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

COUNTRY REPORT 2011

LATVIA

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State of affairs up to 1st January 2012

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

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INTRODUCTION

0.1 The national legal system

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

The basis for the prohibition of discrimination in Latvia is Art. 91 of the Satversme (the Latvian Constitution) providing that "All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind". The reference to "discrimination of any kind" without specifying the grounds implies that the prohibition covers all possible grounds, including the grounds of the two Directives – thus also the discrimination based on sexual orientation which was for the first time included in the Latvian legislation by 21.09.2006 amendments to the Labour Law.

The constitutional prohibition of discrimination is supplemented by non-discrimination clauses scattered in around 35 laws, many of them pre-dating the era of the Directives. As the result of this, these laws do not adequately address the issue of discrimination and often do not cover all grounds covered by the Directives; while sometimes the lists of grounds in these laws are left open, in a number of cases they are closed, thus excluding the reference to the grounds not expressly spelled out. Also, the patchy nature of Latvian anti-discrimination legislation results in not all fields required by the Directives being sufficiently covered; notably, access to goods and services is one such field. The situation is changing, though; while the first law that was drafted and also amended to actually implement the Directives - the Labour Law - initially did not expressly mention sexual orientation as a prohibited ground and it had to be argued to be subsumed under "other circumstances", on 21.09.2006 the Labour Law was finally amended to include express reference to sexual orientation, although to this date it remains the only law to contain it; other such laws - the Law on Social Security amended on 01.12.2005, Patients' Rights Law adopted on 17.12.2009 (in force since 01.03.2010) - do not contain this ground and here still "other circumstances" would have to be argued, yet there is no case law to confirm this argument would be successful.

There are two main peculiarities of Latvia. The one is the so-called non-citizens - a special category of persons defined by the Law on the Status of Those Former USSR Citizens who are not Citizens of Latvia or Any Other State as persons who resided in Latvia on 1 July 1991 and have not obtained the citizenship of any other country (although according to the terms of the Law on Citizenship the possibility to obtain the citizenship of Latvia through naturalisation is open to them, yet it is not automatic). The rights of citizens and non-citizens differ to some extent, and since for these people Latvia is the only state they belong to such differences are inevitably suspect, especially given the fact that according to the 2011 Population Census non-

citizens constitute around 14.1 % of the population (290,660 out of 2,067,887 inhabitants as of 31.12.2011.

The second is the ethnic composition of the inhabitants – according to the 2011 Population Census 62,1% are ethnic Latvians, while 26,9 % are ethnic Russians, 3,3% are Belorussians, 2,2% are Ukrainians, 2,2% are Poles and also for some other minorities, notably Ukrainians, Belorussians the native language is most likely to be Russian. This means that any language proficiency requirements might be suspect as being the proxy for ethnic origin and would have to be looked at carefully.

0.2 Overview/State of implementation

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

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

The main problems of Latvian anti-discrimination legislation are the following ones:

- It remains scattered across many pieces of legislation. However, the main problem is that while it could be said that most, if not all of the fields covered by the directives are covered in Latvia, often it does not apply to all grounds – which results in incomplete protection The older laws containing an equality clause never include all of the grounds required by the Directives and not all of them leave the list of grounds open, and also the laws supposed to implement the directives often leave some grounds uncovered. In relation to employment such relationships that come under the terms of the Labour Law - after the 02.11.2006 amendments including civil service - are covered. A law prohibiting discrimination of self-employed persons, including access to economic activity/self-employment (Law on prohibition of discrimination of natural persons

who are economic operators*)* only covers the grounds of gender, race and ethnic origin, and does not cover age, disability and sexual orientation. Sexual orientation is explicitly listed as a prohibited ground only in the Labour Law and only since the 21.09.2006 (in force from 25.10.2006) amendments. Also the Law on Consumer Rights Protection (after the 28.10.2010 amendments in force from 01.01.2011) covers the grounds of race, ethnicity, gender, disability.

