in practice include violations of other rights (from the aspect of civil and political, social, economic, cultural or children's rights), the Office does not collect separate statistics about discrimination complaints (those are included in the statistics of the above-mentioned legal departments.)'²⁹¹ However, data on discrimination complaints are provided upon request.²⁹² In recent years, over half of the complaints received by the Ombudsman have

²⁸⁵ Luckāns, U. (2009), 'Apsītis: Pašvaldības un ministrijas mēdz ignorēt tiesībsarga viedokli' ('Apsītis: Local Governments and Ministries Tend to Ignore Opinion of the Ombudsman'), *Leta*, 27.05.2009, <https://www.delfi.lv/news/national/politics/apsitis-pasvaldibas-un-ministrijas-medz-ignoret-tiesibsarga-viedokli.d?id=24786081>.

²⁸⁶ Ministry of Finance (2020), 'Budget of the Office of the Ombudsman: Protection of human rights of private individuals', available in Latvian at: https://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/budzets2020/5_tiesibsarga_birojs/-1-privatpersonu-cilvektiesibu-aizsardziba/.

²⁸⁷ Ombudsman (LR Tiesībsargs), *Annual Report 2019 (LR Tiesībsarga 2019.gada ziņojums)*, sp.7, http://www.tiesibsargs.lv/uploads/content/gada_zinojums_versija_3_2_1583476942.pdf.

²⁸⁸ Ministry of Finance (2019), 'Budget of the Office of the Ombudsman: Protection of human rights of private individuals', available in Latvian at: https://fm.gov.lv/lv/sadalas/valsts_budzets/valsts_budzeta_vizualizacija/budzets2019/5_tiesibsarga_birojs/1393-1-privatpersonu-cilvektiesibu-aizsardziba/.

²⁸⁹ Until 2010, the deadline for submission of a discrimination case in court was within one month; since 2010, the time limit has been three months.

²⁹⁰ Jelgava Court, Case No. C 15066406, *S. Kozlovskā v. SIA Palso*, 25.05.2006, available in Latvian at: cilvektiesibas.org.lv/media/attachments/29/01/2013/sk_palso.pdf.

²⁹¹ Email communication from the Ombudsman's Office to the Latvian Centre for Human Rights on 18 March 2016.

²⁹² Ombudsman's Office, Information provided to the LHCR by email on 19.10.2016 and 22.02.2017.

been on grounds of disability, which is allegedly due to the Office's more active cooperation with NGOs focusing on persons with disabilities and its monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities. There is little information available on the outcome of the complaints, including in the annual reports.

In 2016, the Ombudsman's Office received 91 complaints alleging discrimination on different grounds and violations of legal equality.²⁹³ Of those, 48 were on the ground of disability: six relating to employment, eight concerning environmental accessibility, 22 on access to services, two on education, three on housing, and seven in other areas. Ten complaints were on the ground of ethnic origin, including two on employment, one on education, one during court hearings, one relating to access to services, and five in other areas. Five complaints were about alleged discrimination on the ground of gender: two in employment, two on access to services and one in other areas. Two complaints were on the ground of sexual orientation in relation to access to services, and two complaints were on the ground of age in employment and education. The Ombudsman's Office initiated six verification cases. In one case, the prohibition of discrimination was found to have been violated on the ground of sexual orientation. Three cases (two on the violation of the prohibition of discrimination on the ground of disability and one of the violation of legal equality in employment) were under investigation.

In 2017, the Ombudsman's Office received 27 complaints alleging discrimination: 17 on grounds of disability, six on gender, three on age and one on political belief. In 2018, the Ombudsman's Office received 45 discrimination complaints: 17 on grounds of disability (four concerning public sector activity, eight in employment and five on access to goods and services); 11 complaints on national/ethnic grounds (10 relating to public sector activity and one on the right to property), seven complaints on grounds of sexual orientation (five concerning public sector activity, one on the right to property and one on access to goods and services), two complaints on grounds of race (both on public sector activity), two on grounds of age (on education and in relation to public sector activity), and none on grounds of religion.²⁹⁴

In 2019, the Ombudsman received 53 written complaints alleging discrimination. In five complaints, discrimination was alleged on two grounds. There were no complaints on the grounds of race, religion or sexual orientation. There were three complaints on grounds of national/ethnic origin (one concerning public sector activity, one in healthcare and one on access to goods and services in the private sector); there were six complaints on the ground of gender (one concerning public sector activity, four concerning employment, and one other complaint); there was one complaint concerning age in relation to social services; 14 complaints concerned disability (three in relation to public sector activity, three in employment, seven on access to goods/services in the private sector, and one on the right to property); and six complaints concerned other social groups.

In 2019, six verification cases alleging discrimination were opened, and discrimination was established in three cases.²⁹⁵

In 2020, the Ombudsman received 32 complaints alleging discrimination: 7 on grounds of disability (2 in public sector activity, 2 in employment and 3 in access to goods and services in the private sector), 5 on grounds of race/ethnic/national origin (1 in public sector activity, 1 in education, 1 in property and 2 in access to goods and services in the private sector), 2 on grounds of age (1 in public sector activity and 1 in access to goods and services), 2 on gender, 1 on religion (in employment), 1 on sexual orientation (concerning

²⁹³ Ombudsman's Office, Information provided to the LHCR by email on 07.03.2018.

²⁹⁴ Letter No. 6-1/223 of 11 February 2019 from the Ombudsman to the Latvian Centre for Human Rights.

²⁹⁵ Letter No. 1-5/38 of 3 March 2020 from the Ombudsman to the Latvian Centre for Human Rights.

hate speech), 1 on language (in social services), 1 on political affiliation, and 8 on other grounds.²⁹⁶

j) Roma and Travellers

In May 2011, a person was hired by the Ombudsman's Office to specialise on Roma issues. The individual was tasked with the promotion of Roma integration, organising the Office's activities in the realm of non-discrimination and consulting Roma on various issues, including facilitating Roma access to law enforcement institutions.²⁹⁷ As of 1 January 2017, there is no longer a Roma consultant post.

