

# Equality Law in Latvia: Current Trends and Challenges

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This article covers recent developments in equality law and practice in Latvia. It comments on the latest trends and challenges in legislation, case law, administrative practice (in particular, the practice of the Ombudsman's Office) and public opinion, with the exception of those related to hate crimes. The time period covered is from 1 January 2010 till 1 July 2012 (unless indicated otherwise).

## I. General Legal Framework

### 1) Constitution and Legislation

Article 91 of the Constitution of Latvia provides that all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.

The provision does not contain the list of grounds on which discrimination shall be prohibited. Nevertheless, as established in case-law and in the legal doctrine,<sup>2</sup> Article 91 covers at least the grounds mentioned in Article 21(1) of the Charter of Fundamental Rights of the European Union (sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation) alongside with other grounds initially suggested by the leg-

islator for the Constitution (membership of a political party, official capacity, other similar circumstances). For example, language is not explicitly mentioned as a prohibited ground for discrimination in the Constitution or law. Nevertheless, discrimination on the grounds of language is included in these "other circumstances" referred to in normative acts and the Constitutional Court has ruled that it is prohibited.<sup>3</sup>

According to case-law and the legal doctrine,<sup>4</sup> the prohibition of discrimination in the Constitution may have a limited horizontal effect – in the absence of specific legal provisions in sectoral legislation. For example, in 2003 the court decreed that a particular black applicant should be compensated for an offence against his dignity, as a pre-election campaign advertisement incited negative attitudes towards all black people.<sup>5</sup>

The prohibition of discrimination in the Constitution is developed in other legislative acts. Under the Law on Free Development and Rights for Cultural Autonomy of National and Ethnic Groups, residents of the Republic of Latvia are guaranteed equal human rights according to international standards (section 1) regardless of their ethnic origin. Section 3 of the same law guarantees all permanent residents equal rights in the employment sphere.

Section 4(2) of the Law on Judicial Power states that a court shall adjudicate a trial irrespective of the origin, social and financial status, race or nationality, sex, education, language, attitude towards religion, type and nature of occupation, place of residence, or the political or other views of a person. Similar provisions are included in the Administrative Procedure Law (section 6) and the Criminal Procedure Law (section 8).

Section 7 of the Labour Law guarantees everyone equal rights to employment, to an equitable, safe work environment that is not harmful to health, and to fair payment for work; such rights are guaranteed without any direct or indirect discrimination in regard to race, skin colour, sex, age, disability, religious, political or other conviction, ethnic or social origin, material or family status, sexual orientation or other status. This principle also applies to the state civil service (section 2(4) of the State Civil Service Law).

Section 29 of the Labour Law prohibits direct and indirect discrimination (Paras 5 and 6) and also defines harassment as a form of discrimination (Para 7), and prohibits the instruction to discriminate (Para 4). If the discrimination ban is violated, the law guarantees financial compensation for pecuniary and moral damages, the sum of the compensation being defined by the court. Section 9 also prohibits victimisation – the creation of adverse consequences for someone as a reaction to his or her use of legal guarantees to obtain redress.

Section 3 of the Education Law stipulates that every resident shall be equally entitled to acquire education irrespective of their social or material status, race, ethnicity, sex, religious or political conviction, health, occupation or place of residence. A ban on discrimination is

also included in section 3(2) of the Children's Rights Protection Law.

The Law on Social Security (section 2(1)) prohibits direct or indirect discrimination in regard to race, ethnic origin, skin colour, sex, age, disability, health, religious, political or other conviction, national or social origin, or material, family or other status. It also prohibits harassment and the instruction to discriminate. Similar bans are mentioned in the Law on the Rights of Patients (section 3).

The Advertising Law prohibits advertising which expresses discrimination against a person on the grounds of race, skin colour, sex, age, religious, political or other convictions, national or social origin, material status or other circumstances (section 4, Para 2(1)).

The Consumers' Rights Protection Law (section 3(1)) prohibits direct or indirect discrimination on the grounds of sex, racial or ethnic origin. It also prohibits harassment and the instruction to discriminate. If the discrimination ban is violated, the law guarantees financial compensation for pecuniary and moral damages (the sum of the compensation is set by the court). The Law also prohibits victimisation – the creation of adverse consequences for a consumer due to the use of legal guarantees. Similar bans exist in the Law on the Prohibition of Discrimination Concerning Natural Persons Who Are Engaged in Business Activities and in the Support for Unemployed Persons and Persons Seeking Employment Law. Section 5(1) of the Law On Insurance Companies and Supervision Thereof prohibits discrimination on grounds of sex.

