

**REPORT ON MEASURES TO COMBAT
DISCRIMINATION IN THE 13 CANDIDATE
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT
LATVIA**

MAY 2003

Gita Feldhune

MEDE European Consultancy

Hooghiemstraplein 155

3514 AZ Utrecht

Netherlands

Tel +31 30 634 14 22

Fax +31 30 635 21 39

office@europeanconsultancy.nl

www.europeanconsultancy.nl

Migration Policy Group

Rue Belliard 205, Box 1

1040 Brussels

Belgium

Tel +32 2 230 5930

Fax +32 2 280 0925

info@migpolgroup.com

www.migpolgroup.com

This report has been drafted as part of a study into measures to combat discrimination in the candidate countries, funded by the European Community action programme to combat discrimination. The views expressed in this report do not necessarily reflect the views or the official position of the European Commission.

Introduction

Latvia is, and has always been a multiethnic country, although the proportion of various ethnic groups among its population has varied. By 1 January 2003 out of 2 331 467 inhabitants registered at the Population register of Latvia, 54.8% were Latvians, 29.0% Russians, 3.9% Belarussians, 2.6% Ukrainians, 2.5% Polish, 1.4% Lithuanians, 0.5 Jews, 0.1% Estonians and 1.6% others¹. Latvian citizens constitute 1 795 454 persons or 77% of the population. Of these, ethnic Latvians constitute 75.6%, while the second biggest group among citizens is Russians – 17.87%. The Poles follow with 2.23%. Among the 504 277 or 21.62% non-citizens², Russians constitute the biggest group or 66.8%, which, alongside the fact that many other minority groups use the Russian language at home is, is the reason why the problem of non-citizens is often referred to as the Russian or Russian-speakers' problem. This means that, first, differences in rights between citizens and non-citizens are perceived as suspect, as the division of citizens and non-citizens largely corresponds to ethnic divisions. Secondly, it also makes linguistic issues very sensitive. Latvian is the official language in Latvia, and since certain positions require knowledge of the official language, it is much more likely that they will be occupied by ethnic Latvians. A recent study indicates that, although the share of ethnic Latvians among its citizens is 75.6%, the share of Latvians employed by the ministries is 92.10%.³ There are no state university with Russian as the teaching language, and the Law on Education currently requires that from 2004 the teaching language in secondary schools be primarily Latvian; although this presumably would improve the chances of representatives of minorities on the labour market, it raises issues related to the protection of minorities and has encountered serious resistance from the parents of the pupils affected. Since, according to Art.10 of the State Language Law all submissions to public authorities must be made in the official language, it raises serious issues related to access to justice, especially as regards persons in closed institutions, including prisons, without access to an interpreter⁴. Additionally, there is concern over language requirements in the private sphere. However, as a positive development it has to be noted that the requirement contained in both municipal and Parliamentary election laws that the candidate presents proof that his knowledge of the Latvian language corresponds to the highest level was abolished in 2002, although simultaneously re-emphasising in the Constitution the status of the Latvian language to provide that the working language of the Parliament and the municipalities is Latvian and requiring the newly elected MPs as the condition for confirming their qualifications to give a solemn promise including, *inter alia*, the undertaking to strengthen Latvian as the only official language. Gender-based discrimination is another concern. Although there is a nearly total lack of any case law – there have been so far only two court cases on discrimination altogether – a survey conducted in 2001 indicates that approximately 20% of respondents have encountered gender-based differential treatment when applying for a position, while 10% have encountered it in relation to promotion or pay raises. 35.9% of women consider that their rights are more restricted than those of men, and 58.3% consider

¹ Data taken from the home page of the Naturalization department, www.np.gov.lv/fakti/index.htm

² Non-citizens is a special category of persons defined by the Law on the Status of Those Former USSR Citizens who are not Citizens of Latvia or Any Other State (Likums par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības) as persons who resided in Latvia on 1 July 1991 and have not obtained the citizenship of any other country. The rights of citizens and non-citizens differ to some extent, for example, for Latvian citizens the years they worked outside Latvia are taken into account while calculating their pensions, while they are not taken into account for non-citizens. This was challenged in the Constitutional Court as discriminatory, but the Court refused to decide on the merits as the particular provision of the law challenged was silent on non-citizens only providing that for citizens this time is taken into account, even if the obvious effect of the silence of the law was that for non-citizens it was not taken into account resulting in differential treatment. – See the 16 June 2002 Constitutional Court judgment in the case No. No. 2001-02-0106, the judgment in English available at [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106\(01\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106(01).htm)

³ Artis Pabriks. Ethnic Proportions, Employment and Discrimination in Latvia [Etniskās proporcijas, nodarbinātība un diskriminācija Latvijā], Rīga, 2002, p.25

⁴ The National Human Rights Office: Report 2001 [Valsts Cilvēktiesību Biroja 2001. gada ziņojums], p.27. This problem has been also noted by ECRI in its second report on Latvia (14 December 2001), para.17

their opportunities more limited⁵. Although there are no surveys devoted to the issue of age in employment, there seems to be a general impression among elderly employees, especially those over the pensionable age, that they are the first candidates for dismissals⁶. At the level of legislation, the May 20, 2003 judgment of the Constitutional Court⁷ is likely to entail a reassessment of age limits included in legislation. The difficulties of disabled persons in finding an employment are common knowledge, although there are no studies to confirm this either, and the only reason why no similar difficulties are experienced by sexual minorities is that the attitude of Latvian society is still far from being sufficiently liberal to encourage them to admit their orientation; this was amply demonstrated by the essay contest “Latvia free of homosexuality” organized in 2001 by the right-wing publishing house “Vieda” and its leader Aivars Garda and the resulting book “Homosexuality – the disgrace and disaster of mankind”. That this is to a significant extent still a taboo topic was demonstrated in the adoption of the new Labour Law – the most advanced law in terms of outlawing discrimination. During the examination of the draft law by the 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.

No studies have been conducted on discrimination based on religion, but so far it does not appear to be a problematic area, which is also confirmed by the statistics of the national Human Rights Office.

In this context, it appears that the state should take a more active stand to actually promote equal treatment, as the lack of case law cannot be taken as an indicator that no problems exist. According to the latest data of the national Human Rights Office, within the last quarter of 2002 the Office has all together provided 44 oral consultations on issues of discrimination; of these, 12 concerning discrimination on the basis of gender, 11 – on the basis of age, 2 – on the basis of ethnic origin and language (the Office has also received 2 written complaints on discrimination on this basis), 4 – on the basis of religious, political or other opinion, and 10 on the basis of social origin or property status; no complaints have been received concerning discrimination on the basis of race or sexual orientation.⁸ While only written complaints count, as these are the only ones which are formally considered, the number of oral consultations indicate that the feeling of being discriminated against exists, and that there is a need to improve the legal framework, the dissemination of information and to raise awareness. As a positive development, the creation of the position of the minister for special assignments for society integration affairs has to be noted. The secretariat of this minister is expected to take over the responsibility from the Ministry of Justice for ensuring compliance with the Race Equality Directive, and on April 4, 2003 it, in cooperation with the information centre of the Council of Europe, organised the conference entitled “Integration of society - the promotion of tolerance”, which was the first widely- attended event organized by the state to discuss the issue of discrimination. As a separate issue, the scarcity of studies on discrimination needs to be mentioned. So far, only discrimination on the basis of nationality has been addressed⁹ and, to some extent, discrimination on the basis of gender, but there are no studies or empirical data on discrimination on the basis of age, sexual orientation, disability or religion. This explains the lack of references to empirical data in the later parts of this report.

Chapter 1 The legal framework, definitions and scope

⁵ The Understanding and Attitude of the Inhabitants Towards the Issues of Gender Equality [Iedzīvotāju izpratne un attieksme pret dzimumu līdztiesības jautājumiem]. The results of the Social Policy Studies conducted by the Ministry of Welfare in 2001, p.5

⁶ The share of pre-retirement age persons among the unemployed was 15.2% in 2001; this indicates that such persons have difficulties finding jobs, even if there are no discrimination cases brought. – Social Report for the year 2001, p.27

⁷ The 20 May 2003 decision in case No. 2002-21-01. The English translation is not available yet.

⁸ Latvijas Vēstnesis [Official Gazette] No.14 28.01.2003

⁹ See footnote 3.

a. The legal framework

Article 1 (Racial Equality Directive and Employment Equality Directive)

Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation? If so, what is the nature of the national legal framework (e.g. Are the anti-discrimination laws and provisions general or ground-specific? Is discrimination on all of the grounds listed in Art.13 EC expressly prohibited in law as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions? Is the level of protection the same for all grounds? Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law? Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?

Where there is no anti-discrimination law, the reports should make note of any relevant public or academic discussion, policy debate or legislative proposals at the national level. In particular, the reports should explain what any proposed legislation entails.

At the constitutional level the principle of non-discrimination is enshrined in Art.91 of the *Satversme* (the Latvian Constitution) providing that

“All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind”.

The Constitution generally is regarded as directly applicable. While it is difficult to determine with certainty what exactly this means, in view of the on-going debate concerning the right or possibly the duty of the courts of general jurisdiction to refer cases of doubt concerning the compliance of a norm with a norm of higher legal force to the Constitutional court¹⁰, the Constitutional court itself pointed out in the “Compensation of losses case”¹¹ that Constitutional norms can be applied directly. While the petitioner argued discrimination because a change in the law failed to provide for the compensation of losses in his case, the Constitutional court held that Art.92 of the Constitution could be applied directly and that the absence of a concretising law cannot serve as the ground for refusal of the court to accept the claim.

Art.91 refers to “discrimination of any kind” without specifying the grounds and thus covering all possible grounds. As the Constitution stands highest in the hierarchy of norms, this permits an argument that a non-exhaustive list of grounds in fact applies also in cases of laws that only contain an exhaustive list of grounds in their non-discrimination clauses¹², although this complicates matters by

¹⁰ The problem has been created by the different regulation of the issue by the Criminal Procedure Code and the Law on Civil Procedure providing for court referral, as distinguished from the Administrative procedure law scheduled to come into force on 1 July 2003 which does not provide for court referral but instead authorises the judge himself to decide on the conformity of norms and to apply the norm of higher force in cases of incompatibility, without, however, the authority to invalidate the incompatible norm.

¹¹ The 5 December 2001 decision in the case No. 2001-07-0103, available in English at [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/07-0103\(01\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/07-0103(01).htm). In this particular case the petitioner complained of the unconstitutionality of the law “On the Compensation of Losses Suffered as the Result of Illegal or Unsubstantiated Actions of Bodies of Investigation, Prosecutor's Office or Court” because the law, allegedly in contradiction with Art.92 of the Constitution providing that “Everyone, where their rights are violated without basis, has a right to commensurate compensation”, failed to provide for the compensation of losses in his case. While the law governed the compensation of losses to, *inter alia*, persons acquitted by the court, it did not apply to cases such as the petitioner's case when the person found guilty had spent longer time in pre-trial detention than the period of deprivation of liberty imposed on him by the sentence. The Constitutional court held the above-mentioned law only regulates certain cases of compensation, without purporting to be exhaustive, providing for a simplified procedure in those listed cases, whereas in all other cases the person can turn to the court of general jurisdiction basing his claim directly on Art.92 of the Constitution, the court having the duty to adjudicate the case.

¹² For example, while Art.3 of the Education Law [Izglītības likums] only guarantees equal rights to receive education to citizens of Latvia, Latvian non-citizens and citizens of the EU states regardless of “property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence”, not mentioning, for example, sexual orientation or age, by referring to Art.91 of the Constitution it is possible to regard these grounds as non-exhaustive.

requiring weighty arguments to counter the *inclusio unius est exclusio alterius* argument. The main problem, however, is that the Constitution is not regarded as directly applicable to actions by private individuals, and thus lacking horizontal effect, hence, while it would be possible to argue the applicability of the principle of non-discrimination to the public sphere even in the absence of any concretising legislation, in the private sphere such legislation is crucial. Even if from the human rights law point of view the state could be held responsible for failing to provide the necessary protection against discrimination in the private sphere, this is clearly insufficient given that the aim of a guarantee against discrimination is to actually ensure non-discrimination and not just to allocate responsibility.