The Advisory Council on Roma Issues (Romu konsultatīvā padome) was established under the auspices of the Ombudsman's Office in 2013.²⁹⁸ The main aims of the Council are to assess activities and measures undertaken in 2007-2012 aimed at preventing discrimination, reducing the exclusion of Roma, assessing measures undertaken in 2012-2020 in education, employment, healthcare and access to housing, developing and submitting to the Ombudsman proposals aimed at improving the economic situation of Roma and the rest of society, developing and submitting proposals about amendments that require to be made to legislative acts to prevent Roma discrimination and exclusion, and facilitating equal participation by Roma in economic life.

The meetings of the Council were not open to the public, and there was little public information about its activities. The Council has not functioned since 2017.

In 2012, the Ombudsman criticised the national authorities on the basis that EU funding and funding from the state budget that had been allocated for improving the situation of the Roma minority and their integration from 2007 to 2012 had not been spent 'purposefully and effectively'.²⁹⁹ The Ombudsman made recommendations to (1) create an effective control mechanism concerning the allocation of funding, (2) appoint a responsible institution that would evaluate and harmonise the compliance of each project with the aims of EU and national policy planning documents, and (3) provide information to the Ombudsman about planned projects for the purposes of monitoring. The Ombudsman also recommends engaging Roma in project design and implementation.

At the same time, the Advisory Committee of the Council of Europe noted in its Second Opinion in 2014 that, despite expressing his concern about the situation of Roma in Latvia, who continue to face discrimination in many spheres of life, the Ombudsman is considered to have made only limited concrete contributions to promoting their full and effective equality in society.³⁰⁰

On certain occasions, the Ombudsman has voiced support for controversial ideas, such as the creation of Roma villages, which was proposed by the Roma leader in Latvia,³⁰¹ although it was criticised by other Romani representatives.³⁰²

²⁹⁶ Ombudsman (2021), *Annual Report 2020 (2020.gada ziņojums)*, p. 24, https://www.tiesibsargs.lv/uploads/content/tiesibsargs_2020_gada_zinojums_final_1613044295.pdf.

²⁹⁷ Information provided by the consultant on Roma issues at the Ombudsman's Office, 08.08.2011.

²⁹⁸ Ministry of Culture, Roma (*Romi*), www.km.gov.lv/lv/ministrija/romi.html.

²⁹⁹ Ombudsman of the Republic of Latvia (2012), Ombudsman's Letter on the Spending of European Union Financial Instruments and State Budget for Roma Integration (Tiesībsarga vēstule par Eiropas Savienības finanšu instrumentu un valsts budžeta līdzekļu izlietojumu romu integrācijai), 30.08.2012, available in Latvian at: http://www.tiesibsargs.lv/img/content/atzinumi/romi_es_lidzekli_romu_kopienai_vestule_saeimai_mk_.pdf.

³⁰⁰ Advisory Committee on the Framework Convention for the Protection of National Minorities (2014), *Second Opinion on Latvia*, adopted on 18.06.2013, Paragraph 35, p. 12, ACFC/OP/II(2013)001, https://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Latvia_en.pdf.

³⁰¹ Romu centrs (Roma Cultural Centre) (2014), '21st Century Tabor' (21.gadsimta tabors), http://www.romucentrs.lv/uploads/3/8/9/1/38919243/ciemats_lv.pdf.pdf.

³⁰² LSM.LV (2013), 'Would Gypsies in Latvia Want to Live in Separate Villages Built Exclusively for Them?', 19 December 2013, <http://www.lsm.lv/lv/raksts/latvija/zinas/vai-chigani-latvija-gribetu-dziivot-atseviskjos-vinjiem-buvetos.a72611/>.

The Ombudsman undertook no activities specifically related to Roma issues from 2015 to 2017, and there is no evidence that the Ombudsman has been treating Roma issues as a priority over the period from 2018 to 2020. The Ombudsman was not involved in the implementation of the National Identity, Civil Society and Integration Guidelines Plan 2017-2018.

8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

There has been limited dissemination of information about legal protection against discrimination in the last decade by state bodies such as the Ombudsman's Office, the Ministry of Culture and the Ministry of Welfare. Although the State Labour Inspectorate has continued to organise informative seminars on the Labour Law, these have concentrated on issues of non-discrimination in only a limited way.

Since 2014, a public agency, the Society Integration Fund, has conducted a range of projects in cooperation with NGOs aimed at promoting diversity and combating discrimination. The projects have been implemented through the PROGRESS 2007-2013 programme of the European Union and have included training for judges, a comprehensive Roma survey, a poster campaign and video spots challenging discrimination on different grounds.³⁰³

In 2017, SIF continued to implement the Diversity Promotion project, which is funded by the European Social Fund. Two research reports were published, aimed at developing awareness-raising activities about social inclusion and discrimination prevention, providing support services to persons at risk of social exclusion and discrimination and developing an anti-discrimination communication campaign.³⁰⁴ In November 2017, in cooperation with several partners, SIF started a social campaign against discrimination in the labour market, urging Latvian employers to select employees according to their professional abilities and not according to age, ethnic affiliation, gender, sexual orientation or other criteria not connected to knowledge and experience.³⁰⁵ An awareness-raising campaign and programme of training activities for employers on equality and diversity issues, undertaken by the Society Integration Fund and covering the period from 2018 to 2022, focused on asylum seekers and refugees in 2018,³⁰⁶ while in 2019 the focus was on persons with different ethnic backgrounds.³⁰⁷ In 2020, the focus was on gender, with age being the focus in 2021 and disability in 2022.

- b) Measures 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)

Since 2014, a public agency, the Society Integration Fund, has conducted a range of projects in cooperation with NGOs aimed at promoting diversity and combating discrimination. The projects have been implemented through the PROGRESS 2007-2013

³⁰³ Society Integration Fund (2015), 'Different people. Different Experience. One Latvia II', see http://www.sif.gov.lv/index.php?searchword=Progress&ordering=&searchphrase=all&Itemid=198&option=com_search&lang=lv.