The legislation aimed at fighting against discrimination has been amended in recent

years due to the transposition of several EU Directives.<sup>6</sup> But Latvia adopted only the minimum standards and rejected the idea of a more integrated approach, in particular the adoption of a framework law on discrimination<sup>7</sup> which would also take into consideration the conventions of the Council of Europe and the UN.

## 2) Sanctions, Proof and Institutions

Apart from pecuniary sanctions, section 204(17) of the Administrative Violations Code stipulates a fine of between LVL 100 (EUR 143) and LVL 500 (EUR 715) for violating the discrimination law. The Criminal Law (section 149(1)) envisages fines for repeated (within one year) discrimination on the basis of racial or ethnic origin or other discrimination prohibited by law, but for the same deeds under aggravating circumstances (i.e. if it caused substantial damage, or is connected with violence, deception or threat, or is perpetrated by a group of persons or by civil servants, etc.) more serious punishment is envisaged – up to two years' imprisonment.

According to section 29(3) of the Labour Law, an employer shall bear the main burden of proof if there is alleged discrimination. The same principle can be found in the Consumer's Rights Protection Law and the Law on the Prohibition of Discrimination Concerning Natural Persons Who Are Engaged in Business Activities. The burden of proof in other civil cases rests with the plaintiff (section 93 of the Civil Procedure Law). The Administrative Procedure Law insists on impartial investigation (section 103); therefore the burden of proof does not lie with the applicant: the court decides which side has to prove certain facts and the court is itself entitled to search for evidence.

In accordance with section 11(2) of the Ombudsman Law, the Ombudsman's Office is responsible for fighting against discrimination. The Ombudsman has the right to file a civil lawsuit or administrative application to a court to protect the interests of an individual who has suffered from discrimination (section 13, Paras 9-10). In 2010 the Ombudsman's Office received 63 written complaints about discrimination,<sup>8</sup> in 2011 – 72 such complaints.<sup>9</sup>

## II. Sex

In the field of gender equality several problems have been mentioned in recent years in media, surveys and publications by official bodies. One group concerns direct discrimination – such as references to a particular gender in job postings<sup>10</sup> or different night club entry fees. The former is prohibited by section 32(1) of the Labour Law; the latter – by section 3(1) of the Consumers' Rights Protection Law. The prohibition to enter a shop with a pram or a pushchair is mentioned by the Ombudsman as a case of indirect discrimination against women (as in Latvia they are more often on parental leave, compared with the men).<sup>11</sup>

In Latvia members of decision-making bodies of enterprises are not normally covered by legal guarantees of the Labour Law, unless they have a valid labour contract. In turn, the Commercial Law does not contain a discrimination ban. In 2010 the European Court of Justice (ECJ) decided that EU law precludes Latvian legislation, which permits a member of a capital company's Board of Directors to be removed from that post without restriction, where the person concerned is a "pregnant worker" and the decision to remove her was taken essentially on account of her pregnancy. Even if the Board

Member concerned is not a “pregnant worker”, the fact remains that the removal, on account of pregnancy or essentially on account of pregnancy, of a member of a Board of Directors can affect only women and therefore constitutes direct discrimination on grounds of sex.<sup>12</sup> The Senate of the Supreme Court found, however, that the removal in the case was not essentially on account of pregnancy.<sup>13</sup> Nevertheless, it might be feasible to amend laws which are considered to be *lex specialis* in relation to the Labour Law (such as the Commercial Law and the Law on Religious Organisations) in order to include an explicit discrimination ban.

In 2010 the Senate of the Supreme Court found that the provision of the Law on Unemployment Insurance contains indirect discrimination against women, since the Law did not take properly into account the situation of persons on maternity leave. As a result, the unemployed persons who had previously been on maternity leave received a lower unemployment benefit.<sup>14</sup> The Law has since been amended.