In addition to the non-discrimination clause in Art.91, Art. 89 of the *Satversme* 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 *Satversme* have to be interpreted in the light of international human rights standards binding upon Latvia¹³. The competence of the Court to review the compatibility of international treaties signed or concluded by Latvia with the Constitution, as well as to review the compatibility of national legal norms with those international treaties concluded by Latvia that do not contradict the Constitution must be noted especially, since this also indicates the place of international treaties binding on Latvia in the hierarchy of norms: they are below the Constitution yet above the ordinary laws, and ordinary laws and all subordinate norms must comply with these treaties¹⁴. Moreover, in practice it has also been accepted that international treaties can be relied upon, and applied directly – to the extent that direct application is possible and the treaties are self-executing - even in the absence of any implementing legislation. The European Convention on Human Rights and Fundamental Freedoms stands out as particularly important, as not only the Constitutional Court who is by far a leader in using international legal instruments, but also courts of general jurisdiction are starting to rely on it, or at least refer to it increasingly¹⁵. It also must be noted that the plaintiffs in the Constitutional Court are increasingly relying not only on the non-discrimination clause of the *Satversme*, but also on those of international treaties binding on Latvia – primarily the ECHR – and that the Constitutional Court has in certain cases examined, *inter alia*, whether Art.14 of the ECHR has been violated.¹⁶

In addition to the Constitutional regulation, the principle of equal treatment is further elaborated in a number of laws. Of these, the Labour law¹⁷ is the most advanced one as it was drafted taking into account the requirements of the Racial Equality Directive and Employment Equality Directive. It contains a general non-discrimination clause¹⁸ which is strengthened by a specific prohibition of

¹³ Constitutional Court 30 August 2000 judgment in case No.2000-03-01, available in English at [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/03-01\(00\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/03-01(00).htm)

¹⁴ While views as to *why* international treaties take place below the *Satversme* and above the ordinary statutes (in fact, it has been argued that some international treaties, due to the subject they deal with, may even be at the same level as the Constitution. See Ineta Ziemele. International Law in Latvian Legal System. In: Ineta Ziemele, ed. Realization of Human Rights in Latvia: Courts and Administrative Procedure (in Latvian), Riga, 1998, pp.43-44) differ – for example, Mārtiņš Mīts considers that the supremacy of international treaties is a general principle of law, even if it has not been included in a norm of constitutional rank (see, e.g., Mārtiņš Mīts. The *Satversme* in the Context of European Human Rights Standards. Latvian Human Rights Quarterly # 7-10/1999, p.50), this is not doubted anymore and is well established and affirmed by practice.

¹⁵ The most recent and most prominent application of the ECHR standards has taken place in the defamation case *L.Strujevics pret a/s "Diena" un A.Ozoliņu* (case No.SK-604, last judgment by the Supreme Court Senate adopted 14 November 2002); this is the first case where ECHR was not just referred to without ever attempting to go into details as to the contents of its articles, but the standards developed by the ECHR case law were relied on, although there is still a lot of controversy as to whether these standards have been correctly applied.

¹⁶ See, for example, the Constitutional Court judgment in the cases 2000-03-01 (see footnote 10) and 2001-02-0106 (see footnote 2).

¹⁷ Labor Law [Darba likums], adopted 20.06.2001, in force since 01.06.2002

¹⁸ See Art.7 of the Labor Law in the annex.

differential treatment on the grounds of gender, race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status or other circumstances of an employee in a separate article¹⁹. While the way Art.29 is worded might seem to give heightened protection against discrimination on the basis of gender²⁰, this was not the intention of the drafters and discrimination on all grounds is equally prohibited, although the wording is perhaps somewhat unfortunate; the explanation of it is that initially the law was drafted to prohibit gender discrimination, and other grounds were added after the two Directives were adopted. One may just hope that the wording will not mislead the courts and they will interpret it correctly. None of the grounds for discrimination is defined, however, neither in the Labour law nor in any other law, and from a discussion at a seminar devoted to a survey planned by the Latvian Association of Personnel Management it appears that particularly the term “social origin” seems enigmatic and would need further explanation.

A number of other laws contain a prohibition of discrimination, for example, Law on Scientific Activity²¹ provides, in Art.3, that “Everybody has the right to engage in scientific activity regardless of race, ethnicity, gender, language, party membership, religious or political opinions, property or social status, position occupied and origin”. Art.2 of the Law on Social Security²² refers to “an equal guarantee of social services regardless of gender, race, ethnicity, religious opinion” – which shows that not all laws leave the list of grounds open. It is also important to note that in certain areas the person’s citizenship or other status is a condition for access to certain services. This applies, for example, to law on Education²³ or to access to social security which is limited to Latvian citizens, non-citizens, third-country nationals and stateless persons to whom a personal ID number has been issued, with the exception of persons in possession of temporary residence permits only (Art.59(1) of the law on Social Aid); a similar provision on the possession of permanent residence permit as a precondition for acquiring of the status of an unemployed person was invalidated by the Constitutional Court as regards the spouses of Latvian citizens who can only obtain the permanent residence permit after a certain number of years, as the intention of the spouses clearly is to stay permanently, by the same differing from other persons who receive temporary residence permit.²⁴

The Law “On the Unrestricted Development and Right to Cultural Autonomy of Latvia’s Nationalities and Ethnic Groups”²⁵ declares that “the residents of the Republic of Latvia are guaranteed, regardless of their national origin, equal human rights, which correspond to international standards” (Article 1). Additionally, Article 3 of this law specifically provides for equality in the employment sphere:

"The Republic of Latvia guarantees to all its permanent residents, regardless of their national origin, equal rights to work and remuneration for work. Any direct or indirect actions to restrict, based on national origin, the opportunities of permanent residents to choose their profession or, based their skills and qualifications, occupy a position, are prohibited."

While in those cases when the particular law provides a closed list of grounds or does not contain any anti-discrimination clause at all – as is, for example, the case with the Law on Housing²⁶, it is possible to invoke Art.91 of the Constitution as far as the sphere is concerned; in the private sphere there are no guarantees of equal treatment. As an exception, the protection against discrimination on two grounds has to be noted – Art.78 of the Criminal

¹⁹ See Art.29 of the Labor Law in the annex.

²⁰ This impression may be created also by Art.60 of the Labor Law which speaks of equal pay to men and women.

²¹ Likums par zinātnisko darbību, adopted 10.11.1992.

²² Likums par sociālo drošību, adopted 07.09.1995.

²³ See footnote 10.

²⁴ Constitutional Court judgment in the case No 2001-11-0106 adopted 25 February 2002, available in English at [http://www.satv.tiesa.gov.lv/Eng/spriedumi/11-0106\(01\).htm](http://www.satv.tiesa.gov.lv/Eng/spriedumi/11-0106(01).htm).

²⁵ Likums par Latvijas nacionālo un etnisko grupu brīvu attīstību un tiesībām uz kultūras autonomiju, adopted 19.03.1991

²⁶ Likums par dzīvojamo telpu īri, adopted 16.02.1993

Law²⁷ protects against discrimination on the basis of racial or national origin (in the field of economic, political, or social rights only, and only if intent to discriminate can be shown) and Art.150 of Criminal Law protects against discrimination based on religion or belief²⁸. Thus, the Constitution prohibits any kind of discrimination, but it does not mention specific grounds; moreover, it only applies directly in the public sector and 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 none of them mention specifically all of the grounds covered by the two Directives; some of these laws cover only specified grounds without leaving the list open.

b. The definition of discrimination

Article 2 (Racial Equality Directive and Employment Equality Directive)

Direct and indirect discrimination

Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives?

Please make precise reference to the relevant legal provisions and case law.

There is no express definition in national law of direct discrimination; the only law that contains something comparable to a description of direct discrimination, although to a limited extent only, is Art.78 of the Criminal Law outlawing “restricting directly or indirectly economic, political or social rights of individuals or creating, directly or indirectly, advantages for individuals based on their racial or ethnic origin”. Art.150 of the Criminal Law contains a similar wording speaking of “directly or indirectly restricting person’s rights or creating any advantages” based on a person’s attitude towards religion. Art.78 is placed in the Chapter of the Criminal Law dealing with “Crimes against humanity, peace, war crimes, genocide, which to some extent could explain the high threshold for the application of this article, as it requires the proof of intent, while Art.150 is contained in the Chapter “Offences against person’s basic rights and liberties”.

The only law that defines indirect discrimination – although one can say that reference is made to it also in Art.78 of the Criminal Law quoted above – is Art.29 (4) of the Labour Law. This Article provides:

“Indirect discrimination occurs when apparently neutral provisions, criteria or practice create disadvantages to a substantially higher proportion of members of one gender, unless these provisions, criteria or practice are appropriate and necessary and can be justified by objective circumstances that are not related to gender.”

Art.29(5) applies the prohibition of differences in treatment contained in Art.29(1) and also the definition of indirect discrimination contained in Art.29(4) to differences in treatment on grounds of a person’s race, colour, age, disability, religious, political or other opinions, national or social origin, property or family status and other circumstances. Differential treatment on the grounds of sexual orientation was contained in the initial draft of the Labour Law, but was dropped later when the parliamentary committee responsible for the proposal offered new wording of this clause. However, sexual orientation can be regarded as one of the “other circumstances” mentioned in Art.29(5) and thus may be covered if so interpreted by the courts; however, this will only become apparent in the future case law. The reluctance of the MPs to include an express reference to sexual orientation shows how sensitive this topic still is.

While technically, Labour Law applies only to employment relationships (including pre-contractual relationships, as both the reference in Art.29(1) to “establishing employment relationship” and Art.34 dealing with the consequences of violating the prohibition of differential treatment when establishing employment relationship indicate) and employment-related claims, it is not inconceivable that this

²⁷ Kriminällikums, adopted 17.06.1998

²⁸ For more discussion on these articles, see under f Sanctions.

definition could be used in other cases when the issue of indirect discrimination is raised, especially since it would also follow from the international treaties binding on Latvia. However, even this definition is somewhat incomplete, which presumably can be attributed to the process of translation of the definition taken from the Directives: instead of “particular disadvantage compared to other persons” referred to in the two Directives, the Labour Law uses the expression “substantially higher proportion of members [of one gender]” – that is, a numerical criterion which in certain cases may turn out to be limiting.

It must moreover be noted that not all employment relationships come under the terms of the Labour Law; although it applies both to the private and public sector, it does not apply to people in the civil service or specialised civil service; the latter includes policemen, border guards, individuals in diplomatic or consular service and certain other institutions²⁹.

In the only “pure” Latvian discrimination case discrimination on the basis of gender was the issue. A woman had been denied employment as a prison ward on the basis of being a woman, and while it was found that she had been discriminated against – primarily because the position to which she applied was not included on the list of jobs where women cannot be employed - , the Supreme Court Senate made a reference to what they considered to be “positive discrimination”, stating that the reference to hard working conditions and specific requirements to personnel that are linked to the need to participate in searches of persons of the opposite gender contained in the refusal to employ the plaintiff showed that positive discrimination had taken place, and that this has to be taken into account when awarding damages³⁰. Apparently, the fact that the discrimination involved was “positive” was a factor when deciding that the finding of discrimination is in itself sufficient.

Thus, it can be said that there is no express definition in national law of direct discrimination, and indirect discrimination is only defined in the Labour Law, and even here the definition does not fully comply with the Directives.

Harassment

Does national law define harassment, as defined in the Directives?

Are there any existing or forthcoming Codes of Practice on harassment?

Please make precise reference to the relevant legal provisions and case law.

There is no definition of harassment under national law, and, in fact, this has been so far to a certain extent considered a taboo topic, possibly because of the feeling that it may be very difficult to differentiate cases of unwanted conduct from welcome conduct. To some extent there is very limited protection against harassment in the Labour Law – without, however, any express reference to it: Art.100(5) of the Labour Law permits the employee to dispense with the requirement that he give one month’s advance notice if he wants to quit the job if he has an important reason for it, and any condition that, “based on considerations of morality and fairness” does not permit the continuation of the employment relationship. In addition to this, Art.94 of the Labour Law permits the employee to submit a complaint to a designated official or institution to protect his violated rights and interests. Obviously, while theoretically harassment could be subsumed under these two articles, this protection is clearly inadequate, and, moreover, it excludes harassment from the ambit of discrimination. In addition, the Labour Law applies only to employment relationships and thus only this field is covered. Theoretically, one could argue that Art.156 of the Criminal Law providing for punishment for intentional violations of a person’s dignity or oral degradation, in writing or by conduct, could be applied to cases when the person’s dignity is offended by reason of membership in some group or

²⁹ For more, see Fields of application under c) scope

³⁰ Judgment of the Senate of the Supreme Court in the case No.SKC-297 Muhina v. Central Prison (8 May 2002). By “positive discrimination” the Court apparently mean discrimination that could not be valued negatively, as the intention had been laudable – namely, to protect women from hard and physically demanding jobs.

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 to attack the gravest cases of harassment.

It must be noted that according to information received from the Ministry of Welfare, during 2003, the government intends to prepare amendments to the Labour Law which will include the definition of harassment as required by the two Directives.

There is no indication that any Codes of Practice on harassment exist; given the continuing taboo nature of the topic it is not unreasonable to assume that the situation might change only after the Labour Law is amended to include a definition of harassment.

There is no case law on harassment.

It can be concluded that currently there is no express prohibition, nor definition of harassment under Latvian legislation, and though there might be some limited protection against it, this has not been confirmed in practice.

Instruction to discriminate

Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives? Please make precise reference to the relevant legal provisions and case law.

There are no express provisions under national law outlawing instruction to discriminate. Limited protection against instructions to discriminate is provided only by Art 78 of the Criminal Law prohibiting “restricting directly or indirectly economic, political or social rights of individuals or creating, directly or indirectly, advantages for individuals based on their racial or ethnic origin” taken together with Art. 20 of the Criminal Law which speaks of various forms of accomplices (organiser, inciter and supporter), but only for the very limited cases falling under Art.78 which, moreover, are limited to discrimination on the grounds of racial or ethnic origin. The same possibility to invoke Art.20 applies to instruction to discriminate based on religion or belief if taken together with Art.150 of the Criminal Law which prohibits “restricting directly or indirectly a person’s rights or creating any advantages to persons based on their attitude towards religion”.