³⁰⁴ SIA 'Safegē Baltija', SIA 'Comperio', SIA 'Prospero' (2017), *Izpētes ziņojums par pašreizējo sabiedrības izpratnes un informētības līmeni un efektīvākajiem informācijas sniegšanas mehānismiem*, http://www.sif.gov.lv/images/files/nodevumi/ESF_Da%C5%BE%C4%81d%C4%ABas/Izpetes_zinojums_p_ar_sabiedribu.pdf.

³⁰⁵ Society Integration Fund (2017), 'Study: One-half of employers are not ready to employ people with chronic illness or disability and former prisoners', 15.11.2017, http://www.sif.gov.lv/index.php?option=com_content&view=article&id=10326%3APetijums-Puse-darba-deveju-nav-qatavi-nodarbinat-cilvekus-ar-hroniskam-slimibam-vai-invaliditati-un-bijusos-ieslodzitos&catid=14%3AJaunumi&Itemid=186&lang=lv.

³⁰⁶ Society Integration Fund (2018), 'Openness is a Value' ('Atvērtība ir vērtība'), http://www.sif.gov.lv/index.php?option=com_content&view=article&id=10454%3AAtvertiba-ir-vertiba&catid=14%3AJaunumi&Itemid=186&lang=lv.

³⁰⁷ Society Integration Fund (2019), 'Openness is a Value' ('Atvērtība ir vērtība'), https://www.sif.gov.lv/index.php?option=com_content&view=article&id=10812%3AKas-paveikts-2019-gada-dazadibas-veicinasana&catid=14%3AJaunumi&Itemid=186&lang=lv.

programme of the European Union and have included training for judges, a comprehensive Roma survey, a poster campaign and video spots challenging discrimination on different grounds.³⁰⁸

In 2017, SIF continued to implement the 'Diversity Promotion' project, which is funded by the European Social Fund. Two research reports were published aimed at developing awareness-raising activities about social inclusion and discrimination prevention, the provision of support services to persons at risk of social exclusion and discrimination and the development of an anti-discrimination communication campaign.³⁰⁹ In November 2017, in cooperation with several partners, SIF started a social campaign against discrimination in the labour market, urging Latvian employers to select employees according to their professional abilities and not according to age, ethnic affiliation, gender, sexual orientation or other criteria not connected to knowledge and experience.³¹⁰ In 2018, an awareness-raising campaign and training activities for employers on equality and diversity issues (2018-2022), undertaken by the Society Integration Fund, focused on asylum seekers and refugees.³¹¹ In 2020, the Fund focused on awareness raising and training activities for employers and youth on gender discrimination. In 2021, the campaign focus will be on age discrimination.³¹²

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

Social dialogue in Latvia is conducted within the framework of the National Tripartite Cooperation Council (NTCC).³¹³ The NTCC is made up of an equal number of representatives from the Government, the Latvian Confederation of Employers and the Free Trade Union Confederation of Latvia. The NTCC examines drafts of framework documents, programmes, laws and other legal acts and submits its proposals to the relevant ministries in relation to a wide range of social and economic issues. Four sub-councils have been established on the following issues: social insurance, professional education and employment, healthcare and labour issues. The last of these, the Labour Tripartite Cooperation Sub-Council, deals with issues of employment law, labour protection and equal opportunities. Issues of discrimination have been discussed in the work of the sub-councils and the NTCC to a limited extent only – only as far as they relate to employment law, and mostly in relation to gender-based discrimination. Issues of gender-related discrimination have been examined more closely.

Social dialogue concerning discrimination-related issues related to gender-based and disability-based discrimination occurs in those areas where dialogue and cooperation with the relevant NGOs is well established. There has been a Gender Equality Committee since 2002 (previously the Gender Equality Council), and the National Council for the Affairs of Disabled Persons, bringing together representatives of NGOs and state institutions, was

³⁰⁸ Society Integration Fund (2015), 'Different people. Different Experience. One Latvia II', see http://www.sif.gov.lv/index.php?searchword=Progress&ordering=&searchphrase=all&Itemid=198&option=com_search&lang=lv.

³⁰⁹ SIA "Safeg Baltija", SIA "Comperio", SIA "Prospero" (2017), *Izpētes ziņojums par pašreizējo sabiedrības izpratnes un informētības līmeni un efektīvākajiem informācijas sniegšanas mehānismiem*, http://www.sif.gov.lv/images/files/nodevumi/ESF_Da%C5%BE%C4%81d%C4%ABas/Izpetes_zinojums_p_ar_sabiedribu.pdf.

³¹⁰ Society Integration Fund (2017), 'Study: One-half of employers are not ready to employ people with chronic illness or disability and former prisoners', 15.11.2017, http://www.sif.gov.lv/index.php?option=com_content&view=article&id=10326%3APetijums-Puse-darba-deveju-nav-qatavi-nodarbinat-cilvekus-ar-hroniskam-slimibam-vai-invaliditati-un-bijusos-ieslodzitos&catid=14%3AJaunumi&Itemid=186&lang=lv.

³¹¹ Society Integration Fund (2018), *Openness is a Value ('Atvērtība ir vērtība)*, http://www.sif.gov.lv/index.php?option=com_content&view=article&id=10454%3AAtvertiba-ir-vertiba&catid=14%3AJaunumi&Itemid=186&lang=lv.

³¹² See <https://atvertiba.lv/>.