Following the recent verdict of ECJ concerning the use of sex as a determining factor in the assessment of risk in the calculation of premiums and benefits for the purposes of insurance and related financial services,<sup>15</sup> it is also necessary to amend the Law On Insurance Companies and Supervision Thereof before 21 December 2012. The government has already sent a corresponding draft law to the Parliament.<sup>16</sup>

### III. Nationality

As of 1 January 2012, the population of Latvia was estimated to be 2,217,053, of whom 1,844,741 (83.2%) were Latvian citizens, 312,189 (14.1%) were “non-citizens” (now stateless former citizens of the USSR and

their descendants who already resided in Latvia in 1992), 173 were stateless persons, and the rest were foreign citizens.<sup>17</sup>

On 15 October 1991 the Latvian Parliament passed the Decision “On the Renewal of the Rights of the Citizens of the Republic of Latvia and on the Fundamental Principles of Naturalisation”, which was based on the concept of the pre-war citizenship continuity: only those persons who had been citizens of independent Latvia in 1940, and their descendants, had their citizenship restored. The legal status of people who were not recognised as citizens remained unclear until 1995, when the Law on the Status of Former USSR Citizens Who Do Not Have the Citizenship of Latvia or of Any Other State was adopted. The Law introduced a special legal status of “non-citizens”. It defined the status of those people who had registered domicile in Latvia on 1 July 1992 and who did not have citizenship of Latvia or any other country. The Constitutional Court declared that non-citizens are not Latvian nationals and are not considered stateless according to international law; it also mentioned that the Republic of Latvia recognises a certain legal link with “non-citizens”, thus this status cannot be revoked due to permanent residence abroad (unless a non-citizen receives a foreign nationality).<sup>18</sup>

“Non-citizens” have rights akin to citizens, for example, the right to reside in Latvia without visas or residence permits. However, in accordance with some legislative acts, some rights and opportunities are reserved only for citizens. This includes political rights (the right to participate in elections, or establish political parties) and social and economic rights (land property rights in some territories, public and private sector careers in some professions, or pension for work periods accrued during the Soviet period outside Latvia). Some of these rights

are also guaranteed to EU citizens if they reside in Latvia, but they are not granted to “non-citizens”. As of October 2011, there were 80 differences in rights between citizens and “non-citizens”, mainly relating to careers in the public sector.<sup>19</sup>

In September 2008 the Ombudsman completed an investigation into the differences in rights between citizens and “non-citizens”.<sup>20</sup> The Ombudsman found that some restrictions on “non-citizens” are not proportional, such as the ban for “non-citizens” to work as advocates or patent attorneys, to receive the first category licence for security work, or be head or member of the board in detective agencies. He also found disproportional restrictions on obtaining land property in the cities by “non-citizens”. The Ombudsman recommended verifying whether restrictions concerning those rights guaranteed for EU citizens but denied to “non-citizens” are justified. Nevertheless, the new Ombudsman who was elected in March 2012 declared that the principle of equality requires a differential treatment towards persons in legally different situations, and that therefore the difference in rights between citizens and “non-citizens” is not of a discriminatory nature, since the legal status of “non-citizens” is not comparable with that of citizens.<sup>21</sup>

The most widely discussed difference in rights between citizens and “non-citizens” concerns the calculation of pension for work periods accrued during the Soviet period outside Latvia – in other parts of the former USSR. For citizens such periods are to be taken into account, whereas for non-citizens they are not (with minor exceptions). In 2009 the European Court of Human Rights (ECtHR) declared that such difference of treatment based exclusively on the ground of nationality is not compatible with the requirements of Article 14 of the Conven-

tion for the Protection of Human Rights and Fundamental Freedoms taken in conjunction with Article 1 of Protocol No. 1.<sup>22</sup> However, the Law on State Pensions has not been amended since. The Constitutional Court, when deciding on a subsequent similar complaint by several individuals, found that the position of ECtHR should be read only in the context of a particular case (where the applicant was in fact working on the territory of Latvia for an employer based outside Latvia),<sup>23</sup> thus suggesting a very narrow interpretation of the ECtHR judgment.<sup>24</sup> The applicants in the subsequent case decided by the Constitutional Court have submitted an application to ECtHR.<sup>25</sup>

Following the recent verdicts of ECJ concerning the nationality of notaries<sup>26</sup> it might appear necessary to amend the Notary Law – according to section 9(1) currently in force, only Latvian nationals are entitled to work as notaries. Most probably the amendment, if adopted, will cover other EU nationals, but not non-citizens.