Everything else is left unprotected, including even employment relationships. According to information received from the Ministry of Welfare, during 2003, the government intends to prepare amendments to the Labour Law which will include a prohibition of the instruction to discriminate as required by the two Directives

The Current situation is clearly unsatisfactory, which in part can be attributed to the general problem of the application of the prohibition of discrimination to the private sector. One of the few well-publicised cases that took place in 1999 is quite illustrative. In this case, a member of home guard forces (*Zemessardze*) guarding a private café refused to let a person of Roma origin enter the café by referring to the instructions of the owner of café not to let such persons in. The leadership of the home guard, after investigating the case at the request of the National human rights office, concluded, *inter alia*, that the guard himself could not have acted in a discriminatory way as one of his grandparents was Roma, and that the owner of the café bore all the responsibility as he was the author of the internal rules on which the guard had relied. This was the end of the story, and no criminal proceedings were instigated³¹.

Thus, currently there are no express provisions under national law outlawing instruction to discriminate.

c. Scope

Fields of application

³¹ Human rights in Latvia in 1999. Latvian Center for Human Rights and Ethnic Studies, p.41

Article 3.1 (Racial Equality Directive and Employment Equality Directive)

Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?

Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?

Please make precise reference to the relevant legal provisions and case law.

One of the two main problems of Latvian anti-discrimination legislation is its application to the private sector (the other problem is sanctions even in the public sector where there is no doubt that discrimination is forbidden; this is discussed in more detail in Chapter 2 f under “Sanctions”). As Art.91 of Satversme (the Constitution) contains a general equality clause providing that “All persons in Latvia shall be equal before the law. Human rights shall be observed without discrimination of any kind” and the Constitution is directly binding on all public bodies, the prohibition of any kind of discrimination – be it racial and ethnic discrimination or discrimination on grounds of religion or belief, disability, age or sexual orientation – applies to the whole public sector and all fields listed in Art.3.1 of the Racial Equality Directive and Employment Equality Directive even if there are no separate clauses to this effect in laws governing the respective sphere. However, the absence of such separate clauses and, more importantly, of the lack implementation and sanctions mechanism, including the shared burden of proof (which currently exists only under Labour Law and thus applies to employment-related relationships only), complicates implementation considerably. Moreover, the Constitution does not have horizontal effect, which means that private relationships are covered only when there exists specific legislation to this effect.

** access to employment, self-employment or occupation*

Access to employment in all its aspects is governed by the Labour Law which regulates employment relationships, including access to employment, trial periods, working conditions, pay, promotion and dismissals and prohibits differential treatment, providing protection against it as required by the Directives and covering all fields mentioned therein, although sexual orientation is not expressly spelt out. It applies both to the public and private sectors, with the exception of the state civil service and specialised civil service.

Art. 2(4) of the State Civil Service³² Law provides that in the state civil service those norms regulating employment relationships with regard to work and rest time, pay, terms and material responsibility of the employee apply. This excludes, by *inclusio unius est exclusio alterius*, the norms on differential treatment, including those norms on the burden of proof; while in cases of discrimination it is possible to refer to the Constitution and argue that the guarantee of equality contained therein has been violated, undeniably the non-application of the burden of proof of norms means the burden of proof rests entirely on the plaintiff. While opinion has been expressed that it might be possible to apply the norms of the Labour Law, including the norms on burden of proof, by analogy, the author of this report regrets being unable to agree with this suggestion and considers that amending the State Civil Service law to include expressly a non-discrimination clause or a reference to non-discrimination provisions of the Labour Law would be optimal and indeed essential.

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

³² Valsts civildienesta likums, adopted 07.09.2000

discriminatory by the 20 May 2003 Constitutional Court decision³³; this may entail reassessment of other age limits contained in legislation.

There is no express prohibition of differential treatment as far as access to self-employment is concerned, but to the extent that Art.91 of the Constitution applies to all public bodies acting in all spheres, access to self-employment is nevertheless covered as it involves certain registration procedures performed by public bodies.

It must also be noted that in addition to the provisions described above, discrimination in any sphere, including employment, and both in the public and private sectors based on religion is outlawed by Art.150 of the Criminal Law.

Thus, it can be concluded that access to employment and occupation is covered by Latvian legislation both in relation to the private and the public sphere, although it would be advisable to include express prohibition of differential treatment also in the law governing civil service relationships – unless an all-encompassing anti-discrimination statute is adopted instead.

- *access to vocational guidance and training*

Access to vocational guidance and training in both the public and private sectors (with the exception of the civil service as described above) is covered by Art.29(1) of the Labour Law referring to “occupational training” and the Law on Education which also applies both to the public and private sectors. The problem, however, is that this law contains an exhaustive list of grounds which do not include age, disability and sexual orientation. Art.3 of the Law on Education provides: “Every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by Latvia, or person to whom a permanent residence permit has been issued, as well as citizens of the European Union states to whom temporary residence permits have been issued and their children have equal rights to receive education independently from property and social status, race, ethnicity, gender, religious or political opinions, health condition³⁴, occupation and place of residence.”

As far as its application to the public sector is concerned, the reference to Art. 91 of the Constitution can cure this deficiency, even if it is somewhat complicated, especially since in cases when the particular ground for discrimination is not expressly mentioned, the burden of proof which rests on the plaintiff is clearly even more significant, as he also has to argue against the *inclusio unius est exclusio alterius* principle; there is nothing to make up for these missing grounds in the private sphere. The conclusion thus is that in, relation to vocational training outside employment relationships, differential treatment is not adequately prohibited, as the Law on Education contains a closed list of grounds which do not include age, sexual orientation and disability (although it could be argued that it can be subsumed under the heading “health”); although in the public sector it can be deduced from Art.91 of the Constitution, it would be advisable to amend this law by either including express references to the missing grounds or leaving the list open. Also, the State Civil Service Law should be amended to include a prohibition on differential treatment in civil service relationships.

- *employment and working conditions, including dismissals and pay*

Employment and working conditions in both public and private sector are covered by the Labour Law, with the exception of the state civil service (see above), although the Labour Law provisions on pay also apply to the civil service. In addition to the Art.29(1) prohibition of differential treatment which also, inter alia, refers to “pay”, Art.60(1) of the Labour Law reiterates that equal work remuneration has to be given to men and women for the same kind of work or work of equal value. The Ministry of Welfare explained that it was felt that the

³³ The 20 May 2003 decision in the case No. 2002-21-01. The English translation is not available yet

³⁴ In the autumn of 2002 there was a case when a teacher following the instructions of her superior had not let an HIV-positive pupil to enter a class. The case was well-publicised, raising, inter alia, the issue of the protection of sensitive data, and the teacher was disciplinary punished.

need to re-emphasise equal pay independently of gender existed because it was one of the most problematic areas in practice.

- *membership and involvement in organisation of workers or employers, or professional organisation*

Art.2 of the Law on Trade Unions³⁵ refers to the right of all persons residing in Latvia, who are employed or study, to establish trade unions. However, there is no specific prohibition of discrimination in the exercise of this right. Art.2(2) of the Law on Organisation of Employers and Their Associations³⁶ similarly provides that a natural or legal person who employs at least one person on the basis of a contract can become a member of an employers' organisation, but does not contain any non-discrimination clause. Art.8 of the Labour Law reiterates the right of employees and employers to freely create and join organisations to protect their interests, but the equality clause of the Labour Law does not apply to this article. As regards professional organisations, the Law on the Bar³⁷ does not contain any equality clause at all, but Latvian citizenship is a condition for access to the Bar. To the extent that professional organisations can be said to exercise certain public functions, again it is possible to refer to constitutional guarantees of equality, but all in all it must be admitted that this is a problematic sphere clearly requiring legislative action as the requirements of the Directives are currently not fulfilled.

- *social protection, including social security and healthcare*

In addition to constitutional guarantees of equality, Art.109 of the Constitution provides that everyone has the right to social security in old age, for work disability, for unemployment and in other cases provided for by law, while Art.111 states that the state shall protect human health and guarantee a basic level of medical care for everyone. Art.2 of the Law on Social Security³⁸ refers to "equal guarantees of social services regardless of gender, race, ethnicity, religious opinion". Art.16 of the Medical Care Law³⁹ provides that everyone has the right to receive urgent medical care as provided for by the Cabinet of Ministers, while Art.17 of that law states that the right to medical care guaranteed by the state is enjoyed by Latvian citizens, non-citizens, foreign citizens and stateless persons who are registered in the Population Register and have received a personal ID number, as well as by imprisoned and detained persons; there is no express guarantee of equality. Thus, it can be observed that in some cases the guarantee of equality is missing, while in other cases (for instance, the Law on Social Security) it does not encompass all grounds required by the Directives, which might be particularly problematic in the private sphere (private medical care, for example) to which the Constitution does not apply directly. Legislative action is needed to remedy the situation as the requirements of the Directives currently are not fulfilled.

- *social advantages*

In addition to the constitutional guarantee of equality, Art.3 of the Law on Social Services and Social Security⁴⁰ provides that the Latvian citizens, non-citizens, foreign citizens and stateless persons who have received the personal ID number, except persons who have received temporary residence permits, have the right to social services and social security. To the extent that provision of such services and security is a public function, the constitutional guarantee of equality applies, however, the lack of express guarantee of non-discrimination has to be noted.

- *education*

³⁵ Likums "Par arodbiedrībām", adopted 13.12.1990

³⁶ Darba devēju organizāciju un to apvienību likums, adopted 29.04.1999

³⁷ Advokatūras likums, adopted 27.04.1993

³⁸ Likums par sociālo drošību, adopted 07.09.1995

³⁹ Ārstniecības likums, adopted 12.06.1997

⁴⁰ Sociālo pakalpojumu un sociālās palīdzības likums, adopted 31.10.2002

The Law on Education applies to both the public and private sphere and contains a closed-list non-discrimination clause which does not include all the grounds required by the Directives; see under Access to vocational guidance and training above.

- *access to and supply of goods and services including housing*

Access to goods and services is an uncovered field. There is no general law on services, and the Law on Housing does not contain a non-discrimination clause. While in the public sphere the constitutional guarantee applies and in the private sphere the limited protection offered by Art.78 and 150 of the Criminal Law in relation to the gravest cases only on the grounds of race/national origin and religion or belief, there is no adequate protection against private discrimination and no adequate sanctions even for public discrimination. As an illustration, see under Instruction to discriminate the case on access to a café: although the actions of the owner of the café clearly came under the terms of Art.78, no criminal case was opened.

It can be concluded that in the public sphere the protection against discrimination on the grounds of racial and ethnic origin, religion or belief, disability, age or sexual orientation is implicit in Art.91 of the Constitution and thus applies to all fields of application; nevertheless, it would be preferable to have this guarantee expressly incorporated in separate laws. The equality guarantee applies also in cases where the laws in question contain a closed list of grounds which do not include all grounds required by the Directives, but also in these cases – especially in view of the difficulties created by *inclusio unius est exclusio alterius* principle – amendment of these clauses to include all grounds or at least leave the list of grounds open is recommended. In some cases Latvian legislation goes beyond the requirements of the Directives to the extent that it provides for equal treatment regardless of nationality, although then it is nevertheless linked to the person's status (having received ID number or permanent residence permit).

As regards the scope of the application of Race Equality Directive and Employment Equality Directive to the private sector, the only adequate protection against discrimination can be found in Labour law regarding the employment relationships, which includes access to employment, trial periods, work conditions, pay, promotion and dismissals. As regards education and vocational training, the equality clause contained in the Law on Education applies, which, however, contains a closed list of grounds that does not include age, disability and sexual orientation. Finally, discrimination based on religion or belief can be punished pursuant to Art.150 of the Criminal Law, while discrimination on the grounds of racial and ethnic origin can be punished pursuant to Art.78 of the Criminal Law in the field of enjoyment of economic and social rights if the intent to discriminate has been shown; the latter provisions have never been applied, which may give rise to legitimate questions as to their effectiveness.

Exceptions and exemptions

- *Occupational requirements*

Article 4 (Racial Equality Directive and Employment Equality Directive)

Do such exemptions exist on the national level? Does national law define 'genuine and determining occupational requirements' and, if so, how?

Please note that the Employment Equality Directive includes particular provisions with regard to organisations the ethos of which is based on religion or belief.

Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?

Please make precise reference to the relevant legal provisions and case law.

The only statute that refers to occupational requirements is the Labour Law. Its Art.29 (2) provides that “differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition for performance of the relevant work or for the relevant employment”; Art.29(5) applies also to differential treatment based on a person’s race, color, age, disability, religious, political or other opinions, national or social origin, property or family status and other circumstances. There is no further explanation of such preconditions, nor any case law which alone would show the real contents of these preconditions.

Prior to the entry into force of the Labour Law on 1 June 2002 the situation was different as the Labour Code then in force prohibited differential treatment except where restrictions or advantages had been provided for by a statute or other normative act; two such acts were the 1992 regulations of the Council of Ministers No.292 on Hard jobs and jobs in a harmful environment where it is forbidden to employ women and on Hard jobs and jobs in a harmful environment where it is forbidden to employ persons below eighteen years of age. Thus, the criterion was a formal one – inclusion of a particular job title in such list or in any law. The result was that in the only pure discrimination case in Latvia, *Muhina v. Central Prison* where a woman had been denied employment as a prison ward by virtue of being a woman, the case was decided in favour of the plaintiff exactly because the respondent had not shown that a statute or any other normative act provides for an exception in relation to the position of a prison ward⁴¹. The current solution permitting individual tailoring depending on the tasks of the particular position is preferable. However, as mentioned above, the way in which the courts will interpret “objective and substantiated requirements” in cases of dispute is essential.