³¹³ Regulations on the National Tripartite Cooperation Council (*Nacionālās Trīspusējās sadarbības padomes nolikums*), 30.10.1998, available in Latvian at: <http://likumi.lv/doc.php?id=50778>.

created under the aegis of the Ministry of Welfare in 1997. The Council focuses, among other things, on issues related to the implementation in Latvia of the UN Convention on the Rights of Persons with Disabilities.³¹⁴

d) Addressing the situation of Roma and Travellers

The Ministry of Culture is responsible for the advancement of Roma issues at a national level. In 2016, it set up a Latvian Roma platform to foster cooperation between the Roma community, state and municipal institutions and social partners to improve participation in and coordination and implementation of Roma integration measures at local, regional and national levels.³¹⁵ The platform is in its fourth year of action. The Action Plan on the Implementation of the Guidelines for 2017–2018, approved on 31 May 2017,³¹⁶ sets out the continuation of Roma education quality monitoring, support to Roma teacher assistants and mediators in educational establishments and municipalities, and activities to prevent leaving school early, to provide support measures to Roma youth, women and Roma NGOs, to promote tolerance and intercultural dialogue activities that aim to decrease prejudice towards Roma, and to further develop the Roma integration platform. The Action Plan on the Implementation of the Guidelines for 2019-2020³¹⁷ sets out awareness raising among Roma about their rights, fostering co-operation between the Roma community, municipalities and state institutions, support for at least five Roma mediators in Latvian cities, support for a Roma regional expert network, reducing the number of Roma children dropping out of school early, research on Roma early drop-outs from the education system, and support for Roma who are in the high-risk group for early drop-outs.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

There is no information indicating that Latvia has not transposed Articles 14(a) and 16(a). Latvian law contains no explicit provisions for the screening or potential abolition of laws, provisions and regulations that do not comply with the principle of non-discrimination.

It is difficult to establish whether any laws or regulations that are contrary to the principle of equality are still in force; at least, there appear to be no cases to indicate this. Such laws would tend not to be discriminatory in themselves, but they may fail to provide adequate protection against discrimination. In cases of conflict, EU law would take precedence over national law.

If it is the legal provision itself that is discriminatory, the person who has suffered from discrimination on the basis of the measure can, by first initiating procedures in the courts of general jurisdiction, submit a constitutional complaint to the Constitutional Court, which may declare null and void the legal provisions that are contrary to provisions of a higher legal force, up to the Constitution. The alternative would be to approach the Ombudsman's Office, asking it to bring a complaint. However, the Ombudsman can only bring abstract review cases, and since the unconstitutional law usually loses its force only prospectively, the result of the case will be of no avail to the particular complainant. In the case of a concrete review resulting from a constitutional complaint, the Constitutional Court can

³¹⁴ Ministry of Welfare (Labklājības ministrija) (2015), 'Meetings with Associations that Represent Persons with Disabilities', <http://www.lm.gov.lv/text/3089>.

³¹⁵ Ministry of Culture (Kultūras ministrija), Latvian Roma platform (*Latvijas Romu platforma*), see <https://www.km.gov.lv/lv/integracija-un-sabiedriba/romi/latvijas-romu-platforma>.

³¹⁶ Cabinet of Ministers (2017), *Par Nacionālās identitātes, pilsoniskās sabiedrības un integrācijas politikas pamatnostādņu 2012.-2018. gadam īstenošanas plānu 2017.-2018. gadam*, 31 May 2017, available in Latvian at: <https://likumi.lv/ta/id/291179?&search=on>.

³¹⁷ Cabinet of Ministers (2018), *On the Action Plan on the Implementation of the Guidelines for 2019-2020 (Par Nacionālās identitātes, pilsoniskās sabiedrības un integrācijas politikas pamatnostādņu īstenošanas plānu 2019.-2020. gadam)*, 18 July 2018, <https://www.vestnesis.lv/op/2018/143.6>.

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.

According to Article 104.¹ of the Administrative Procedure Law, a court can request a preliminary ruling from the ECJ, including on compliance with Articles 14 and 16: 'A court in the cases provided for by European Union (Community) legal norms shall assign matters to the European Court of Justice regarding the interpretation or validity of European Union (Community) legal norms for the rendering of a preliminary ruling.'³¹⁸

Since 2009 the procedure for indicating the compliance of draft legislative acts with Latvia's international obligations has been harmonised at all levels of legislative decision making. According to the Government regulations on preparing draft legislative acts, they must include reference to the relevant EU legislation.³¹⁹ According to the Government rules of procedure for submitting draft legislation, the responsible ministry or institution has to ensure the compliance of the draft legislative act with Latvia's international obligations (Article 24.3).³²⁰ According to the Parliamentary rules of procedure for submitting draft legislation or amendments, the Commission is required to indicate the compliance of the act or amendments with relevant international treaty obligations (Article 81(5)(1)).³²¹ A separate instruction governs the technical procedure for the drafting of ex-ante impact assessment reports, covering the impact of the legislation on Latvia's international obligations (Article 4.10, Chapter VI) and its compliance with EU law.³²²

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

There is no indication that the country has not transposed Articles 14(b) and 16(b).

There exists a mechanism, however, for ensuring that contracts, collective agreements and internal rules that are incompatible with the principle of equal treatment are abolished – or, more precisely, are recognised by the courts as being void. Article 6 of the Labour Law provides that 'provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments, erode the legal status of an employee, are void and can be declared as such by courts of general jurisdiction'. According to Article 43(1) of the Civil Procedure Law, claims concerning labour disputes are exempt from judicial costs, which means that the applicant does not have to pay state duty or other costs directly related to the proceedings. Since 1 January 2019, state-funded legal aid has been available to persons for Constitutional Court proceedings if the Court has refused to initiate a case indicating a lack or clear insufficiency of legal grounds for satisfaction of the claim as the only basis for such a decision.

³¹⁸ Administrative Procedure Law, adopted 25.10.2001 (in force 01.02.2004).

³¹⁹ Cabinet of Ministers Regulations No. 108 on Preparing Documents of Legislative Acts (*Noteikumi Nr 108 "Normatīvo aktu projektu sagatavošanas noteikumi"*), adopted 03.02.2009 (in force 18.02.2009), Chapter 4.

³²⁰ Cabinet of Ministers Rules of Procedure (*Ministru kabineta Kārtības rullis*), adopted 07.04.2009 (in force 17.04.2009).

³²¹ Saeima Rules of Procedure (*Saeimas Kārtības rullis*), adopted 28.07.1994 (in force 01.09.1994).

³²² Cabinet of Ministers Instruction No. 19 on Procedures for Ex-Ante Impact Assessment of Legislation (*MK instrukcija Nr. 19 Tiesību akta sākotnējās ietekmes izvērtēšanas kārtība*), adopted 15.12.2009 (in force from 01.01.2010).