#### IV. Racial or Ethnic Origin

As of 1 January 2012, the population of Latvia was estimated to be 2,217,053, of whom 1,319,552 (59.5%) were ethnic Latvians, 603,125 (27.2%) Russians, 77,423 (3.5%) Belarusians, 54,041 (2.4%) Ukrainians, 50,498 (2.3%) Poles, 28,946 (1.3%) Lithuanians, 9,418 (0.4%) Jews, and 8,482 (0.4%) Roma. In some regions of the country, ethnic Latvians were a minority: in Riga, the capital, ethnic Latvians were estimated at 42.4%, while Russians made up 40.3% of the city’s population. In the second largest city in Latvia, Daugavpils, 17.8% of the population were Latvians and 51.7% were Russians.<sup>27</sup>

Latvia’s Population Register contains information on the ethnic origin of each person

(Population Register Law, section 10, Para 1(9)). The registration is obligatory even for new-borns: their ethnicity is recorded as being the same as that of their parents. If the parents are of different ethnicity, they can choose one of the two for their baby. The Personal Data Protection Law, however, qualifies information about one's ethnicity as sensitive data (section 2(8)) and imposes certain restrictions on access to such information.

The Law on the Free Development and Rights to Cultural Autonomy for National and Ethnic Groups guarantees any Latvian citizen or a permanent resident (if he or she does not have citizenship of any other country) the right to declare their ethnic origin in compliance with their self-consciousness (section 2). Nevertheless, the Law on the Change of a Given Name, Surname and Ethnicity Record establishes the blood principle of ethnic determination, whereby ethnicity is traced back to an individual's predecessors. Individuals seeking to change their official ethnicity record (allowed once in a lifetime) are required to provide evidence that an ancestor was of the desired ethnicity (with the exception of the Livs, a small autochthonous minority – section 6, Para 2(1)). When changing to Latvian ethnicity, the applicant must also prove his/her command of the state (official) language (section 6, Para 2(5)). This approach is apparently motivated by certain privileges enjoyed by Latvians and Livs in accordance with the Citizenship Law and the Repatriation Law.

Since it has been mandatory to specify ethnicity in the Population Register in accordance with the blood principle, information on the ethnic self-identification of Latvians **in compliance with their choice** is not easily available. According to the 2011 Population Census, the number of people identifying as ethnic

Latvians was slightly higher than in the Population Register – 62.1%, while the number of people belonging to minorities was lower (Russians – 26.9%, Belarusians – 3.3%).<sup>28</sup>

The Population Census in 2011 once again revealed a discrepancy between the official data on ethnicity and self-identification. Such approach might create problems both from the point of view of non-discrimination law and minority rights (for example, Article 3(1) of the Framework Convention for the Protection of National Minorities stipulates that every person belonging to a national minority shall have the right to freely choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice).

In 2011 the Ombudsman dealt with several complaints related to a higher entry fee for foreigners in some night clubs. The Ombudsman's Office classified such cases as a direct discrimination on grounds of racial or ethnic origin.<sup>29</sup>

The problem of discrimination against Roma (often unreported) remains the subject of concern. An opinion poll held in Riga in 2010 suggests that only 19% of respondents were ready to communicate with Roma as with close relatives or friends. For the majority of respondents there was a long social distance with Roma – 17% even said that Roma should not enter Latvia at all.<sup>30</sup>

## V. Language

### 1) General Situation

As a result of the Soviet language policy in Latvia, most non-Russian minorities in Latvia accepted Latvian or Russian as their main language and were thus assimilated

into the corresponding linguistic communities. According to the 2011 census, 56.3% of the respondents named Latvian as their first family language, 33.8% said their first family language was Russian, while 9.3% did not mention their first language.<sup>31</sup> Latvian was the native language for 95.6% of Latvians. Russian was the native language not only of ethnic Russians but also of most ethnic Jews (79.1%), Belarusians (72.8%), Ukrainians (67.8%) and Poles (57.7%).<sup>32</sup>

Since October 1998, Article 4 of the Constitution has been supplemented with a provision stipulating that Latvian is the state language. The current State Language Law came into force in 1999. It stipulates that all other languages, except the Latvian language, are defined as foreign languages with no exceptions for minority languages (section 5). The Liv language is defined as an autochthonous language enjoying some official support (section 4).