- Disability is defined as a long-term or non-transitional very severe, severe or moderate level limited functioning, and it is divided into 3 possible degrees of disability in accordance with the provisions of the Disability Law[1] depending on the gravity of the impairment. Moderate disability is defined as the loss of 25-59% of the capacity to work. The issue may arise whether the concept of disability in the laws covers only those disabilities that have received official qualification and consequently the person's status as disabled has been officially recognized, or whether it covers any *de facto* disability. This can be problematic and amount to insufficient implementation unless the courts, when confronted with this issue, will interpret the notion of disability in a compatible way. Disability is expressly mentioned in the Labour Law, Law on Consumer Rights Protection; Patients' Rights Law, Law on Social Security, it might possibly be subsumed under the "health condition" mentioned in the Law on Education, but it is not expressly spelled out.
- The provision for shifting the burden of proof exists only in relation to employment and (concerning limited grounds) – in relation to access to goods and services, as well as in relation to self-employment and education, activities concerning reduction of unemployment. To cases coming under the Administrative procedure law - i.e., where an administrative act or factual action of administration is challenged and which thus encompasses the whole state-provided social security sphere, –the exception of examination *ex officio* applies, the court itself investigating the facts of the case.
- The possibility to award moral damages exists only in relation to employment, education, as well as in relation to cases coming under the Administrative procedure law and under the Law on Consumer Rights Protection – in relation to access to goods and services and the limited scope of the Law on prohibition of discrimination of natural persons who are economic operators; in all other areas the available sanctions can hardly be considered dissuasive and effective.
- The Law on Private Pension foundations contains an exhaustive list of prohibited grounds for discrimination which does not include disability and sexual orientation. It is doubtful whether in the presence of this *lex specialis* a reference to the general anti-discrimination provision of the Labour Law can remedy this deficiency even if "working conditions and remuneration" could be interpreted as covering also occupational pensions.
- A remaining tendency in the latest anti-discrimination legislation is to completely ignore the grounds contained in Directive 2000/78, providing for the protection only in relation to race, ethnic origin and gender – which, while

[1] Disability Law (Invaliditātes likums) adopted on 25 May 2010.

sometimes simply means not going beyond the requirements of the directives, in other cases clearly amount to defective implementation. This is the case of all three laws to which anti-discrimination amendments were adopted in 2010 – Law on prohibition of discrimination of natural persons who are economic operators, the Law on the support to unemployed persons and job seekers and the Law on Education. The amendments to the first two are limited to the grounds of racial or ethnic origin and gender, whereas the latter maintains the existing longer list, but all of them omit age, disability and sexual orientation. Although with the ratification of the UN CRPD by Latvia, disability was added to the list of prohibited grounds of discrimination in the Consumer Rights Protection Law on 28.10.2010.

0.3 Case-law

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

Name of the court
Date of decision
Name of the parties
Reference number (or place where the case is reported).
Address of the webpage (if the decision is available electronically)
Brief summary of the key points of law and of the actual facts (no more than several sentences)
➔Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

Name of the court: Kurzeme Regional Court
Date of decision: 21 September 2011
Name of parties: V.Trusēvičs v. SIA Bio-Venta [Bio-Venta Ltd]
Reference number: case No. C40066110
Brief summary: The first instance court - Ventspils District Court (Ventspils rajona tiesa) in the 25.05.2011 judgment in case V.Trusēvičs v. SIA Bio-Venta found the dismissal of a disabled employee unlawful and invalid, reinstated him at work, awarded loss of earnings for work stoppage in the amount of LVL 9,741.75 (EUR 13,916, including taxes) and moral compensation - LVL 500 (EUR714). The claimant is a disabled man who had been hired as an assistant manager by a private company 'Bio-Venta' and the employer knew of his disability upon hiring him. A year after the hiring, the employer issued a new job description that would cause

considerable difficulties for the disabled person to fulfil the new tasks (climb on factory's roof, mow grass, clear snow). The employee was also allocated a new office on the 4th floor that could be reached by stairs only. The employer also introduced new restrictions on car parking prohibiting the disabled person to park his car near administrative offices, but allow seven other employees continue doing so. The employer issued V.T. a disciplinary warning and eventually dismissed him. The Court concluded that the employer had completely ignored V.T.'s disability, and had treated employee unequally. The plaintiff and the company appealed the judgement. On 21.10.2011 the Kurzeme Regional Court established that discrimination on grounds of disability (Art 29) had been proven as well as victimisation (Art 9), and that the employer had breached the equality principle (Art 7 (3) by failing to fulfil the obligation to provide for reasonable accommodation. The Court did not explicitly specify the type of discrimination that had occurred, however it can be inferred from the judgement that it was direct discrimination. The Court raised the moral compensation to LVL 1,000 (EUR 1,430).