9 COORDINATION AT NATIONAL LEVEL

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

The Ministry of Welfare is responsible for issues relating to discrimination in the fields of employment relationships, social security, children and family affairs, as well as in relation to equal opportunities regarding disabled persons and gender equality, thus covering the grounds of gender, disability and age.

Tasks and obligations in relation to social integration have been handed over to different ministries, eventually ending up with the Department for Social Integration Affairs within the Ministry of Culture (MoC). The regulations governing the MoC do not explicitly mention anti-discrimination functions, however the competence of the MoC in the realm of social integration and the promotion of civil society in 2018 includes a role 'to ensure the observance of the rights of minorities, including Roma, by facilitating the elimination of racial and ethnic discrimination.' The Ombudsman's Office has not assumed a national coordinating role on non-discrimination issues.

There is no national action plan on anti-discrimination or anti-racism, but the Government has adopted several framework documents and action plans for the implementation of the UN Convention on the Rights of Persons with Disabilities and its Additional Protocol. In September 2013, the Government approved the framework document for 2014-2020.³²³

The Framework Document on Guidelines on National Identity, Civil Society and Social Integration Policy 2012-2018³²⁴ includes a brief paragraph on anti-discrimination, citing that an institutional mechanism and an anti-discrimination legislative framework have been developed, while discrimination often remains unrecognised and unpunished.

On 17 July 2018, the Cabinet of Ministers approved the National Identity, Civil Society and Integration Policy Implementation Plan for 2019-2020³²⁵ drawn up by the Ministry of Culture. In the area of anti-discrimination, the Plan focuses on gender, age, disability and ethnic discrimination. It envisages the continuation of awareness-raising activities for employers and employees on discrimination prevention issues (training 50 persons per year), as well as motivation and support services, the launch of an anti-discrimination social campaign and other activities.

In 2020, a new draft Framework Policy Document, 'On the Development of Consolidated and Civically Active Society 2021-2027', was drawn up by the Ministry of Culture. The Framework plans to promote the strengthening of national identity and a sense of belonging, promoting inclusive participation and raising the level of civic knowledge, strengthening qualitative and secure democratic participation and information space and facilitating the public participation of foreign citizens living in Latvia, as well as discouraging attitudes based on negative stereotypes against different groups in society. There are three directions of action planned: the strengthening of national identity, the strengthening of

³²³ Cabinet of Ministers (2013), *Guidelines for implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020* (Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādnes 2014.-2020.gadam), 22.11.2013, available in Latvian at: http://www.lm.gov.lv/upload/2013junijs/lmpamn_040613_inv.pdf.

³²⁴ Cabinet of Ministers (2013), *Guidelines on National Identity, Civil Participation and Society Integration 2012-2018* (Nacionālās identitātes, pilsoniskās sabiedrības un sabiedrības integrācijas politikas pamatnostādnes 2012.-2018.gadam).

³²⁵ Cabinet of Ministers (2018), *National Identity, Civil Society and Integration Policy Implementation Plan for 2019 - 2020* (Nacionālās identitātes, pilsoniskās sabiedrības un integrācijas politikas īstenošanas plans 2019. - 2020. gadam), available in Latvian at: www.likumi.lv/ta/id/300483-par-nacionalas-identitates-pilsoniskas-sabiedrības-un-integrācijas-politikas-īstenošanas-planu-2019-2020-gadam.

civic society and the promotion of integration. The strengthening of civic society and integration includes promoting the integration of socially marginalised groups and the prevention of discrimination. The policy document is set to be adopted in 2021.³²⁶ An action plan for 2021-2023 will include more detailed measures aimed at preventing discrimination.

The Ministry of Welfare prepared the 2015-2017 Implementation Plan for the *Guidelines for the implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020*.³²⁷ On 15 December 2015, the plan was approved by the Government. (See 3.2.7)

The Ministry of Welfare produced the Action Plan for the Implementation of the UN CRPD for 2018-2020, which envisages the continuation of the activities implemented in 2015-2017 in accordance with the Guidelines for the Implementation of the UN CRPD 2014-2020.³²⁸

On 3 July 2020, the Cabinet of Ministers approved a report on the implementation of the UN Convention on the Rights of Persons with Disabilities.³²⁹ The study aims to assess the progress of the implementation of the CRPD, providing an overview of the impact of national policies on the implementation of equal rights and opportunities for persons with disabilities and identifying necessary further actions for effective and sustainable disability policy. The main tasks of the study were (1) to analyse the degree of achievement of the goals and planned results set out in the Guidelines for the Implementation of the UN Convention on the Rights of Persons with Disabilities for 2014-2020 from 01.01.2014. until 31.12.2019; and (2) to analyse the progress of the implementation of the UN Recommendations for the period from 01.09.2017. until 31.12.2019. The study concludes that the situation of persons with disabilities has improved in the field of disability expertise, in inclusive education, in environmental accessibility and in access to information, as well as in social services, with the expansion of support services including community-based services. The most significant problems are related to employment, the high level of poverty among people with disabilities, the risk to the financial sustainability of community-based services, and the lack and poor quality of human resources among service providers. The study provides an assessment of 47 UN recommendations, of which 32 or 68 % have been assessed as partially or fully implemented, with 12 recommendations that have started to be implemented and 3 recommendations that have not yet begun to be implemented. In 2019, the Ministry of Welfare developed guidelines on the environmental accessibility of public buildings and premises. The guidelines summarise the legal provisions on environmental accessibility for persons with disabilities and the recommendations made by different experts.³³⁰

³²⁶ Ministry of Culture (2020), draft Framework Policy Document *On the Development of Consolidated and Civically Active Society 2021-2027 (Pamatnostādņu projekts "Saliedētas un pilsoniski aktīvas sabiedrības attīstības pamatnostādnes 2021.-2027.gadam")*, 23.07.2020, <http://tap.mk.gov.lv/lv/mk/tap/?pid=40490048>.

³²⁷ Ministry of Welfare (2015), 2015-2017 Implementation Plan for the *Guidelines for implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020 (Pasākumu plāns nākamajiem gadiem ANO Konvencijas par personu ar invaliditāti tiesībām īstenošanai Latvijā)*, 15 December 2015, available in Latvian at: <http://tap.mk.gov.lv/lv/mk/tap/?pid=40365029&mode=mk&date=2015-12-15>.