Under section 1(4) of the State Language Law, minorities have the right to choose any language in the private domain. However, the Law permits proportional interference in the private sphere if legitimate public interests, such as health, security or public order, are at stake (section 2(2)). At the same time, the private use of languages in unofficial communication between individuals, internal communication inside ethnic and national groups, as well as in religious activities, cannot be regulated by the Law (section 2(3)).

Given the strong correlation between native language and ethnic origin, it is almost inevitable that in some cases the lack of differential treatment of persons who have the official and non-official languages as their mother tongue is analysed from the viewpoint of indirect discrimination. The Con-

stitutional Court confirmed that the failure to differentiate in such situations may be qualified as discrimination, taking into account that the persons belonging to ethnic minorities are not in the same situation as those belonging to the majority, and this difference is characterised by ethnic origin and language.<sup>33</sup>

## 2) Professional Language Requirements

Section 6 of the State Language Law states that employees of state and municipal institutions and enterprises must know and use the state language to the extent necessary for the performance of their professional duties. Employees of private institutions, organisations and enterprises (companies) must use the state language if their activities affect the legitimate interests of the community or if they perform specific public functions. For such occupations the Cabinet of Ministers defines the required language proficiency,<sup>34</sup> for example, the highest levels are compulsory for advocates and their assistants, lawyers, psychologists, doctors, pilots, heads of companies, and members of boards and councils of enterprises, if the employee communicates with consumers or provides information. As regards the rest of the private sector, employers and self-employed persons set their own requirements as to the state language proficiency of their employees within three months after starting business. The legislation does not make exceptions, not even for the territories where minorities account for the majority of the population. The only exception refers to foreign specialists and foreign business persons – they have to either obtain the proficiency certificate or ensure interpretation into Latvian.

There is some controversy concerning the status of members of the local councils and

parliament – whether the elected representatives are to be considered “employees” for the purposes of the professional language requirements. Currently C2 level (highest) is required for members of parliament, and C1 (second highest) was required for members of local councils until January 2012. Several members of the local councils tried to contest the fines imposed for poor use of Latvian, stating that the delegation to establish the level of proficiency covers only employees of municipal institutions, but members are elected officials, not employees, therefore the government has extended the limits of delegation. The Administrative Regional Court rejected this argument referring to section 2(1) of the State Language Law, which stipulates that the state language shall be used and protected in the state and municipal institutions. In the court’s view, the notion “municipal employees” covers also elected municipal officials, otherwise the legislator would provide for an exemption.<sup>35</sup> Moreover, according to amendments to the Law on the Status of a Member of the Republican City Council and Regional Council, after the local elections in 2013 a regional court will be entitled to annul mandates of elected members of local councils on account of lack of state language proficiency, if after the municipality-paid courses and within six months after the first check this member cannot pass the exam (section 4).

Interestingly, in June 2012, parliament approved amendments to the Labour Law, which stipulate that the employer is not entitled to demand foreign language proficiency (i.e., any language except for Latvian and Liv according to section 5 of the State Language Law) in a job posting, if the use of this language is not foreseen in the obligations of the employee. The reason for such amendment was alleged discrimination against Latvian-

speakers, as in practice employers often require the knowledge of Russian.

### 3) *Spelling of Personal Names*

Section 19 of the State Language Law stipulates that personal names shall be reproduced in accordance with the Latvian language traditions and shall be transliterated according to the accepted norms of the literary language. In a person’s passport or birth certificate, the person’s name and surname reproduced in accordance with Latvian language norms may be supplemented by the historical form of the person’s surname or the original form of the person’s name in another language transliterated in the Latin alphabet if the person or the parents of a minor so desire and can provide verifying documents.

The Cabinet of Ministers has issued detailed Regulations on Spelling and Identification of First Names and Family Names.<sup>36</sup> These Regulations establish the rules for spelling first names and family names and how they should be used in Latvian and spelled and identified in official documents. They make no exceptions for the names of the people belonging to minorities. Foreign names and family names have to be spelled in the Latvian language (expressed with Latvian language sounds and letters) as close as possible to their pronunciation in the original language. Besides, every name and family name has to have an ending corresponding to the Latvian language grammatical system (masculine or feminine endings according to the person’s gender). So, for instance, Ricardo Daniel Baranov Cardoso is changed to Rikardu Daniels Baranovs-Kardožu.