Name of the court: the Riga Regional Court
Date of decision: 29 November 2007
Name of the parties: Raimonds Strazdiņš v. Rīgas Jaunā Svētās Ģertrūdes evaņģēliski luteriskā draudze [Riga New St Gertrude Evangelical Lutheran Church]
Reference number: case nr C30139606
Brief summary: The first instance court Vidzeme District Court (Vidzemes priekšpilsētas tiesa) on 25 April 2006 dismissed a claim by a church congregation evangelist that he had been dismissed by the Church on grounds of disability and therefore discriminated against. R.S. had been hired as an evangelist on 2 January 2003 and an employment contract had been concluded. In December 3 2005 he received a notice of dismissal as the post had been liquidated and no other job could be offered. The notice of dismissal was based on the provision of the Labour Law concerning redundancies, but later the church changed the reason for dismissal motivating it by relevant provisions of the Law on Religious Organisations. The court indicated that he had been hired as a religious worker and the decision of a religious organisation was sufficient basis for the termination of employment legal relations irrespective of conditions of employment contract. The court did not establish discrimination. On 23 October 2006 Riga Regional Court dismissed his claim. It ruled that the concluding of a contract with an evangelist who is a religious worker did not contravene either the Law on Religious Organisations or Church's Constitution. The court opined that in relation to congregations' religious workers the Law on Religious Organisations was applicable as *lex specialis* irrespective of the fact whether the congregation had concluded a separate employment contract with the religious worker or he performed his duties without remuneration. The court indicated that the fact of discrimination in the case had not been proven. On 11 April 2007 the Supreme Court Senate overruled the decision of the lower instance court and sent it back for review. The Senate stated that as the employment legal relations were established on the basis of the employment contract, Labour Law and other legislative acts are binding to all employers irrespective of their legal status and that lower instance court had erroneously concluded that the labour contract signed by the parties is not

binding to the congregation in the aspect of regulation determined by the Labour Law. The Senate indicated that the conclusion of the appellate court that discrimination had not been proven contravened the Labour Law which obligates the employer to prove that differential treatment is based on objective circumstances. On 29 November 2007, the Riga Regional Court confirmed a conciliation agreement whereby Riga New St Gertrude's Evangelical Lutheran Church is to pay R.S. compensation in the amount of 3,000 LVL (4,285 EUR).

Other cases (gender grounds):

In 2008, there were two conciliation agreements concerning discrimination on gender grounds, both concerned employment (interview, termination of labour contract), whereby victims were paid 800 LVL (~1,142 EUR)[2] and 5000 LVL (~7,142 EUR) in compensation.[3] In 2010, the Riga Regional Court issued a ruling against a recruitment agency for discrimination on gender grounds, who had in an e-mail indicated that the company it was doing recruitment for would prefer male candidates for a final interview. The plaintiff was awarded 300 LVL (~428 EUR) in moral compensation.[4]

The first discrimination cases tried by administrative courts have emerged, albeit all on gender grounds. On 15 October 2010 the Supreme Court ruled in the case *of I.P. vs State Social Security Insurance Agency (Valsts sociālās adrošināšanas aģentūra (VSAA)* on indirect discrimination on gender grounds in the calculation of unemployment benefit after childcare leave whereby the Agency was ordered to recalculate benefits. There have been four other similar cases tried by first instance courts in 2011 that have referred to the Supreme Court Senate judgement.

Two cases relating to application of the Directives were decided by the courts of general jurisdiction in 2006.

Name of the court: the Riga regional court
Date of decision: 08 June 2006
Name of the parties: Māris Sants v. Rīgas Kultūru vidusskola [Riga Cultures secondary school]
Reference number: case No. C32242904 CA-1096/2
Brief summary: The first instance court - Riga city Ziemeļu district court in the 25.05.2005 judgment in case Māris Sants v. Rīgas Kultūru vidusskola [Riga Cultures secondary school], case No. C32242904047505 had held that the plaintiff, a former Lutheran minister that had lost his position as a minister after he had publicly admitted his homosexual orientation – an event widely publicised at that time - had been discriminated against on the basis of his sexual orientation when the school,

[2] LR Zemgales apgabaltiesas Civillietu kolēģijas lēmums, lietā nr. C 370560908, 20.11.2008.
[3] Rīgas pilsētas Ziemeļu rajona tiesas lēmums lietā S.K. v SIA Ziemeļu nafta case nr. C32169607, 10.11.2008.
[4] I.M. v SIA "I-Work Latvia", Rīgas pilsētas Ziemeļu rajona priekšpilsētas tiesa, Case No C31276209, 28.04.2010.

after encouraging him to submit his application for the position of the teacher of history of religion following an initial phone inquiry, informed him that the position had been filled already by another candidate whose qualifications were lower than the plaintiff's.