³²⁸ Cabinet of Ministers (2018), 2015-2017 Implementation Plan for the *Guidelines for implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020 (Par Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādņu 2014.-2020. gadam īstenošanas plānu 2015.-2017. Gadam)*, 12 December 2018, <https://likumi.lv/ta/id/303670-par-apvienoto-naciju-organizācijas-konvencijas-par-personu-ar-invaliditāti-tiesībām-īstenošanas-pamatnostādņu-2014-2020>.

³²⁹ Cabinet of Ministers (2020), *Assessment of the implementation of the UN Convention on the Rights of Persons with Disabilities*, <http://petijumi.mk.gov.lv/node/3249>.

³³⁰ Ministry of Welfare (2018), *Guidelines for environmental accessibility for public buildings and premises and public outdoor places (Vides pieejamības vadlīnijas publiskās būvēs un telpām un publiskajām ārtelpai)*, available in Latvian at: http://sf.lm.gov.lv/f/files/vienlidzīgas_iespejas_2014-2020/pieejamiba_12042018_LM_vadlinijas.pdf.

The Cabinet of Ministers approved the Plan for the development of environmental accessibility in Latvia for 2019 – 2021 (*Plāns pieejamas vides veidošanai Latvijā 2019.-2021. gadam*) drawn up by the Ministry of Welfare. The plan was developed in accordance with the guidelines for the implementation of the CRPD for 2014-2020 and recommendations on environmental accessibility issued to Latvia by the Committee on the Rights of Persons with Disabilities in 2017.³³¹ The aim of the plan is to increase the number of electronic services, public buildings and places designed in accordance with the principles of universal design and to make them accessible to all groups in society, including persons with disabilities. The plan aims to ensure that public and local authorities and their services, including electronic services, are available to persons with disabilities, regardless of age and social status, by 2030. The implementation of the plan names the organisation representing persons with disabilities as the main partner for assessing the development of universal design and for quality control.³³²

In 2020, the Ministry of Welfare organised training for public and municipal bodies for conducting self-assessment concerning accessibility to public and municipal buildings and buildings where state and municipal services are provided. A total of 2 249 buildings were assessed between June and October 2020, including their accessibility to persons with mobility, sight, hearing and mental disabilities. The results of the survey will be released in 2021.³³³

³³¹ UN Committee on the Rights of Persons with Disabilities (2017), 'Concluding observations on the initial report of Latvia', CRPD/C/LVA/CO/1.

³³² Ministry of Welfare (2019), *Plan for the development of environmental accessibility in Latvia for 2019 – 2021 (Plāns pieejamas vides veidošanai Latvijā 2019.-2021. gadam)*, 12 March 2019, <https://likumi.lv/ta/id/305520-par-planu-pieejamas-vides-veidosanai-latvija-2019-2021-gadam>.

³³³ Ministry of Welfare (2020), *Self-assessment of Environmental and Information Accessibility*, 03.09.2020, <https://www.lm.gov.lv/lv/vides-pieejamibas-pasnovertejums-2020>.

10 CURRENT BEST PRACTICES

An example of good practice is provided by a set of activities organised by the Ombudsman's Office, in cooperation with NGOs working with persons with disabilities, aimed at raising public awareness about the barriers faced by persons with disabilities. Annual surveys are conducted concerning accessibility to healthcare facilities, banks and higher educational establishments by persons with disability, there is an annual conference, annual awards are made to NGOs, and actions are being taken by employers to facilitate the social inclusion of persons with disabilities.

There are no best practices in relation to the use of artificial intelligence.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

In relation to vocational training outside employment relationships, differential treatment is not adequately prohibited. The Law on Education contains a closed list of grounds that does not include age, disability or sexual orientation. As far as the application of the Law on Education in the private sector is concerned, there is nothing to make up for the missing grounds. The Law on Support to Unemployed Persons and Job Seekers, which covers access to vocational retraining, applies to only three grounds: gender, race and ethnic origin. Hence, it ignores Directive 2000/78 ((Article 3(1)(b)).

The shift in the burden of proof is not included in the Law on Social Protection *expressis verbis*. Hence, the areas of social protection and social advantages remain uncovered, which could amount to a breach of Article 8 of Directive 2000/43/EC.

A strict time limit of three months for bringing a discrimination claim before the court in employment cases, as opposed to a two-year limit in other labour dispute cases, may serve as a barrier for victims of discrimination. In a case alleging gender discrimination in 2018, the Supreme Court decided that the claim for compensation for non-pecuniary damage was dependent on establishing discrimination in the first place, which is subject to a three-month limit, hence the claim for non-pecuniary damages falls under the same limit.³³⁴

Disability is defined as a long-term or non-transitional very severe, severe or moderate level of limited functioning, and is divided into three possible degrees of disability in accordance with the provisions of the Disability Law, depending on the gravity of the impairment. The issue may arise whether the concept of disability in the laws prohibiting discrimination covers only those disabilities that have received official qualification, in which case the person's status as disabled has consequently been officially recognised, or whether it covers any de facto disability. This can be problematic and can result in insufficient implementation unless the courts, when confronted with this issue, interpret the notion of disability in the laws prohibiting discrimination in a manner compatible with the CJEU case of *Skouboe Werge and Ring*.³³⁵

It would appear that Latvian legislation provides for a wider range of exceptions for direct race discrimination than the Racial Equality Directive, extending beyond a general occupational requirement.

The number of court cases concerning discrimination on grounds of ethnicity, religion, disability, age or sexual orientation resulting in compensation for the victim remains limited. The majority of cases concern gender discrimination in the sphere of employment. The average amount of moral compensation awarded in known discrimination cases is EUR 1 428. Such a small amount of compensation can hardly be considered effective, proportionate and dissuasive. Cases of forward-looking remedies, such as ordering the Health Inspectorate to issue an administrative act to order certain health service providers to ensure access to their premises for persons with disabilities, remain rare.