In 2010 the UN Human Rights Committee found a violation of the right to privacy (Article 17 of the International Covenant

on Civil and Political Rights) with respect to the unilateral change of the author's name by Latvia.<sup>37</sup> The Committee decided not to address the issue of possible violation of other provisions of the Covenant (the prohibition of discrimination and the rights of persons belonging to minorities). Still, the law has not been amended. The author has applied for a revision of his case *de novo* to the Senate of the Supreme Court. The Senate declared that, in principle, the Views of the Committee can be considered as an adjudication of the European Court of Human Rights or other international or supranational court for the purposes of revision on grounds of newly-discovered facts.<sup>38</sup> However, it decided to dismiss the author's application stating that the case can first be revised by competent administrative authorities (in particular, the State Language Centre).<sup>39</sup>

In the meantime, in a similar case the Senate of the Supreme Court applied to the Constitutional Court for a preliminary ruling asking to declare that the legislation in force is not compatible with the Constitution, interpreted in light of the Views.<sup>40</sup> The Constitutional Court has declined this request and stated that it is not necessary to reevaluate such compatibility, as the evaluation had been made by the Constitutional Court in its previous case law. Nevertheless, the Constitutional Court has indicated that the Senate of the Supreme Court is entitled to review the proportionality of interference with the right to privacy in a particular case.<sup>41</sup> The Senate has not found any weighty reasons to depart from legislation in force and rejected the application.<sup>42</sup>

Apart from this, there is also another subject of debate: whether the legislation currently in force is compatible with Article 11(1) of the Framework Convention for the Protec-

tion of National Minorities. The latter stipulates that the Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

## VI. Religion

Historically, the largest religious groups in Latvia are Lutheran, Roman Catholic and Orthodox. As of 2012, the Register of Enterprises registered 1206 congregations. These included Lutheran congregations (306), Roman Catholic (254), Orthodox Christian (130), Baptist (108), Old Believers (75). Also, there were 14 Jewish and 23 Muslim registered congregations.<sup>43</sup>

Article 99 of the Constitution and the Law on Religious Organisations provide for the separation of church and state, as well as for freedom of religion and the right to establish religious organisations. No religion has the status of official religion in Latvia. In practice "traditional" religions have more opportunities than "new" ones. In particular, only clerics of the following religions have the right to register marriages: Lutherans, Catholics, Orthodox Christians, Old Believers, Baptists, Methodists, Adventists and Jewish rabbis (section 53 of the Civil Law).

In accordance with section 1 of the Law on Holidays, Commemoration Days and Celebratory Days, the non-working days are Christmas (December 24-26) and Easter. Though the law does not mention the religious character of these holidays, the dates used are those celebrated by Catholics and Protestants but not Orthodox Christians (who use the Julian calendar). The Law provides that Orthodox, Old Believers and be-

lievers of other confessions celebrate Christmas and Easter on the days set by their confessions. However, if an employee wants to take a day off on one of these days, his or her employer is not obliged to pay him as if they were holidays. Thus, Orthodox, Old Believers and members of non-Christian communities are in a position of inequality.

## VII. Disability

In 2010 Latvia ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol and adopted a new Disability Law. Article 7(3) of the Labour Law provides for the employer's obligation of reasonable accommodation.

Still, the issue of reasonable accommodation both within employment and outside represents a significant challenge. In 2010 it was discovered by the Ombudsman that only 26% of municipal services are fully available to disabled persons.<sup>44</sup> Also the lack of access to other services (such as night clubs) is reported.<sup>45</sup>

The government's regulations on the standards applicable to public buildings prescribe the need to guarantee access for disabled persons.<sup>46</sup> But the standards are applicable only to new and reconstructed public buildings; the old ones frequently remain without access. Nevertheless, the public services are to be guaranteed also without such access. The Senate of the Supreme Court decided that the failure to provide such guarantees can be contested in court as the failure to act.<sup>47</sup>

## VIII. Age

In the field of age several problems have been mentioned in recent years in media, surveys and publications by official bodies. The most widely cited is references to a particular age

in job postings,<sup>48</sup> prohibited explicitly by section 32(2) of the Labour Law.