As far as exemptions based on religion or belief is concerned, Art.150 of the Criminal Law which prohibits “direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion”, except for “activities in the institutions of a religious denomination”. At the same time, Art.14(1) of the Law on Religious Organisations provides that religious organisations elect or appoint their religious personnel in accordance with their regulations, while other employees are employed and dismissed in accordance with the law regulating employment; while Labour Law does not expressly provide for an exemption for employment by religious organisations, such exemptions are clearly implied in Art. 29(5) of the Labour Law. There is no case law on exemptions based on religion or belief; in 2002 a Lutheran minister was dismissed for being a practicing homosexual, however, while the case received considerable publicity, the minister chose not to pursue a legal case.

There are no exceptions from occupational health and safety rules for disabled persons.

The principle of exemptions based on occupational requirements has only been spelt out in the Labour Law; as there is no case law on this yet, it is difficult to predict how these would be interpreted and applied by the courts.

Reasonable accommodation

Article 5 (Employment Equality Directive)

Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide a ‘reasonable accommodation’?

Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are

⁴¹ Judgment of the Senate of the Supreme Court in the case No.SKC-297 (8 May 2002). The lower court had also mentioned, however, that by applying to a position that had been advertised inviting only men to apply the plaintiff had consciously had created the possibility of being subjected to discrimination, which should be taken into account when deciding on damages.

prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?

Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?

How do courts determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'? What type of criteria is used (medical, occupational, educational, grants etc.)?

How does, under national law, a failure to provide a reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?

Art.11 of the 1992 Law on Medical and Social Protection of Disabled Persons⁴² provides that disabled persons have the right to such social security as is necessary, *inter alia*, to ensure a place in society that corresponds to his wishes and abilities, in particular with regard to occupation. Art.12 of the Law on Social Security reiterates that disabled persons have the right to such social security as necessary for their involvement society, by creating for them suitable conditions for employment that correspond to their ability to work and interests. However, these norms are declarative and the reality leaves much to be desired.

Art.36 of the Labour Law permits a prospective employer to require a job applicant to undergo medical testing to verify that the applicant is suited for the performance of the work he is applying for; Art.36(2) states that the doctor shall indicate only whether the applicant is suitable for the performance of this work. The law does not specify at which stage of the application process the examination can be required. Additionally, Art.33(2) of the Labour Law prohibits the employer from asking questions that do not concern the performance of the intended work or are not related to the suitability of the employee for such work during an interview. In addition, questions which are directly or indirectly discriminatory are forbidden; this should be interpreted to include questions on a disability if it does not affect the employee's ability to perform the job, however, it is clear that in practice, if such a question were asked, it would be difficult for the applicant to refuse to answer it. Besides, Art.33(4) provides that the applicant has a duty to provide information to the employer regarding the state of his or her health and occupational preparedness insofar as this is of significance for entering into an employment contract and for the performance of the intended work. There are no consequences for the failure to comply with this requirement. However, although Art.101(1)(7) permits the employer to give the notice if the employee is unable to perform the contracted work due to his or her state of health and such state is certified with a doctor's opinion; this, according to the practice under the Labour Code which previously governed employment relationships, was a ground for termination of the contract only in cases of durable inability to work. If the disability is not such as to amount to the inability of the employee to perform the job, yet affects his performance, the employer can also request that the court terminates the employment relationship if he "has good cause", which includes "considerations of morality and fairness", which presumably could include cases when the employee has failed to disclose the required information concerning his state of health. Whether or not a good cause exists is determined by the court at its discretion. As there is no case law yet, it is difficult to predict how exactly these norms will work in practice and what

⁴² Likums "Par invalīdu medicīnisko un sociālo aizsardzību", adopted 29.09.1992

will be the impact and extent of the provisions on medical examination and the duty of the applicant to disclose.

In addition to the right of disabled persons to “suitable conditions for employment” as provided for in the Law on Medical and Social Protection of Disabled persons and the Law on Social Security discussed at the beginning of this section, the duty of the employers to provide reasonable accommodation can be deduced from the Law On Labour Protection⁴³, Art.4(1)(3) of which requires the employer to adapt the workplace to the individual, mainly as regards the design of workplaces, work equipment, as well as in respect of the choice of work and production methods. However, this is not viewed in the context of discrimination, and in practice the access of disabled persons to employment remains problematic, although there is no case law on the failure to provide reasonable accommodation, which may also be taken as an indication that the duty of providing it has not been determined by law with sufficient precision; this also makes it doubtful whether it is regarded as an enforceable duty at all – both by the employers and by the employees. On measures aimed at encouraging employment of people with disabilities, see under Positive action below.

It can be concluded that the provisions of the Labour Law on pre-employment medical testing and the duty to disclose may be problematic from the point of view of disability discrimination; the exact extent of these provisions is, however, difficult to evaluate due to the lack of case law. The duty of the employers to provide reasonable accommodation is not expressly stated in the legislation, and the requirements of the Employment Equality Directive have not been complied with in this respect. It must be noted, however, that the Ministry of Welfare is planning to draft a new law regulating the protection of disabled persons in 2003.

Minimum requirements and positive action

- ***Minimum requirements***

Article 6 (Employment Equality Directive)

When is differentiation on grounds of age ‘objectively and reasonably’ justified under national law? How is this test being applied?

Are any specific arrangements made in national law regarding age discrimination and occupational social security schemes? (Consider this question with reference to article 6.2 Employment Directive).

Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow the fixing retirement ages by individual or collective labour agreements and, if so, what are the conditions?

Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension)? Are rights to protection from unfair dismissal lost upon reaching this retirement age?

Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching these retirement ages?

Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc)?

⁴³ Darba aizsardzības likums, adopted 20.06.2001

Is selection for redundancy widely decided on age grounds?

Is there obvious evidence of age discrimination in access to training opportunities?

Please, do not undertake far-reaching socio-economic research here, but just mention points that are well-known already to the national experts or easily accessible (for example, existing research, national reports, reports of international organisations etc...).

While Art.29(3) of the Labour Law prohibits differential treatment on the ground of, *inter alia*, age, there are exceptions which can be justified by objective and reasonable conditions and are permitted, so far there is no case law on this issue and thus it is difficult to speculate how the courts would interpret this requirement. Art.37 of the Labour Law sets out restrictions on work of persons under age.

Art.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.

The first case where discrimination on the basis of age was alleged has just been decided by the Constitutional Court⁴⁴. In this case, the provisions of the Law on Higher Educational Establishments⁴⁵ and of the law on Scientific Activity setting the age limit of 65 years for occupying administrative positions in scientific institutions and higher educational establishments and higher academic positions were invalidated by the Constitutional Court as discriminating in access to employment. Since the provisions similar to those invalidated appear to exist in most of European countries, from now on Latvia can be considered to be in the vanguard of fighting discrimination based on age – namely, that part which has its basis in laws.

According to Art.11 of the Law on State Pensions⁴⁶ the right to a state pension arises when the person has reached 62 years of age⁴⁷; in certain professions, for example, in the military or in certain services of the Ministry of the Interior, depending on the term of service, the right to a pension arises earlier.

While there are generally no mandatory retirement ages (it is disputable whether the age limit challenged in the Constitutional Court can be regarded as requiring mandatory retirement, as it only bars the individuals who have reached this age from occupying certain positions; besides, the Law on Higher Educational Establishments provides for the possibility to continue to work on the basis of an individual contract or to receive the status of professor emeritus), access to certain positions, for example, the civil service, is conditioned on the person not having reached a pensionable age; upon reaching the pensionable age the person has to retire from the civil service unless a superior decides otherwise. The Labour Law, however, does not provide for the right of the employer to give notice to the person who has reached retirement age, although in practice there is a widespread feeling that exactly those persons who have reached retirement age would be the first targets for dismissal.

Early retirement is possible, but then the person receives only 80% of the pension he or she would receive otherwise, so it cannot be considered as promoting early retirement⁴⁸. At the same time it can be said that employment of persons who had reached retirement age was discouraged by law prior to the decision of a Constitutional Court in which the provision of State Law on State Pensions was successfully challenged⁴⁹. The law provided that if a person who has retired continues or resumes work, he or she may receive only part of her pension amounting to 60 Lats (approximately 100 Euros), and in a much disputed judgment the Court held that the provision was unconstitutional as it was disproportionate and did not comply with the requirements of the principle of legal certainty.

⁴⁴ The 20 May 2003 decision in the case No. 2002-21-01. The English translation is not available yet.

⁴⁵ Augstskolu likums, adopted 02.11.1995

⁴⁶ Likums "Par valsts pensijām", adopted 02.11.1995

⁴⁷ This is the age to be reached at the end of the pension reform, and has been accomplished in 2003 for men and will be reached in 2008 for women; prior to the reform, the retirement age was 55 years for women and 60 years for men.

⁴⁸ Still, in the year 2001 almost 5500 persons retired prior to reaching the retirement age. - Social Report for the year 2001 [Sociālais ziņojums par 2001 gadu], p.46

⁴⁹ Constitutional court judgment in case No.2001-12-01, adopted 19 March 2002, available in English at [http://www.satv.tiesa.gov.lv/Eng/spriedumi/12-01\(01\).htm](http://www.satv.tiesa.gov.lv/Eng/spriedumi/12-01(01).htm)

In certain training programs, for example, military or police training programs, age restrictions apply. Similarly, an age restriction of 35 years applies to access to service in the police. However, generally, there is no evidence of discrimination in access to training.

It appears that the decision of the Constitutional Court has imposed a very high burden for what will be regarded as sufficient justification for age-based restrictions in employment, which may have far-reaching consequences and lead to re-evaluation of all other age limits in legislation.

- *Positive action*

Article 5 (Racial Equality Directive) and Article 7 (Employment Equality Directive)

Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programmes, financial incentive schemes, etc.)? Is the government considering adopting such measures?

Are there comparable specific measures in relation to gender discrimination?

Please make precise reference to the relevant legal provisions and case law. Please avoid describing social policies and policies aimed at the integration of certain groups.

Positive action so far has largely been foreign to the Latvian legal system, and there are no specific measures aimed at ensuring or promoting full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age or sexual orientation. There is no information that the government might be considering adopting such measures; in fact, in the absence of any reference in national legislation to the possibility of positive action, it is also highly doubtful that such measures, if adopted by a particular employer, would be considered legal. There is one exception – a reduction of social tax if employing disabled persons – while normally the total tax payable is 35.09% from which the employer pays 26.09%, if the employee has 1st or 2nd degree disability, the total tax payable is 28,56 %, with the employer paying 21.24%. The difference thus is minor – around 5% and thus cannot be regarded as a significant incentive. Additionally, there is a pilot project run by the Employment State Service aimed at creation of subsidised work placements for persons with disabilities – the expenses related to the adjustment of the work place would be covered, as well as the minimal salary to the person employed; however, according to Daina Podziņa, the Deputy Director of the Social Assistance department of the Ministry of Welfare, so far this has not triggered any significant interest from employers.

There is no relevant case law in this regard.

Chapter 2 Remedies and enforcement

Article 7 (Racial Equality Directive) and Article 9 (Employment Equality Directive)

a. Judicial and/or administrative procedures

What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?

Please make precise reference to the relevant legal provisions and case law.

Currently a number of remedies are available to persons who consider themselves wronged by differential treatment, however, none of them is specifically aimed at ensuring equal treatment. The institutions to which such persons can turn are:

1) In case of discriminatory practices by public institutions - the same public institution that has treated the person differently, or a higher institution, or public prosecutor's office.

The Law On The Procedure by Which State and Local Government Institutions Examine Submissions, Complaints or Proposals⁵⁰ obliges the institution to examine the complaint, submission or proposal made by the person, and to provide an answer in terms established by law (15 or 30 days). Art.76(2) of the Administrative Procedure Law scheduled to enter into force on 1 July 2003 permits a challenge to the administrative act before a higher institution, and then (or, if such higher institution does not exist, directly) in the court. Article 16 of the Law On The Public Prosecutor's Office provides for the prosecutor's involvement in the protection of rights and lawful interests of disabled, under-aged and other such persons who have limited possibilities to protect their own rights. The result of the prosecutor's involvement is not limited to a warning to the culprit or the opening of a criminal case, but may also lead to initiating a civil case. There is no data available as to whether there have been complaints about race or gender-based discrimination amongst such complaints, and, in any case, there have been no prosecutions based on the discrimination aspect of Art.78 or Art.150 of the Criminal Law.