11.2 Other issues of concern

Since the transposition of the Racial Equality Directive and the Employment Directive, there is still only limited case law concerning discrimination on grounds of race/ethnic origin (1), disability (3), age (2), religion (0) and sexual orientation (0). Court cases on discrimination are not specifically recorded and remain unknown to the wider public. The Ombudsman has not represented a discrimination victim in court, despite having such a mandate.

³³⁴ Supreme Court Senate Civil Cases Department, C31247015 (SKC-79/2018), 06.06.2018, <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/355573.pdf>.

³³⁵ Judgment of 11 April 2013, joined cases C-335/11 and C-337/11, EU:C:2013:222.

12 LATEST DEVELOPMENTS IN 2020

12.1 Legislative amendments

There has been a minor legislative amendment related to non-discrimination.

On 5 May 2020, the Government raised the maximum level of costs that employers can get reimbursed for providing reasonable accommodation when hiring unemployed persons with disabilities³³⁶ from EUR 711 EUR³³⁷ to EUR 1 000.

12.2 Case law

In 2020, there was no case law on discrimination on grounds of race/ethnic origin, religion, age or disability falling under the remit of the Framework Employment and Racial Equality Directives. There have been no cases brought by Roma.

Nevertheless, there have been developments that may eventually make it easier to bring discrimination claims on grounds of sexual orientation in the future.³³⁸

Relevant discrimination ground(s): sex

Name of the court: Constitutional Court (Satversmes tiesa)

Date of decision: 12.11.2020

Name of the parties: n/a

Reference number: Case No. 2019-33-01, 12.11.2020

Link: https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/12/2019-33-01_Spriedums.pdf

Brief summary: In 2020 the Constitutional Court examined a case concerning the family rights of a same-sex couple for the first time. The case concerned a lesbian couple who have been in a relationship and have shared a common household for more than 10 years and should therefore be regarded as a family within the meaning of the first sentence of Article 110 of the Constitution. A child was born to this family, after which the applicant wished to exercise the right to parental leave of 10 calendar days, as provided for by Section 155(1) of the Labour Law. However, the above provision only grants this right to a child's father, not to the female partner of a child's biological mother. On 13 November 2020, the Constitutional Court issued a ruling in the case.³³⁹ According to the Court, the state shall provide legal protection for the family institution, so that family members may enjoy their social and economic rights. The state shall also protect same-sex families, since discrimination on the ground of sex is prohibited and as the best interests of a child to grow up in a family environment shall also be taken into consideration. The contested legal provision contradicts Article 110 of the Constitution and shall be invalid from 1 June 2022. The legislator has until then to draft an appropriate legal mechanism for the protection of same-sex families.

Relevant discrimination ground(s): language

Name of the court: Constitutional Court

³³⁶ Cabinet of Ministers Regulations No. 262, Amendments to Cabinet of Ministers Regulations No. 75 of 25 January 2011, Regulations on the Organisation of Active Employment Measures and Preventive Unemployment Reduction Activities and Order of Financing and Principles of the Selection of Those Implementing Measures (*Grozījumi Ministru kabineta 2011. gada 25. janvāra noteikumos Nr. 75 "Noteikumi par aktīvo nodarbinātības pasākumu un preventīvo bezdarba samazināšanas pasākumu organizēšanas un finansēšanas kārtību un pasākumu īstenotāju izvēles principiem"*), 05.05.2020, Article 1.2, <https://www.vestnesis.lv/op/2020/87.6>.

³³⁷ This amount was set in 2009.

³³⁸ A Constitutional Court case is pending concerning the inheritance rights of the same-sex couple. See Constitutional Court (Satversmes tiesa)xxx (2020), Decision on Initiating a Case, 20 July 2020, https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2020/07/2020-34-03_Lemums_ierosinasana.pdf#search=.

³³⁹ Constitutional Court, Case No. 2019-33-01, 12.11.2020, https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/12/2019-33-01_Spriedums.pdf.

Date of decision: 19 June 2020

Name of the parties: n/a

Reference number: 2019-20-03

Link: https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/09/2019-20-03_Spriedums-1.pdf

Brief summary: of the key points of law and of the facts.

On 19 June 2020, the Constitutional Court delivered a judgment concerning the amendments on language use in kindergartens. According to Cabinet of Ministers Regulations No. 716, the Regulations on State Pre-School Education Guidelines and Model Pre-School Education Programmes of 21 November 2018, the main means of communication during play-based lessons shall be Latvian for children attending either public or private minority kindergartens from the age of five, except for special activities for the learning of the minority language and ethnic culture. During earlier years, a bilingual approach is maintained.³⁴⁰ Kindergarten education is compulsory for children over five.

Several children and parents contested the amendments in the Constitutional Court as not being compatible with the first sentence of Article 112 (the right to education), Article 64 (the right to legislate: the people and the Parliament), Article 114 (the right of persons belonging to ethnic minorities to preserve and develop their language and their ethnic and cultural identity) or Article 91 (non-discrimination) of the Constitution. The applicants claimed that the contested provisions created differential treatment between two groups of kindergarten learners: those who receive education in Latvian and learners who receive education in Russian. The first group consists mainly of Latvians, and the second group comprises those belonging to an ethnic minority. It was claimed that the contested provisions severely restricted the right of the latter group to receive education in their mother tongue and unreasonably imposed differential treatment of students in pre-school educational institutions on the basis of the language criterion. The applicants referred to Article 1 of the UNESCO Convention against Discrimination in Education, Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 26 of the International Covenant on Civil and Political Rights, and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in conjunction with Article 2 of Protocol No. 1 to the Convention and the Framework Convention for the Protection of National Minorities.

In earlier judgments concerning other levels of education, the Constitutional Court had already held that, in Latvia, those learners whose mother tongue is a language other than the official language are not in comparable conditions with learners whose mother tongue is the official language. This finding of the Constitutional Court is based on the constitutional status and significance of the official language in the functioning of a democratic state, as well as the fact that neither the *Satversme* nor the norms of international law that are binding on Latvia impose an obligation on the state to ensure that a learner can use a language of his or her choice in the educational process, or use a language other than the official language in the proportion desired by the learner (see Judgment of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para. 21.1). Hence, the Court found that its findings were also applicable to the level of pre-school education.