The Ombudsman also examined a complaint concerning the possible extension of age limitation for the presence in casinos and other places where gambling is taking place – from 18 to 21 years old. The Ombudsman found the new limitation proportional.<sup>49</sup>

## IX. Sexual Orientation

The issue of discrimination on grounds of sexual orientation is a "hot potato" issue for Latvian society given a high level of intolerance towards sexual minorities. In particular, in a recent survey 23.2% answered that both homosexual persons and homosexual relations are to be condemned, 27.6% declared that they tolerate homosexual persons, but not the relations, 30% answered that neither homosexual persons nor homosexual relations are to be condemned, 18.9% could not answer.<sup>50</sup>

In 2011 the LGBT NGO "Mozaika" recommended the adoption of the Registered Partnership Law which would allow regulating personal and property relations of homosexual couples. Nevertheless, the draft has not been examined. Even the Ombudsman has not provided support to the new legal regulation – with a reference to a public opinion which does not welcome homosexual relations. The Ombudsman suggested instead amending sectoral laws – such as the Law on the Rights of Patients, anti-corruption laws, procedural laws, the laws on social benefits – in order to recognise the rights of unregistered partners in both homosexual and heterosexual relations.<sup>51</sup>

## X. Conclusion

Despite a low number of reported and examined cases, discrimination remains a matter

of concern for Latvia. At the level of legislation it is necessary to establish a comprehensive legal framework covering all grounds and all fields – preferably via the adoption of a framework law on discrimination. At the level of practice it is important that all public institutions (in particular, the Ombudsman's Office) take a proactive position in fighting against discrimination – both through awareness raising and legal sanctions.

Structural problems are to be addressed more effectively – for example, reasonable accommodation is required in order to prevent discrimination against disabled persons. Especially strong action is

needed in the fields where discrimination is based on prejudices and stereotypes of the society (for example, against Roma and sexual minorities). Also the issue of linguistic rights of minorities should be analysed from the viewpoint of potential indirect discrimination.

The issue of discrimination has not been very high on the agenda of policy makers in recent years. Probably a more active stance of the EU institutions could help to activate debate at the domestic level – as it was the case in 2003-2004, before the EU accession of Latvia, when some progress in legislation and awareness was clearly observed.

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2 Levits, E., "91.pants", in *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*, ed. Balodis, R., Riga: Latvijas Vēstnesis, 2011, pp. 98-104.