2) State Labour Inspectorate

The State Labour Inspectorate was established by the Law reinstating the force of the 28th of April, 1939 statute "On Labour Inspection"⁵¹, and its work is currently regulated by the new State Labour Inspectorate law⁵². Among its functions are the monitoring of compliance with legislation regulating the sphere of employment and the observance of the rights of employees. Employees can turn to the Inspectorate with their complaints, which the Inspectorate investigates; it can issue a warning or an instruction to the employer, inform the prosecutor's office and state and local government institutions about violations of law or apply administrative penalties of up to Lats 250 (approximately 400 Euros) for four administrative violations included in the Code of Administrative Offences. These include Article 41, which provides for a general liability for violations of legal acts regulating areas of labour relationships and labour protection. Theoretically, employers who discriminate against a person on the grounds of the person's race, ethnic origin, gender, age, disability or sexual orientation or religion or belief in refusing to conclude a labour contract, dismissing or during the term of the contract can be punished according to this article. However, there are no known cases, and, according to information provided by Karīna Platā, legal advisor to the Director of the State Labour Inspectorate, there have been no complaints whatsoever on discrimination in employment. However, it would be wrong to conclude from this that no discrimination ever occurs; rather, it can be presumed that the employees fear victimisation, and Karīna Platā admitted that often they receive complaints only after the particular employment relationship has ended.

3) Courts of general jurisdiction

The provision of Article 92 of the *Satversme* stating that 'Everyone has the right to defend their rights and lawful interests in an impartial court has been further elaborated by the Judicial Powers Law. Article 5 provides that, in civil cases, the court shall hear cases related to the protection of civil rights, labour rights, family rights, and other rights and lawful interests of individuals and legal entities. Article 7 provides that in administrative cases the court shall, *inter alia*, hear complaints filed by individuals concerning acts of institutions of state authority and state officials. The procedure for adjudicating such cases is determined by the Civil Procedure Law (after the entry into force of Administrative Procedure Law on 1 February 2004 it will be governed by this latter law), and it must be noted that the case also can be initiated by the public prosecutor for the protection of rights of disabled, under-aged and other such persons who have limited possibilities of protecting their own rights. The payment of court expenses, as well as the state levy are waived in cases based on an employment relationship and when the case has been initiated by the prosecutor (Article 43(1), paras.1 and 5 of the Civil Procedure Law). However, this does not include lawyers' fees and, since there is no

⁵⁰ Likums "Iesniegumu, sūdzību un priekšlikumu izskatīšanas kārtība valsts un pašvaldību institūcijās", adopted 27.10.1994

⁵¹ Likums "Par Latvijas Republikas 1939. gada 28. aprīļa likuma «Par darba inspekciju» spēka atjaunošanu", adopted 04.05.1993

⁵² Valsts darba inspekcijas likums, adopted 13.12.2001

formal mechanism by which persons in need can be granted free legal assistance in court proceedings, access to justice may be difficult in certain cases.

So far only two discrimination cases have been decided by the courts of general jurisdiction- the Muhina case where the woman was denied employment as a prison ward because of being of the wrong gender and the victimisation case of Abramova victimisation.

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

4) The National Human Rights Office

The National Human Rights Office was established in 1995 and the Law on the National Human Rights Office was adopted on 5th December 1996. The NHRO is an independent ombudsman-like institution entrusted with the task of promoting the observance of human rights. Article 2 of the Law on the National Human Rights Office obliges it, *inter alia*, to examine and review complaints concerning human rights violations, and to react to such violations. The Office then has to attempt to resolve a conflict through conciliation. If this fails, the Office advises the parties of its opinion and proposals in the form of recommendations, and also presents its suggestions and recommendations for the prevention of human rights violations to the relevant institution or official; however, it cannot enforce its recommendations⁵³, nor can it apply any fines. The Office has also standing to initiate an abstract review case in the Constitutional Court concerning the conformity of legal norms with the norms of higher force and conformity of national legal norms with the international treaties binding on Latvia; it has no standing to bring concrete review cases where the rights of a concrete individual have been violated.

5) The Constitutional Court.

The Constitutional Court was established in 1996 and it examines compliance of laws and other legal norms with the Constitution, as well as other cases under its jurisdiction. It has the right to declare provisions found not in compliance with a higher legal norm to be null and void. According to Article 17 of the Constitutional Court Law, the following have the standing to apply to the Constitutional Court regarding compliance of laws and international treaties signed or ratified by Latvia with *Satversme*, compliance of other legal acts with the legal norms (acts) of higher legal force, as well as compliance of national legal norms of Latvia with the international agreements entered into by Latvia: the President; the *Saeima*; not less than twenty members of the *Saeima*; the Cabinet of Ministers; the Prosecutor General; the Council of State Control; the Council of a municipality; the National Human Rights Office; a court, when reviewing an administrative, civil or criminal case; a judge of the Land Registry when entering real estate - or thus confirming property rights on it - in the Land Book; and an individual whose fundamental rights established by *Satversme* have been violated. Constitutional complaints and judicial referral mechanisms were established by the amendments adopted in 2000. A constitutional complaint can be submitted by a person who considers that his or her basic rights have been violated by a legal norm that contradicts a higher norm. The complaint may be submitted only after all other remedies have been exhausted (in exceptional cases the Court may decide to accept the complaint even if this has not been done) and within 6 months after the last decision in the case. There have been no judicial referrals so far, while constitutional complaints have been widely invoked. Although there have been no complaints of discrimination on the grounds of gender, racial or ethnic origin, sexual orientation or disability, a case has just been decided where age discrimination was alleged. In this case, the provisions of the Law on Higher Educational Establishments and of the law on Scientific Activity setting the age limit of for occupying administrative positions in scientific institutions and higher educational establishments and higher academic positions were successfully challenged.

⁵³ This was amply demonstrated by the 1997 case when a person, Gatis Bugoveckis had been forced to leave the police service because of sexual orientation. Although the national Human Rights Office was of the opinion that discrimination based on sexual orientation had occurred, the problem was not solved as the authorities involved disagreed with the findings of the Office.

To conclude, while avenues - both ordinary and extraordinary - for enforcement of the principle of equal treatment do exist, they are almost never used. While in part this can be explained by fear of victimisation, it also indicates that action to disseminate information and awareness raising campaigns are needed; also, the issue of access to justice and free legal aid for discrimination claims needs to be considered.

b. Associations

Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?

Please make precise references to the relevant legal provisions and case law.

Neither the Civil Procedure Law, nor any other law currently permits any associations, organisations or other entities from formally engaging in judicial or administrative procedures on behalf or in support of a complainant, except in the capacity of a witness. It could be speculated that to some extent this explains the nearly complete lack of case law on discrimination. An organisation may, of course, provide legal aid to the plaintiff, by offering him or her the services of a sworn advocate, but there will not be any formal links to the organisation. Prior to the 31 October 2002 amendments to the Civil procedure Law it was also possible to use the services of any person before the court (in this case it was up to the court to decide whether to admit him or her as the representative of the person (Art.83(4) of Civil Procedure law) , but this was usually granted), but these amendments were aimed at enhancing the role of sworn advocates in civil proceedings and have removed this possibility, permitting only close relatives as representatives in addition to sworn advocates. Given the absence of any state-provided legal aid in civil cases, these amendments are currently being challenged in the Constitutional Court as denying access to justice.

The only exception are trade unions – Article 14 of the Law on Trade Unions permits trade unions to represent and defend the rights and interests of their members before state institutions, including bringing a case in the court; the same is provided by Art.8 of the Law On Labour disputes⁵⁴. In addition, Art.16 of the Law On Voluntary Organisations and their Associations⁵⁵ provides that in the sphere of the aims and tasks of the voluntary organisation it may, if so provided by the internal regulations of the organisation, represent the rights or interests of its members in court; this would mean that the regulations of the organisation in question are decisive on this issue. In both cases (that of voluntary organisations and trade unions) the possibility to engage in judicial proceedings is limited to protecting the rights or interests of their members, leaving non-members without protection. It appears that currently there are only very few examples of trade unions representing their members in the courts, and none of other organisations.

Administrative Procedure law,⁵⁶ initially scheduled to enter into force on 1 July 2003⁵⁷ provides that “in cases provided for in law, public legal entities and persons within the jurisdiction of private law have the right to submit a submission to an institution or an application to a court in order to defend the rights and legal interests of persons”, however, with the exception of trade unions and references to voluntary organisations in relation to their members, there are no such cases provided for by law, which clearly calls for legislative action. Art.183 of the Administrative Procedure Law introduces the

⁵⁴ Darba strīdu likums, adopted 26.09.2002

⁵⁵ Likums par sabiedriskajām organizācijām un to apvienībām, adopted 15.12.1992.

⁵⁶ Administratīvā procesa likums, adopted 14.11.2001. The government has decided to postpone entry into force of this law until 1 February 2004; this still has to be adopted by the Parliament.

⁵⁷ Information has been received that a delay of entry into force of this law is planned; however, no draft has been formally adopted yet.

institution of *amicus curiae* by providing that “an association of persons which is considered a recognised representative of interests in some sector and from which expert opinions may be expected may petition the court in writing to permit it to submit its opinion regarding facts or rights in the relevant sector”, however, this is also inadequate.

It can be concluded that, with the exception of trade unions and certain organisations, the regulations of which specifically provided for this possibility and only in relation to the members of those organisations, Latvian law currently does not recognise the right of associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law to engage in judicial and/or administrative procedures on behalf of or in support of the complainant and that changes to legislation would be needed to provide for it.

c. Time limits

What is the situation concerning time limits?

Please make precise references to the relevant legal provisions and case law.

The General term of prescription provided for in Labour Law for all employment-related claims when no other time limit is provided, is two years (Art.31), but if the employer has not issued an account in writing, as he is supposed to, the time limit is 3 years counted from the day when the account ought to have been issued. However, special time limits are provided for complaints about violations of the principle of equal treatment: Art.34(2) provides for the time limit of one month for bringing a case if the employment relationship has not been established as a result of a violation of the principle of equal treatment; the same time limit from the day when the employee discovered or ought to have discovered that a violation of the principle of equal treatment has taken place applies to cases of discrimination in promotion and determination of work conditions (Art.95). Obviously, this term is very short, and, although recognising the need to balance the interests of the employee with those of the employer, its adequacy is questionable. It is difficult to say if the court might be willing to consider an extension of this time limit if the employee has good reasons for having missed it, as there is no case law on this yet⁵⁸; in any case, it seems that setting a longer time limit would be more appropriate.

Art.188 of the Administrative Procedure Law (expected to enter into force on 1 February 2004) provides that a person may bring a claim for the annulment of an administrative act within 1 month from the day when the administrative act of a higher institution (the final decision regarding the disputed administrative act) has come into effect. However, if the disputed administrative act does not provide where and within what time period it may be appealed, the application may be submitted within a year from the day the administrative act comes into effect. An application regarding an action by an administrative institution may be submitted within a year from the day when the applicant has learned of the particular action of the institution, unless a restriction regarding the time period is prescribed by other laws or Cabinet regulations. If an institution or a higher institution fails to notify the applicant of the outcome of his or her submission, the application may be submitted to a court within a year from the day when the person applied with his or her submission to the institution or the higher institution

Thus, generally an administrative act can be challenged within one month, but a legal action can be brought within a year. The one-month time limit concerning the administrative act seems to be quite short. It must be noted that with the entry into force of the Administrative Procedure Law, Chapter 24-A of Civil procedure Law governing complaints on illegal actions of state or local government

⁵⁸ In the case of *Abramova v. Latgales Druka* discussed under Victimisation the observation of time limit for bringing the claim was one of the issues; however, this case was decided pursuant to the old Labour Code which is not in force anymore and thus is of no interest for the purposes of this study, especially since the court did not decide to extend the time limit, but instead found it inapplicable to the particular case. Note that Art.123 of the Labour Code permits the court to extend the time limit if there are good reasons for missing it, but this only applies to complaints about dismissals.

institutions violating rights of legal and natural persons will lose the force of law. This Chapter currently provides for a time limit of one month from the day when the person has received a negative answer to his or her complaint or should have received the answer, or, if the law provides that the person may turn directly to the court, one month from the day when the person found out about the illegal action.

The general time limit prescribed by Civil Law for cases when no other time limit applies is 10 years (Art.1895 of Civil Law).

Art.19.2(4) of the Constitutional Court law sets a six months time limit from the day the last decision was adopted for bringing a constitutional complaint. This time limit was itself challenged, for allegedly being discriminatory, however, the Court rejected the complaint⁵⁹.

Art. 56 of the Criminal Law sets the limitation period for the prosecution of crimes provided for in Art.150 as 2 years (discrimination based on religion or belief) and 5 years for prosecution of crimes provided for in Art.78 (discrimination based on racial or ethnic origin).

To conclude, it appears that the one month limitation provided for in the Labour Law and Administrative Procedure Law for challenging an administrative act is inadequately short, especially as there has not been a sufficient dissemination of information or awareness raised of discrimination issues. An extension of this limit would certainly improve the chances of discrimination suits being brought.

d. The burden of proof

Article 8 (Racial Equality Directive) and Article 10 (Employment Equality Directive)

Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)? AH: as mentioned before, if included in penal law, this would be contrary to international human rights law

Are there comparable provisions in national law in relation to gender discrimination (NB this is covered by Directive 97/80/EC on the burden of proof in cases of discrimination based on sex).

Please make precise references to the relevant legal provisions and case law.

Art.29(3) of the Labour Law provides for a shift (or sharing) of the burden of proof in cases of discrimination related to an employment relationship: It reads as follows:

“If in case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for the performance of the relevant work or the relevant employment”,

thus complying with the requirements of the respective articles of the two Directives and Directive 97/80/EC in so far as employment relationships are concerned; it must be remembered that Art.29(5) provides that its provisions (thus including those on the burden of proof) also apply to the prohibition of differential treatment based on race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status or other circumstances of an employee.