That had been the first case based on non-discrimination provisions of the Labour Law confirming that sexual orientation is a prohibited ground of differential treatment even in the absence of express reference to it in the open-ended list contained in the relevant provision at that time.

The appellate instance court accepted that the agreement with the successful candidate - who had found out about the vacancy from a different source - had already been reached and hence an employment contract with him concluded during the period between the submission of the advertisement for publication and its actual publication. Since the advertisement contained only information about the vacancy and not an announcement of a competition the director of the school did not have to evaluate the candidates in a comparative way, thus the person who had applied first and with whom an oral agreement had already been reached could be accepted. Thus, in the court's opinion no discrimination based on sexual orientation had taken place. To the extent that it distinguishes announcements for vacancies and announcements of competitions and considers that in the former case the candidates do not have to be evaluated in a comparative way, the reasoning of the court opens the door to the possibilities of discrimination in the vast majority of cases where a competition is not a legal requirement; in practice such announcements almost never mention that the person would be employed 'on a competitive basis". The judgment was appealed, yet the Supreme Court Senate rejected the appeal on the grounds of its non-conformity with the procedural legal requirements without looking at its merits (case SKC-796, the 09.10.2006 decision); hence the judgment of the appellate court remained in force.

Name of the court: Jelgava court
Date of decision: 25 May 2006
Name of the parties: National Human rights office on behalf of Sanita Kozlovska v. SIA "Palso"
Reference number: case No.15066406
Address of the webpage:
http://www.humanrights.org.lv/upload_file/kozlovska.pdf (in Latvian only)
Brief summary: S.Kozlovska, a person of Roma ethnic origin, had been referred to the interview at the respondent enterprise by the State employment service. In the referral form the respondent had indicated as the reason for the refusal to employ the person her accent, which it denied at the hearing, arguing that Kozlovska did not have the required secondary education and her appearance had been inappropriate, which was held to constitute discrimination on the basis of ethnic origin. The judgment was appealed by the respondent, yet the judgment of the first instance entered into force in December 2006 after the appellant respondent failed to appear for the hearing for the second time.

Name of the court: Jurmala city court
Date of decision: 25 April 2006
Name of the parties: I.Kozlovskis v. .Ozoliņš
Reference number: case No. C 17043006
Brief summary: This case did not involve application of the Directives, but derogatory remarks by the respondent addressed to homosexuals in the context of Gay Pride 2005 held in Riga. The plaintiff based his case on Civil Law anti-defamation provisions, the court referring to the concept of value-judgments vs. facts and the absence of express identification of the plaintiff, thus departing from an earlier line of defamation cases (see below), in the relevant statements to reject the claim.

The judgment was appealed, yet the case was closed on 31.03.2008 after the plaintiff repeatedly failed to appear at the hearing at the appellate instance.

Two more cases on gender-based discrimination (I.G. vs. Emīla Dārziņa mūzikas vidusskola and V.Č. vs. SIA "Falks Apsargs"), both in the field of employment, were decided by lower instance courts in 2006 and by the Supreme Court Senate in 2007 finding direct discrimination in both cases. While these cases do not relate directly to the application of the directives, they nevertheless deserve to be mentioned as being part of the still scarce discrimination case-law.

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

Name of the court: Cēsu district court
Date of decision: 05 July 2005
Name of the parties: Anga Stūriņa v. Straupe municipal council
Reference number: case No. C11019405
Address of the webpage:
http://www.humanrights.org.lv/upload_file/Spriedums_Cesis.pdf (in Latvian only)
Brief summary: The court held that the plaintiff who from 1997-2004 had regularly been employed by the municipality for the winter season at the heating central had been discriminated against on the basis of her gender and property status by not being employed again in the 2005 season.