3 Judgment of the Constitutional Court, 14 September 2005, case no. 2005-02-0106.

4 See above, note 2, pp. 92-94.

5 Judgment of the Riga Latgale District Court, 8 September 2003, case no. C29240503.

6 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

7 Draft law "Diskriminācijas novēršanas likums" (reģ.nr. 741).

8 Latvijas Republikas tiesībsargs, *Gada ziņojums: 2010*, 2011, p. 142.

9 Latvijas Republikas tiesībsargs, *Gada ziņojums: 2011*, 2012, p. 149.

10 Ibid., p. 112.

11 Ibid., pp. 116-117.

12 Case C-232/09 *Danosa* [2010].

- 13 Judgment of the Supreme Court, 19 January 2011, case no. SKC-1/2011.
- 14 Judgment of the Supreme Court, 15 October 2010, case no. SKA-480/2010.
- 15 Case C-236/09 *Association Belge des Consommateurs Test-Achats and Others* [2011].
- 16 Draft law “Grozījumi Apdrošināšanas sabiedrību un to uzraudzības likumā” (TA-1305).
- 17 Data of the Population Register is available at: <http://www.pmlp.gov.lv/lv/statistika/iedzivotaju.html>.
- 18 Judgment of the Constitutional Court, 7 March 2005, case no. 2004-15-0106.
- 19 Latvian Human Rights Committee, *Citizens of a Non-Existent State*, 2011, pp. 29-33.
- 20 Atzinums pārbaudes lietā, available at: [http://www.tiesibsargs.lv/files/downloads/Par\\_pilsonu\\_un\\_nepilsonu\\_atskiribam\\_Latvija.doc](http://www.tiesibsargs.lv/files/downloads/Par_pilsonu_un_nepilsonu_atskiribam_Latvija.doc).
- 21 See above, note 9, p.122.
- 22 *Andrejeva v Latvia* [GC], Application no. 55707/00, ECHR 2009.
- 23 Judgment of the Constitutional Court, 17 February 2011, case no. 2010-20-0106.
- 24 European Commission against Racism and Intolerance, *Fourth Report on Latvia*, 2012, Para 130.
- 25 *Savickis and Others v Latvia*, Application no. 49270/11.
- 26 See, for example, Case C-47/08 *Commission/Belgium* [2011].
- 27 See above, note 17.
- 28 Data of the 2011 Population Census, available at: [http://data.csb.gov.lv/DATABASE/tautassk\\_11/2011.gada%20tautas%20skait%C4%AB%C5%A1anas%20gal%C4%ABgie%20rezult%C4%81ti/2011.gada%20tautas%20skait%C4%AB%C5%A1anas%20gal%C4%ABgie%20rezult%C4%81ti.asp](http://data.csb.gov.lv/DATABASE/tautassk_11/2011.gada%20tautas%20skait%C4%AB%C5%A1anas%20gal%C4%ABgie%20rezult%C4%81ti/2011.gada%20tautas%20skait%C4%AB%C5%A1anas%20gal%C4%ABgie%20rezult%C4%81ti.asp).
- 29 See above, note 9, p. 116.
- 30 TNS Latvia, *Sabiedrības integrācija Rīgā*, 2010, available at: [http://www.riga.lv/NR/rdonlyres/E27BFA8D-29AF-45AA-9D93-7F8D5A612DB4/30374/2473\\_RD\\_iedz\\_aptauja\\_2010\\_isais\\_var.pdf](http://www.riga.lv/NR/rdonlyres/E27BFA8D-29AF-45AA-9D93-7F8D5A612DB4/30374/2473_RD_iedz_aptauja_2010_isais_var.pdf).
- 31 See above, note 28.
- 32 Valsts valodas politikas pamatnostādnes 2005.-2014. gadam, p. 8.
- 33 Judgment of the Constitutional Court, 13 May 2005, case no. 2004-18-0106.
- 34 07.07.2009. MK noteikumi Nr. 733 “Noteikumi par valsts valodas zināšanu apjomu un valsts valodas prasmes pārbaudes kārtību profesionālo un amata pienākumu veikšanai, pastāvīgās uzturēšanās atļaujas saņemšanai un Eiropas Kopienas pastāvīgā iedzīvotāja statusa iegūšanai un valsts nodevu par valsts valodas prasmes pārbaudi”.
- 35 Judgment of the Administrative Regional Court, 14 May 2012, case no. A420558710.
- 36 02.03.2004 MK noteikumi Nr.114 “Noteikumi par personvārdu rakstību un lietošanu latviešu valodā, kā arī to identifikāciju”.
- 37 Human Rights Committee, Views with regard to communication No.1621/2007 (*Raihan v Latvia*, adopted on 30 November 2010).
- 38 Decision of the Supreme Court, 12 May 2011, case no.SJA-8/2011.
- 39 Decision of the Supreme Court, 15 June 2011, case no.SJA-8/2011.
- 40 Decision of the Supreme Court, 27 April 2012, case no.SKA-184/2012.
- 41 Procedural decision of the Constitutional Court, 30 May 2012.
- 42 Judgment of the Supreme Court, 7 July 2012, case no.SKA-184/2012.
- 43 Data of the Register of Enterprises, available at: <http://www.ur.gov.lv/?a=1142>.
- 44 See above, note 8, pp. 74-75.
- 45 See above, note 9, p. 116.

46 21.07.2008. MK noteikumi Nr.567 "Noteikumi par Latvijas būvnormatīvu" LBN 208-08.

47 Decision of the Supreme Court, 8 July 2010, case no. SKA-635/2010.

48 See above, note 9, p. 112.

49 Tiesībsarga atzinums pārbaudes lietā Nr.2011-263-26C par likumprojektā "Azartspēļu un izložu likums" paredzēto aizliegumu azartspēļu organizēšanas vietās atrasties personām, kas nav sasniegušas 21 gada vec

50 Tirgus un sabiedriskās domas pētījumu centrs SKDS, Latvijas iedzīvotāju aptauja „Attieksme pret seksuālajām minoritātēm”, 2011, p. 22.

51 See above, note 9, pp. 120-121.