The Administrative procedure Law expected to enter into force on 1 February 2004 introduces the principle of “objective examination” in an administrative procedure. Art.103(2) provides that “within the course of administrative proceedings, while performing its duties, a court shall itself (ex officio) objectively determine the facts of the case and provide a legal assessment of these, adjudicating the matter within a reasonable time”, thus corresponding to the exception from the requirement of a shift in the burden of proof contained in Art.8(5) of the Race Directive and Art. 10(5) of the Employment

⁵⁹ Constitutional Court judgment in the case 2002-09-01 (adopted 26 November 2002)

Equality Directive. Additionally, Art.150 on the burden of proof provides that the institution has to prove the facts on which it relies as the grounds for its objections and the plaintiff, according to his or her possibilities, shall participate in collecting of evidence and that if the evidence submitted by parties is not sufficient the court shall collect it on its own initiative. As this law is not yet in force and hence there is no case law, it is difficult to say exactly to what extent it will make it easier to bring discrimination claims, but in any case it carries this potential.

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 Code (Art.19.1) provides that the burden of proof is on the prosecution and that any doubts are interpreted to the benefit of the accused. The Constitutional Court Law does not make any exception from the requirement that both parties substantiate their views nor does it permit the Court to make its own assessment in cases where discrimination is alleged. True, in one such case – the case on the requirement of the possession of a permanent residence permit for persons wishing to acquire the status of unemployed, the Constitutional court, while refusing to satisfy the complaint as it was, nevertheless distinguished a particular category of persons – spouses of Latvian citizens concerning whom it can be presumed that their presence in Latvia is not intended to be temporary - and found that such a requirement was unconstitutional in relation to them. It should be noted that the plaintiff had not referred separately to this category of persons, and it had only been referred to by the respondent. This shows that to some extent the Court might act on its own initiative, but it cannot be required or relied on to do it, and certainly there is no provision on a shift in the burden of proof in cases alleging discrimination.

It can be concluded that the requirements of the three Directives concerning the burden of proof are currently complied with in relation to all grounds only in cases related to employment relationship (civil service relationships are excluded, see above), and will be complied with in administrative cases after the entry into force of Administrative Procedure Law, provided the courts take the principle of “objective investigation” seriously; this, however, only becomes apparent in time.

e. Victimisation

Article 9 (Racial Equality Directive) and Article 11 (Employment Equality Directive)

Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?

Please make precise references to the relevant legal provisions and case law.

Art.9 of the Labour Law provides for protection against victimisation:

"Infliction of a punishment on an employee as well as creation of direct or indirect unfavourable consequences to the employee, due to the fact that the employee within the framework of a labour relationship avails himself of his rights in a permissible manner, shall be prohibited." This would include cases of victimisation on grounds of a person's complaints about the violation of the principle of equal treatment. Similarly, Art.8 of the Labour Law protects against any unfavourable consequences resulting from a person's membership in a workers' organisation:

“Affiliation of an employee with the organisations referred to in Paragraph one of this Article or the desire of an employee to join such organisations may not serve as a basis for refusal to enter into an employment contract, for termination of an employment contract or for otherwise restricting the rights of an employee”. However, none of these is specific to victimisation as a result of an employee's attempt to enforce compliance with the principle of equal treatment, hence it is not viewed in the context of discrimination and the shift in the burden of proof does not apply in cases of victimisation. Admittedly, it is possible to read the victimisation provision in conjunction with Art.29 and view it as discrimination “on grounds of other circumstances”, and the Abramova case described below gives grounds to think that the courts might be prepared to view victimisation in the context of discrimination and protect against it using the anti-discrimination provisions of the Labour Law even in the absence of an express connection between them in the law.

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

There is one single court case on victimisation, which, however, was decided before the new Labour Law entered into force. The plaintiff, Dagmara Abramova worked as a printer in a printing house - a private company “*Latgales druka*”. In 1998 she was dismissed in accordance with Article 33(1(2)) of the Labour Code then in force as a result of the reduction of the number of employees. Later that year she was reinstated to her position by a decision of the court of first instance. On 11th January 1999 Abramova and “*Latgales Druka*” signed amendments to her labour contract and agreed on the monthly salary of LVL 60. On 3 August 1999 Abramova submitted a complaint to the court that she was misled when she signed the amendments, she asked for an annulment of the amendments as well as the recovery of the LVL 2791 that she would have received if the amendments had not been adopted. She claimed that she had been discriminated against due to her activities in the trade union. She also indicated that she was the only employee whose salary was not linked on the work performed and her salary remained constantly low. Abramova received a positive decision in the court of the first instance and her claim was rejected in the court of appeal. The Supreme Court found that the Latgale Regional Court did not consider certain evidence in the case as indicated by the applicant. The Supreme Court, *inter alia*, pointed out that the court of appeal had not considered whether the principle of equal treatment as provided for by Article 1 of the Labour Code had or had not been violated given that the system of payment was changed only in relation to Abramova. As a result the court sent the case back for reconsideration.⁶⁰ The Latgale Regional Court reaffirmed the findings of the court of first instance that “the discrimination here is against Abramova as an employee who defends her rights and it is the result of a conflict with the employer, even Abramova’s representative pointed to this”.⁶¹ So the Latgale Regional Court found a violation of the principle of equality guaranteed by Article 1 of the Labour Code and of the principle of equal pay for equal work, referring to Article 23 of the Universal Declaration of Human Rights. Interestingly, the discrimination was found to be on the grounds of victimisation due to the fact of defence of her rights, even if this ground was not listed in the exhaustive list of grounds prohibiting discrimination in Article 1 of the Labour Code, whereas the Supreme Court urged the lower courts to examine whether discrimination on the grounds of gender had taken place. This shows that the Latvian courts might be prepared to view victimisation in the context of discrimination and perhaps could protect against victimisation even in the absence of a specific prohibition.

It can be concluded that prohibition on victimisation exists only in the framework of the employment relationship coming under the terms of the Labour Law and in relation to a complaint to the National Human Rights office, however, even in these cases it is not expressly viewed in the context of discrimination and is not accompanied by any sanctions. In no other field there is an express prohibition of victimisation.

f. Sanctions

Article 15 (Racial Equality Directive) and Article 17 (Employment Equality Directive)

⁶⁰ Case No.SKC-415, 27 September 2000

⁶¹ Case No.2-268 A, 1 November 2000

What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (eg labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?

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

Art.78 of the Criminal Law provides:

“1) For a person who commits acts knowingly directed towards instigating national or racial hatred or enmity, or knowingly commits the restricting, directly or indirectly, of economic, political, or social rights of individuals or the creating, directly or indirectly, of privileges for individuals based on their racial or national origin,

the applicable sentence is deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage.

2) For a person who commits the same acts, if they are associated with violence, fraud or threats, or where they are committed by a group of persons, a State official, or a responsible employee of an undertaking (company) or organisation,

the applicable sentence is deprivation of liberty for a term not exceeding ten years.”

Art.150 of the Criminal Law provides:

“For a person who commits direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion, excepting activities in the institutions of a religious denomination, or commits violation of religious sensibilities of persons or incitement of hatred in connection with the attitudes of such persons towards religion or atheism,

the applicable sentence is deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage.”

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

Art.34 of the Labour Law provides that “If, when establishing employment legal relationships, an employer has violated the prohibition of differential treatment, an applicant has the right to request appropriate compensation. In case of a dispute, the amount of compensation shall be determined by the court at its discretion”. The same applies to differential treatment related to promotion (Art.95(1)), whereas in cases of differential treatment in setting the employment conditions the employee can only demand that the discriminatory treatment be terminated. The big question is whether in such cases also non-pecuniary damages can be claimed; so far the only case when Latvian law allows for non-pecuniary damages is that provided for in Arts. 2349, 2352., 2352.a and 2353 of Civil Law in cases of mutilation, unlawful deprivation of liberty, defamation⁶² and rape. This has been confirmed by the decision of 26 February 1999 of the Plenum of the Supreme Court which, *inter alia*, invited the Ministry of Justice to consider the introduction of moral damages in civil and criminal legislation. Recently this has been expressly introduced in the Administrative Procedure Law: Art. 92 of it provides that “Everyone is entitled to claim compensation for financial loss or personal harm, including moral harm, which has been caused him or her by an administrative act or an actual action of an institution”. Thus, when this law enters into force on 1 July 2003 it will be possible to claim

⁶² In the Muhina case discussed above the court was not prepared to award moral damages to Muhina based on Art.2352.a (defamation), as the provisions of the Labor Code then in force, in the opinion of the Senate, were *lex specialis* in the field of equal treatment in labor relationships and the refusal to employ Muhina could not be regarded as injury to her honor or dignity, as Art.2352.a only applies to cases where untrue information has been disseminated.

moral damages in cases of discrimination resulting from administrative action; it is difficult to predict whether the courts will interpret “the discretion of the court” in Arts.34 and 95 of the Labour Law as permitting awarding of also moral damages. The wording of these articles certainly permits this, but how will the courts interpret them? The recent discussion of the author of this report with a group of judges indicates that it is far from 100 per cent certain the judges will be prepared to find moral damages where it is not expressly spelt out⁶³; it is the conviction of the author of this report that to be really effective and dissuasive, sanctions in the field of anti-discrimination must comprise moral damages and possibly also punitive damages and that it would be indeed advisable to spell this out in legislation.

Non - Discrimination specific sanctions can be found in the Administrative Offences Code⁶⁴: its Art.41 provides that an employer can be fined up to 250 Lats (ca. 400 Euros) for violations of employment legislation, however, there are no known instances of the application of this provision in the context of discrimination. Another provision that makes it possible to address discrimination is Art.137 providing that a taxi driver refusing to provide service to a passenger (which thus would cover cases of discrimination, even if it was not the aim of this provision) can be fined from 25 to 250 Lati (40-400 Euros); Art.201-51 imposes a fine on a school principal if the rules on accepting and expelling of pupils are not complied with – with certain imagination this too could be used against discriminatory practices. The fine in this case is 50 to 100 Lats (80 to 160 Euros). This exhausts the actions for which administrative punishments can be applied, although, especially given the high threshold set by Art.78 of the Criminal Law, it certainly would be useful to provide for at least an administrative punishment for cases when no intent is required by Art.78. This would also be in line with Latvia’s obligations under Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination to which Latvia is a state party.

As far as disciplinary liability of civil servants is concerned, there are no provisions specifically relating to cases of discrimination. For discriminatory activities, a civil servant may be punished on the basis of general provisions, e.g., Article 17 of the Cabinet of Ministers Regulations On Disciplinary Punishments of Civil Servants provides for liability for unreasonably failing in the obligations of a civil servant. If this has caused substantial detriment to the civil service or to an individual, the civil servant may be punished by dismissal from the civil service. Another article related to cases of discrimination is Article 30 allowing for the punishment of a civil servant for impolite or intolerant attitudes towards individual or colleagues. However, the disciplinary punishment in this case can be a reprimand. Thus, the punishment of a civil servant for acts of discrimination is subject to the interpretation of the respective disciplinary provisions and, in order to apply them effectively, the awareness of civil servants, including those who can impose punishments, must be raised.

Additionally, in the case of discrimination, currently individuals may file a complaint to the following: the State Labour Inspectorate (in relation to employment relationships), where the outcome of the proceedings can be a halt to the discrimination and the restoration of equality; the National Human Rights Office (in relation to discrimination by representatives of public authorities in all areas) where the outcome can be a friendly settlement; or the court (in relation to discrimination in all spheres). Individuals may seek a halt to the discriminatory practices before the court (of either a representative of the public authorities or a private person), restoration of violated rights or status and compensation for damages if one can prove their existence.

All in all, it is doubtful that the existing sanctions are “effective and dissuasive”, not the least because of the lack of known instances of their application. The situation might improve when the Administrative Procedure Law enters into force on 1 February 2004 and if the courts interpret Labour Law as allowing also for moral damages. The introduction of administrative responsibility for

⁶³ This suspicion is confirmed also by so far the only commentary on the Labor Law, the author of which considers that appropriate compensation presumably would include damages for time spent on applying, interviews and finding a comparable job, but would in no case exceed the salary for 6 month for the job applied for. – Ingus Gailums. Labor Law: Comentaries. Case Law. [Darba likums: Komentāri. Tiesu prakse]. Riga, 2002, pp.35-36.

⁶⁴ Administratīvo pārkāpumu kodekss, adopted 07.12.1984

discriminatory practices not covered by the existing provisions and not amounting to violations of the Criminal Law, which, moreover, protects against discrimination on the basis of two grounds only, also should be considered.

g. Dissemination of information

Article 10 (Racial Equality Directive) and Article 12 (Employment Equality Directive)

What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?

What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions? The purpose of the research is not to establish whether measures are appropriate and effective, but whether or not they exist.

With the exception of the “Integration of the society - promotion of tolerance” conference organised by the minister with special assignments for the integration of society, it has not been possible to discover any measures specifically directed at disseminating information on anti-discrimination legislation to the public at large or to the representatives of the authorities. While the State Labour Inspectorate has conducted informative seminars on the new Labour Law, they have not concentrated on the issues of non-discrimination. Similarly, the Ministry of Welfare has published an Employer’s Manual which among other topics covers the prohibition of differential treatment to which 3 pages are devoted. Although it is possible that some NGOs might fill in this gap – for example, the Latvian Association of Personnel Management is conducting a survey among its members and is planning to prepare and publish a manual on anti-discrimination issues – there is a clear need for governmental action in the field of training and dissemination of information, both as regards public the at large and in particular the public authorities charged with the application of legal norms.

h. Social dialogue and NGOs

Article 11 and 12 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)

Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?