In June 2020 the Venice Commission issued an opinion on recent amendments to the legislation on education in minority languages in Latvia.³⁴¹ It recommends amending

³⁴⁰ Paragraph 9 of Annex 2 states: 'Throughout the entire pre-school education stage, the acquisition of the Latvian language is promoted in an integrated learning process, using a bilingual approach, which is implemented in co-operation with teachers, specialists, and other employees of the educational institution in accordance with the development of the child, as well as using Latvian in everyday communication. For children from the age of five, the main means of communication in play is Latvian, with the exception of purposefully organised activities for the acquisition of the minority language and ethnic culture.'

³⁴¹ Venice Commission (2020), *Latvia – Opinion on the recent amendments to the Legislation on Education in Minority Languages*, Opinion No. 975/2020, 18 June 2020, Council of Europe, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)012-e).

Cabinet Regulation No. 716 in order to return to the previous 'bilingual approach' in play-based lessons, to be applied to the whole period of pre-school education.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Latvia
Date: 31 December 2020

Title of the law: Labour Law [Darba likums]

Abbreviation: -

Date of adoption: 20.06.2001

Latest relevant amendment: 17.10.2019

Entry into force: 01.06.2002

Web link: <http://likumi.lv/doc.php?id=26019>

Grounds covered: Race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation 'or other circumstances'

Civil/administrative/criminal law: Civil

Material scope: Employment relationships proper (civil service and specialized civil service excepted)

Principal content: Prohibition of discrimination in relation to all aspects of employment relationships; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment

Title of the law: State Civil Service Law [Valsts civildienesta likums]

Abbreviation: -

Date of adoption: 07.09.2000

Latest relevant amendment: -

Entry into force: 01.01.2001

Web link: <http://likumi.lv/doc.php?id=10944>

Grounds covered: Grounds not specified

Civil/administrative/criminal law: administrative

Material scope: Civil service relationships

Principal content: Application of Labour Law provisions on protection against discrimination to civil service relationships

Title of the law: Law on Prohibition of Discrimination of Natural Persons-Economic Operators [Fizisko personu – saimnieciskās darbības veicēju diskriminācijas aizlieguma likums]

Abbreviation: -

Date of adoption: 19.12.2012

Latest relevant amendment: -

Entry into force: 02.01.2013

Web link: <http://likumi.lv/doc.php?id=253547>

Grounds covered: Gender, age, religious, political or other conviction, sexual orientation, disability, race or ethnic origin

Civil/administrative/criminal law: civil

Material scope: Access to self-employment; access to goods and services of a self-employed person

Principal content: Prohibition of discrimination in access to self-employment; access to goods and services of a self-employed person; prohibition and definition of victimization

Title of the law: Law on Social Security [Likums par sociālo drošību]

Abbreviation: -

Date of adoption: 07.09.1995

Latest relevant amendment: 29.10.2015

Entry into force: 05.10.1995

Web link: <http://likumi.lv/doc.php?id=36850>

Grounds covered: Race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances

Civil/administrative/criminal law: administrative
 Material scope: Social services - measures ensured by state or municipality as monetary or material support or other services to promote the full realization of person's social rights
 Principal content: Prohibition of differential treatment in provision of social services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment

Title of the law: Law on Education [Izglītības likums]

Abbreviation: -
 Date of adoption: 29.10.1998
 Latest relevant amendments: 22.11.2017
 Entry into force: 01.06.1999
 Web link: <http://likumi.lv/doc.php?id=50759>
 Grounds covered: Property and social status, race, ethnic origin, gender, religious and political belief, state of health, employment and place of residence
 Civil/administrative/criminal law: administrative
 Material scope: Access to education
 Principal content: Prohibition of discrimination in access to all types of education, prohibition of victimisation, reversal of burden of proof

Title of the law: Consumer Rights Protection Law [Patērētāju tiesību aizsardzības likums]

Abbreviation: -
 Date of adoption: 18.03.1999
 Latest relevant amendment: 28.10.2010
 Entry into force: 15.04.1999
 Web link: <http://likumi.lv/doc.php?id=23309>
 Grounds covered: Gender, race, ethnic origin, disability
 Civil/administrative/criminal law: civil
 Material scope: access to goods and services
 Principal content: prohibit discrimination in access to goods and services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment

Title of the law: Law on Associations and Foundations [Biedrību un nodibinājumu likums]

Abbreviation: -
 Date of adoption: 30.10.2003
 Latest relevant amendment: 02.11.2006
 Entry into force: 01.04.2004
 Web link: <http://likumi.lv/doc.php?id=81050>
 Grounds covered: Not specified
 Civil/administrative/criminal law: civil
 Material scope: principles for the activity, organisational structure, liquidation and re-organisation of associations and foundations
 Principal content: Principal content: Right on behalf of the victim to turn to the state institutions and courts in order to protect the rights and legal interests of the person in cases related to the violation of the prohibition of differential treatment

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: Latvia

Date: 31 December 2020

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	10.02.1995	27.06.1997	No	Yes	Yes
Protocol 12, ECHR	4.11.2000	No	No	Yes	Yes
Revised European Social Charter	29.05.2007	26.03.2013	Article 12 para 4	Ratified collective complaints protocol? No	Yes
International Covenant on Civil and Political Rights	N/A	14.04.1992	No	Yes	Yes
Framework Convention for the Protection of National Minorities	11.05.1995	06.06.2005	No, but definition of minority	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	N/A	14.04.1992 (27.01.1992 – ILO database)	No		Yes
Convention on the Elimination of All Forms of Racial Discrimination	N/A	14.04.1992	No	No	Yes
ILO Convention No. 111 on Discrimination	N/A				Yes
Convention on the Rights of the Child	N/A	14.04.1992	No		Yes

Instrument	Date of signature	Date of ratification	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?
Convention on the Rights of Persons with Disabilities	18.06.2008 Optional protocol signed 22.10.2010	01.03.2010 Ratified 31.08.2010	No	Yes	Yes

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