Has the government taken steps to promote dialogue with non-governmental organisations at national level? If so, what are the measures adopted and what are the results?

Social dialogue in Latvia is conducted within the framework of the National Tripartite Co-operation Council (further - "the NTCC"). The latest Regulations on the National Tripartite Co-operation Council were adopted by a Resolution of the President of Ministers on 30th October 1998. The NTCC is made up of an equal number of representatives from the Government, the Latvian Confederation of Employers and the Latvian Union of the Independent Trade Unions. The NTCC examines drafts of the framework documents, programmes, laws and other legal acts and submits its proposals to the relevant ministries in relation to wide range of social and economic issues. Four sub-councils have been established on the following issues: social insurance, professional education and employment, health care, labour issues. The latter - Labour Tripartite Co-operation Sub-Council started its work on 28th September 2000 and it deals with issues of employment law, labour protection and equal opportunities. If one of the parties to the Sub-Council disagrees with the relevant provisions, the decision must be taken by the NTCC.

It can be said that Latvia is still in the process of establishing a habit of discussing equality related issues amongst the representatives of trade unions, employers and the Government. Issues of racial

and ethnic discrimination have been discussed in the work of the sub-councils and the NTCC to a limited extent only- i.e., only as far as they relate to employment law. Issues of gender related discrimination have been examined more closely. Thus, the social dialogue concerning discrimination related issues is at a very initial stage, and so is the dialogue with NGOs. There are two exceptions related to gender-based discrimination and disability-based discrimination where the dialogue and cooperation with the relevant NGOs is well established. In 2002 the Gender Equality Council was created as a consultative and coordinating institution with the participation of NGOs, including the Latvian Gender Association which is the umbrella organisation for NGOs active in this field, to promote the elaboration of a policy on gender equality and the implementation of the Framework Document on the Implementation of Gender Equality. In 1997 the National Council of the Affairs of Disabled persons uniting representatives of NGOs and state institutions was created under the aegis of the Ministry of Welfare to promote the full integration of disabled persons in political, economic and social life based on the principle of equality. However, with the exception of these two institutions under the aegis of the Ministry of Welfare, which generally stands out as far as the cooperation with NGOs is concerned, there is no evidence of the government taking the steps to promote serious dialogue with NGOs.

Chapter 3 Specialized bodies

Article 13 (Racial Equality Directive)

Does such a body exist on the national level? Where it does, what are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?

Are existing bodies addressing the issue of multiple discrimination?

Where a body does not exist on the national level, are there plans to establish such a body?

The body most closely corresponding to the requirements of the specialised body required by Art.13 of the Race Equality Directive is the national Human Rights Office, although it does not have a special mandate in the field of non-discrimination. The NHRO is an independent ombudsman-like institution entrusted with the task of promoting the observance of human rights.

According to Article 2 of the Law on the National Human Rights Office, the NHRO has the following functions: (1) to provide information to and raise awareness, of the public on human rights; (2) to inquire into any individual complaint related to human rights violation; (3) to take immediate measures in cases of human rights violations and to identify situations causing human rights violations on its own initiative; (4) to monitor human rights situation in the country, to prepare and promote programmes for the promotion of observance of human rights; (5) to carry out an analysis of the legislation; and (6) to report annually to the Parliament. The Parliament may have an influence upon the independence of the NHRO in two ways - when approving or dismissing the Director and when adopting the budget. Thus, it can be concluded that the functions of the NHRO correspond to those required by Art.13 of the Race Equality Directive and include dealing with discrimination on any grounds.

The NHRO is entitled to review individual complaints, to acquire the necessary information and to strive for a friendly settlement. The NHRO does not have power to enforce its recommendations. Neither can it levy any fines. The power of the NHRO to submit a constitutional complaint to the Constitutional Court must be noted; after the 2002 amendments to the Constitutional Court law the NHRO has brought a number of complaints and already won several of them.

The biggest problem of the NHRO is the frequent changes of personnel, insufficient funding and an excessive workload. In 2001 discussions were started on the reform of the NHRO and introducing an institute of an ombudsman instead. A working group under the auspices of the President of the State produced a draft providing for five ombudsman persons on the following issues: rights of a child; local

governments; justice, internal and military affairs; procedural rights; general issues. However no action has been taken on the draft, and alternative calls to strengthen the existing NHRO, possibly by providing expressly for a mandate in the field of discrimination, have been expressed instead. At the moment there are no discussions under way.

It is evident that the need for a specialised body to promote equal treatment exists, and that a decision has to be made either to create a new body with a specific mandate in the field of discrimination or that the NHRO be strengthened by providing it with adequate resources and staff as the existing resources do not permit the NHRO to fulfil this mandate.

Chapter 4 Compliance and implementation

Article 14 (Racial Equality Directive) and Article 16 (Employment Equality Directive)

a. Screening

Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?

Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?

There is no specific regulation in national law designed to abolish laws, provisions and regulations that do not comply with the principle of non-discrimination; if it is the legal norm itself that is discriminatory, the person who has suffered from discrimination on the basis of this norm can, by first initiating procedure in the courts of general jurisdiction, submit a constitutional complaint to the Constitutional Court which may declare null and void legal norms that are contrary to the norms of a higher legal force up to the Constitution; this, however, is a cumbersome procedure requiring the prior exhaustion of all other remedies. Besides, there is no mechanism for providing free legal assistance or for compensating legal costs before the Constitutional Court, although the person may also turn to the national Human Rights Office asking the Office to bring the complaint. However, the Office can only bring abstract review case, and since the unconstitutional law usually loses its force only prospectively, the result of the case will be of no avail to the person. In case of a concrete review as a result of constitutional complaint the constitutional court can make, and has made in the past, an exception to allow the author of the complaint to benefit from the positive result of the case.

Art.6 of the Labour Law provides that “provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments, erode the legal status of an employee, are void and can be declared such by courts of general jurisdiction”. According to Article 43(1) of the Civil Procedure Law claims concerning labour disputes are exempt from judicial costs, which means that the applicant does not have to pay state duty or other costs directly related to the proceedings. However, this does not include lawyers’ fees . There is no formal mechanism by which persons in need can be granted free legal assistance in court proceedings. It is possible to claim compensation for the costs of remunerating a lawyer, however, Article 44(1) of the Civil Procedure Law limits this compensation to 5% of the total amount awarded by the court, which in some cases could be too low and this would make it difficult to hire a lawyer thus denying the person access to justice.

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- * Māris Badovskis, Director of the European and Legal Affairs department of the Ministry of Welfare
- * Līga Biksiniece, Head of the analysis section of the National Human Rights Office
- * Karīna Platā, legal advisor to the Director of the State Labour Inspection
- * Daina Podziņa, the Deputy Director of the Social Assistance department of the Ministry of Welfare
- * Ineta Tāre, Director of Labour department of the Ministry of Welfare
- * Māris Logins, lawyer at the European and Legal Affairs department of the Ministry of Welfare

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Constitution (Satversme)

Chapter VIII

Fundamental Human Rights

89. The State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.

91. All human beings in Latvia shall be equal before the law and the courts.

Human rights shall be realized without discrimination of any kind.

101. Every citizen of Latvia has the right, as provided for by law, to participate in the activities of the State and of local government, and to hold a position in the civil service. Local governments shall be elected by Latvian citizens who enjoy full rights of citizenship. The working language of local governments is the Latvian language

109. Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.

111. The State shall protect human health and guarantee a basic level of medical assistance for everyone.

112. Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory.

114. Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.

Criminal Law⁶⁵

Section 20. Joint Participation

- (1) An act or failure to act committed knowingly, by which a person (joint participant) has jointly with another person (perpetrator), participated in the commission of an intentional criminal offence, but he himself or she herself has not been the direct perpetrator of it, shall be considered to be joint participation. Organisers, instigators and accessories are joint participants in a criminal offence.
- (2) A person who has organised or directed the commission of a criminal offence shall be considered to be an organiser.
- (3) A person who has induced another person to commit a criminal offence shall be considered to be an instigator.
- (4) A person who knowingly has promoted the commission of a criminal offence, providing advice, direction, or means, or removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instruments or means for committing the criminal offence, evidence of the criminal offence or the objects acquired by criminal means or has previously promised to acquire or to sell these objects shall be considered to be an accessory.
- (5) A joint participant shall be held liable in accordance with the same Section of this Law as that in which the liability of the perpetrator is set out.
- (6) Individual constituent elements of a criminal offence which refer to a perpetrator or joint participant do not affect the liability of other participants or joint participants.
- (7) If a joint participant has not had knowledge of a criminal offence committed by a perpetrator or other joint participants, he or she shall not be held criminally liable for such.
- (8) If the perpetrator has not completed the offence for reasons independent of his or her will, the joint participants are liable for joint participation in the relevant attempted offence. If the perpetrator has not commenced commission of the offence, the joint participants are liable for preparation for the relevant offence.

⁶⁵ Source of the English text: Translation and terminology Centre, www.ttc.lv

- (9) Voluntary withdrawal, by an organiser or instigator from the completing of commission of a criminal offence shall be considered as such only in cases when he or she, in due time, has done everything possible to prevent the commission with his or her joint participation of the contemplated criminal offence and this offence has not been committed. An accessory shall not be held criminally liable if he or she has voluntarily refused to provide promised assistance before the commencement of the criminal offence.

Section 78. Violation of National or Racial Equality and Restriction of Human Rights

- (1) For a person who commits acts knowingly directed towards instigating national or racial hatred or enmity, or knowingly commits the restricting, directly or indirectly, of economic, political, or social rights of individuals or the creating, directly or indirectly, of privileges for individuals based on their racial or national origin,
the applicable sentence is deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage.
- (2) For a person who commits the same acts, if they are associated with violence, fraud or threats, or where they are committed by a group of persons, a State official, or a responsible employee of an undertaking (company) or organisation, the applicable sentence is deprivation of liberty for a term not exceeding ten years.

Section 150. Violation of Equality Rights of Persons on the Basis of their Attitudes Towards Religion

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

Section 156. Defamation

For a person who commits intentional defamation or demeaning of the dignity of a person orally, in writing, or by acts, the applicable sentence is custodial arrest, or a fine not exceeding ten times the minimum monthly wage.

Labour Law⁶⁶

Section 6. Invalidity of Regulations that Erode the Legal Status of Employees

- (1) 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, shall not be valid.
- (2) Provisions of an employment contract which contrary to a collective agreement erodes the legal status of an employee shall not be valid.

Section 7. Principle of Equal Rights

- (1) Everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair work remuneration.

⁶⁶ Source of the English text: Translation and terminology Centre, www.ttc.lv

(2) The rights provided for in Paragraph one of this Section shall be ensured without any direct or indirect discrimination – irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status or other circumstances.

Section 8. Right to Unite in Organisations

(1) Employees, as well as employers shall have the right to freely unite in organisations and to join them in order to defend their social, economic and occupational rights and interests.

(2) Affiliation of an employee with the organisations referred to in Paragraph one of this Section or the desire of an employee to join such organisations may not serve as a basis for refusal to enter into an employment contract, for termination of an employment contract or for otherwise restricting the rights of an employee.

Section 9. Prohibition to Cause Adverse Consequences

It is prohibited to apply sanctions to an employee or to otherwise directly or indirectly cause adverse consequences for him or her because the employee, within the scope of employment legal relationships, exercises his or her rights in a permissible manner.

Section 29. Prohibition of Differential Treatment

(1) Differential treatment based on the gender of an employee is prohibited when establishing employment legal relationships, as well as during the period of existence of employment legal relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training, as well as when giving notice of termination of an employment contract.

(2) 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.

(3) If in case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for performance of the relevant work or the relevant employment.

(4) Indirect discrimination exists if evidently neutral provisions, criteria or practice cause adverse consequences for a majority of persons belonging to one gender, except in cases where such provisions, criteria or practice is appropriate and necessary and may be justified by objective circumstances unrelated to gender.

5) The provisions of this Section 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 or other circumstances of an employee.

Section 30. Settlement of Individual Disputes Regarding Rights

Individual disputes regarding rights between an employee and an employer, if they have not been settled within an undertaking, shall be settled in court.

Section 31. Limitation Period

(1) All claims arising from employment legal relationships are subject to a limitation period of two years unless a shorter limitation period is provided by law.

(2) If an employer had a duty to issue to an employee a statement of account in writing, the limitation period set out in Paragraph one of this Section shall commence on the date of issue of the statement of account. If the employer does not issue a statement of account, the relevant claim shall be subject to a limitation period of three years from the date when the statement of account was to be issued.

Division One

Establishing Employment Legal Relationships

Chapter 10

Job Advertisements and Preparing Contracts of Employment

Section 32. Job Advertisements

(1) A job advertisement (a notification by an employer of vacant work places) may not apply only to men or only to women, except in cases where belonging to a particular gender is an objective and substantiated precondition for the performance of relevant work or for a relevant employment.

(2) It is prohibited to indicate age limitations in a job advertisement except in cases where, in accordance with the law, persons of a certain age may not perform relevant work.

Section 33. Job Interviews

(1) A job interview is an oral or written inquiry prepared by the employer to assess the suitability of applicants.

(2) A job interview may not include such questions by the employer as do not apply to performance of the intended work or are not related to the suitability of the employee for such work, as well as questions which are directly or indirectly discriminatory, in particular questions concerning:

- 1) pregnancy, except in cases where the intended work or occupation may not be performed during the time of pregnancy;
- 2) family or marital status;
- 3) a previous conviction, except in cases where this may be of essential importance with respect to the work to be performed;
- 4) religious conviction or belonging to a religious denomination;
- 5) affiliation with a political party, employee trade union or other public organisation; and
- 6) national or ethnic origin.

(3) An employer has a duty to familiarise an applicant with the applicable collective agreement in the undertaking and the working procedure regulations, as well as to provide other information of significance for entering into an employment contract.

(4) An applicant has a duty to provide information to the employer regarding the state of his or her health and occupational preparedness insofar as this is of significance for entering into an employment contract and for performance of the intended work.

Section 34. Consequences of Violating the Prohibition of Differential Treatment when Establishing Employment Legal Relationships

(1) If when establishing employment legal relationships an employer has violated the prohibition of differential treatment, an applicant has the right to request appropriate compensation. In case of a dispute, the amount of compensation shall be determined by the court at its discretion.

(2) The applicant may bring the action referred to in Paragraph one of this Section to court within a period of one month from the date of receipt of refusal of the employer to establish employment legal relationships with the applicant.

(3) If employment legal relationships have not been established as a result of violation of the prohibition of differential treatment, the applicant does not have the right to request the establishment of such relations on a compulsory basis.

Section 36. Health Examination

- (1) An employer may request an applicant to undergo a health examination which would allow verification that the applicant is suitable for performance of the intended work.
- (2) In the opinion regarding the state of health of an applicant, the doctor shall indicate only whether the applicant is suitable for performance of the intended work.
- (3) Expenditures related to the health examination of an applicant shall be covered by the employer, except in cases where the applicant has knowingly provided the employer with false information during a job interview.

Section 37. Prohibitions and Restrictions of Employment

- (1) It is prohibited to employ children in permanent work. Within the meaning of this Law, a child shall mean a person who is under 15 years of age and who until reaching the age of 18 continues to acquire a basic education.
- (2) In exceptional cases children from the age of 13, if one of the parents (guardian) has given written consent, may be employed outside of school hours doing light work not harmful to the safety, health, morals and development of the child. Such employment shall not interfere with the education of the child. Work in which children may be employed from the age of 13 shall be determined by the Cabinet.
- (3) In exceptional cases if one of the parents (guardian) has given written consent and a permit from the State Labour Inspection has been received, a child as a performer may be employed in cultural, artistic, sporting and advertising activities if such employment is not harmful to the safety, health, morals and development of the child. Such employment shall not interfere with the education of the child. The procedures for issuing permits for the employment of children as performers in cultural, artistic, sporting and advertising activities, as well as the restrictions to be included in such permits with respect to working conditions and employment conditions, shall be determined by the Cabinet.
- (4) It is prohibited to employ adolescents in jobs in special conditions which are associated with increased risk to their safety, health, morals and development. Within the meaning of this Law, an adolescent shall mean a person between the ages of 15 and 18 who is not to be considered a child within the meaning of Paragraph one of this Section. Work in which the employment of adolescents is prohibited and exceptions when employment in such jobs is permitted in connection with occupational training of the adolescent shall be determined by the Cabinet.
- (5) An employer has a duty, prior to entering into an employment contract, to inform one of the parents (guardian) of the child or adolescent regarding the assessed risk of the working environment and the labour protection measures at the relevant workplace.
- (6) Persons under 18 years of age shall be hired only after a prior medical examination and they shall, until reaching the age of 18, undergo a mandatory medical examination once a year.
- (7) An employer, after receipt of a doctor's opinion, is prohibited from employing pregnant women and women for a period following childbirth not exceeding one year, but if the woman is breastfeeding – during the whole period of breastfeeding if it is considered that performance of the relevant work poses a threat to the safety and health of the woman or her child.
- (8) Aliens and stateless persons who do not have a permanent residence permit may be employed only if they have received a work permit in accordance with the procedures prescribed by regulatory enactments.

Section 48. Violation of the Prohibition of Differential Treatment when Giving Notice of Termination of an Employment Contract during the Probation Period

- (1) If an employer when giving a notice of termination of an employment contract has violated the prohibition of differential treatment, the employee has the right to request appropriate compensation. In case of a dispute, the amount of compensation shall be determined by a court at its discretion.

(2) An employee may bring the action referred to in Paragraph one of this Section to court within a one-month period from the date of receipt of a notice of termination from the employer.

Section 60. Equal Work Remuneration

(1) An employer has a duty to specify equal work remuneration for men and women for the same kind of work or work of equal value.

(2) If an employer has violated the provisions of Paragraph one of this Section, the employee has the right to request the remuneration that the employer normally pays for the same work or for work of equal value.

(3) An employee may bring the action referred to in Paragraph two of this Section to court within a one-month period from the day he or she has learned or should have learned of the violation of the provisions of Paragraph one of this Section.

Section 95. Consequences of Violating the Prohibition of Differential Treatment in Promotions and in Determining Working Conditions

(1) If an employer in promoting an employee, has violated the prohibition of differential treatment, the relevant employee has the right to request appropriate compensation. The amount of compensation shall be determined by the court at its discretion.

(2) If an employer when determining working conditions has violated the prohibition of differential treatment, the relevant employee has the right to request the termination of such differential treatment.

(3) An employee may bring the action referred to in Paragraphs one and two of this Section in court within a one-month period from the day he or she has learned or he or she should have learnt of the violation of the prohibition of differential treatment.

Section 100. Notice of Termination by an Employee

(1) An employee has the right to give a notice in writing of termination of an employment contract one month in advance, unless a shorter time limit for the giving of a notice of termination is provided by the employment contract or the collective agreement. At the request of the employee, a period of temporary incapacity shall not be included in the term of a notice of termination.

(2) An employee who is employed in paid temporary public works has the right to give notice of termination of an employment contract one day in advance.

(3) The right of an employee to recall a notice of termination shall be determined by the employer, unless such right has been specified by the collective agreement or the employment contract.

(4) By agreement of an employee and the employer, an employment contract may be terminated also before expiry of the time period for a notice of termination.

(5) An employee has the right to give written notice of the termination of an employment contract without complying with the time limit for a notice of termination specified in this Section if he or she has good cause. Each condition based on considerations of morality and fairness that does not allow the continuation of employment legal relationships shall be regarded as such cause.

Section 101. Notice of Termination by an Employer

(1) An employer has the right to give a written notice of termination of an employment contract only on the basis of circumstances related to the conduct of the employee, his or her abilities, or of economic, organisational, technological measures or measures of a similar nature in the undertaking in the following cases:

- 1) the employee has without justified cause significantly violated the employment contract or the specified working procedures;
- 2) the employee, when performing work, has acted illegally and therefore has lost the trust of the employer;
- 3) the employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of employment legal relationships;

- 4) the employee, when performing work, is under the influence of alcohol, narcotic or toxic substances;
 - 5) the employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons;
 - 6) the employee lacks adequate occupational competence for performance of the contracted work;
 - 7) the employee is unable to perform the contracted work due to his or her state of health and such state is certified with a doctor's opinion;
 - 8) an employee who previously performed the relevant work has been reinstated at work;
 - 9) the number of employees is being reduced; or
 - 10) the employer – legal person or partnership – is being liquidated.
- (2) If an employer intends to give a notice of termination of an employment contract on the basis of the provisions of Paragraph one, Clauses 1, 2, 3, 4 or 5 of this Section, the employer has a duty to request from the employee an explanation in writing. When deciding on the possible termination of the employment contract, the employer has a duty to evaluate the seriousness of the violation committed, the circumstances in which it has been committed, as well as the personal characteristics of the employee and his or her previous work.
- (3) An employer may give a notice of termination of an employment contract on the basis of the provisions of Paragraph one, Clauses 1, 2, 3, 4 or 5 of this Section not later than within a one-month period from the date of detecting a violation, excluding the period of temporary incapacity of the employee or the period when he or she has been on leave or has not performed work due to other special reasons, but not later than within a six-month period from the date the violation was committed.
- (4) It is permitted to give a notice of termination of an employment contract due to the reasons referred to in Paragraph one, Clauses 7, 8 or 9 of this Section if the employer can not employ the employee with his or her consent in other work in the same or another undertaking.
- (5) On an exceptional basis, an employer has the right within a one-month period to bring an action for termination of employment legal relationships in court in cases not referred to in Paragraph one of this Section if he or she has good cause. Any condition which does not allow the continuation of employment legal relationships on the basis of considerations of morality and fairness shall be regarded as such cause. The issue whether there is good cause shall be settled by court at its discretion.
- (6) Prior to giving a notice of termination of an employment contract, an employer has a duty to ascertain whether the employee is a member of an employee trade union.

Section 108. Preferences for Continuing Employment Relations in Case of Reduction in the Number of Employees

- (1) In the case of a reduction in the number of employees, preference to continue employment relations shall be for those employees who have higher performance results and higher qualifications.
- (2) If performance results and qualifications do not substantially differ, preference to remain in employment shall be for those employees:
- 1) who have worked for the relevant employer for a longer time;
 - 2) who, while working for the relevant employer, have suffered an accident or have fallen ill with an occupational disease;
 - 3) who are raising a child up to 14 years of age or a disabled child up to 16 years of age;
 - 4) who have two or more dependants;
 - 5) whose family members do not have a regular income;
 - 6) who are disabled persons or are suffering from radiation sickness;
 - 7) who have participated in the rectification of the consequences of the accident at the Chernobyl Atomic Power Plant;
 - 8) for whom less than five years remain until reaching the age of retirement;
 - 9) who, without discontinuing work, are acquiring an occupation (profession, trade) in an educational institution; and
 - 10) who have been granted the status of politically repressed person.

3) None of the preferences referred to in Paragraph two of this Section shall have priority in comparison with the others.

Section 109. Prohibitions and Restrictions on a Notice of Termination by an Employer

(1) An employer is prohibited from giving a notice of termination of an employment contract to a pregnant woman, as well as to a woman following the period after birth up to one year, but if a woman is breastfeeding – during the whole period of breastfeeding except in cases set out in Section 101, Paragraph one, Clauses 1, 2, 3, 4, 5 and 10 of this Law.

(2) An employer is prohibited from giving a notice of termination of an employment contract to an employee who is declared to be a disabled person, except in cases set out in Section 101, Paragraph one, Clauses 1, 2, 3, 4, 5, 7 and 10 of this Law.

(3) An employer does not have the right to give a notice of termination of an employment contract during a period of temporary incapacity of an employee, as well as during a period when an employee is on leave or is not performing the work due to other justifiable reasons.

Section 122. Time Periods for Bringing an Action

An employee may bring an action in court for the invalidation of a notice of termination by an employer within a one-month period from the date of receipt of the notice of termination. In other cases, when the right of an employee to continue employment legal relationships has been violated, he or she may bring an action in court for reinstatement within a one-month period from the date of dismissal.

Section 123. Renewal of a Missed Time Period for an Action

(1) If an employer as a result of justified cause has missed the time period for bringing an action specified in Section 122 of this Law, a court may renew such time period on the basis of an application by the employee.

(2) An application regarding renewal of a missed time period shall state the causes as a result of which the time period was missed, and the application shall be accompanied by appropriate evidence. Concurrently with the submission of such application, an employee has a duty to bring in court also the action specified in Section 122 of this Law.

(3) An application for the renewal of a missed time period for an action shall be submitted not later than within a two-week period from the day when the basis for the missed time period for an action has ended. Such application may not be submitted if more than six months have elapsed from the expiry of the missed time period for an action.

Law on Education⁶⁷Art.3:

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

Law on Scientific Activity⁶⁸

Art.3:

Everybody has the right to engage in scientific activity regardless of race, ethnicity, gender, language, party membership, religious or political opinions, property or social status, position occupied and origin.

⁶⁷ Source of the English text: Translation and terminology Centre, www.ttc.lv

⁶⁸ Source of the English text: Translation and terminology Centre, www.ttc.lv

Law “On the Unrestricted Development and Right to Cultural Autonomy of Latvia’s Nationalities and Ethnic Groups”

Art.1:

The residents of the Republic of Latvia are guaranteed, regardless of their national origin, equal human rights, which correspond to international standards”

Art.3:

The Republic of Latvia guarantees to all its permanent residents, regardless of their national origin, equal rights to work and remuneration for work. Any direct or indirect actions to restrict, based on national origin, the opportunities of permanent residents to choose their profession or, based their skills and qualifications, occupy a position, are prohibited.

State Civil Service law⁶⁹

Section 2. Operation of this Law

(4) The norms of regulatory enactments regulating legal employment relations that prescribe working hours and rest time, remuneration, the financial liability of employees and terms shall apply to the legal relations of the State civil service insofar as such are not prescribed by this Law.

⁶⁹ Source of the English text: Translation and terminology Centre, www.ttc.lv