Name of the court: Riga regional court
Date of decision: 11 July 2005
Name of the parties: Raimonds Smagars v. SIA "Vernisāžas centrs"
Reference number: case No. C04386004
Address of the webpage
http://www.humanrights.org.lv/upload_file/Smagara_spriedums.pdf (in Latvian only)
Brief summary: The plaintiff, a wheelchair user, had twice been refused entry into a nightclub. The court held that he had been discriminated against on the basis of his disability, thus offending his honour and reputation (the wording of the applicable anti-defamation provision of the Civil Law), and awarded the plaintiff moral damages thus continuing the line of cases where, in the absence of more specific legislation,

the Civil Law provision on protection of honour and reputation is relied on in cases of discrimination, which might be important, although it falls outside the scope of the Directives.

Still earlier cases where discrimination was the issue at least to some extent, even if not related to application of the Directives, include:
Name of the court: Latgale regional court
Date of decision: 01 November 2000
Name of the parties: Abramova v. "Latgales druka"
Reference number: case No.2-268 A
Brief summary: The court held that the plaintiff had been victimized due to the defence of her rights, namely, after she had been dismissed as the result of the reduction of the number of employees she had challenged the dismissal in the court; the salary she was receiving after her reinstatement by the court decision was lower than the one she had been receiving before and also lower than that of her other colleagues. The case was decided under the provisions of the old Labour Code prior to the legislation transposing the Directives.

Name of the court: Senate of the Supreme court
Date of decision: 08 May 2002
Name of the parties: Muhina v. Central Prison
Reference number: case No.SKC-297
Brief summary: The court held that the plaintiff had been discriminated against based on her gender as the prison warden position had been advertised for men only, while this position was not on the list of jobs where women may not be employed. Claim for moral damages was rejected as the refusal to employ the plaintiff was based on hard working conditions and specific requirements to personnel related to the need to participate in searches of persons of the opposite gender. The case was decided under the provisions of the old Labour Code prior to the legislation transposing the Directives.

Name of the court: Civil law chamber of the Supreme court
Date of decision: 09 April 2003
Name of the parties: Kristofers Edžugbo and Peteris Mensahs v. Liberty party and Latvian television (the so-called "Los Amigos case")
Reference number: PAC-244
Brief summary: The advertisement with the participation of the plaintiffs contained incitement to discrimination based on race and diminished the reputation and honor of the plaintiffs. This is the first in the line of cases where, in absence of more specific legislation, the Civil Law provision on protection of honour and reputation was relied on in cases of discrimination.

Name of the court: Latgale district court of Riga
Date of decision: 08 September 2003
Name of the parties: George Ronney Steel v. “Brivibas partija” [the Liberty party] and SIA “Latvijas Televizija” [The Latvian Television Ltd]

Reference number: case No. C29240503
Address of the webpage: http://politika.lv/article/varda-briviba-un-religiskas-jutas-latvijas-karikaturistu-ieveribai (in Latvian)
Brief summary: The discriminatory advertisment - the same one that was at issue in the previous case - constituted an “illegal attack on dignity and honour” within the meaning of Art.2352 a of the Civil Law.

Additionally, the Constitutional court has decided two cases of relevance to the issues covered by the Directives:

Name of the court: The Constitutional court
Date of decision: 20 May 2003
Name of the parties:
Reference number: case No. 2002-21-01
Address of the webpage: http://www.satv.tiesa.gov.lv/upload/2002-21-01.rtf.
Brief summary: In this decision the provisions of the law setting the age limit of 65 for occupying the post of university professor or associated professor, as well as highest administrative positions in universities and scientific institutions was invalidated as discriminatory. The challenge was based on the non-discrimination article and the article on right to work (Art. 106 "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications"); the main arguments were that to limit the right to work based on age, not abilities or qualifications, as provided for by Art.106, is contrary to this article, and that the process of assessing of abilities should be individualized, not using age as proxy. The Constitutional court held that the restrictions were not proportionate, as the evidence showed they were not suitable for attaining the aim sought, namely, to attract young people to academia. Since the Constitutional court held that the restrictions violated the right to work and thus were invalid, it did not consider whether they were also discriminatory.

Name of the court: The Constitutional court
Date of decision: 18 December 2003
Name of the parties:
Reference number: case No. 2003-12-01
Address of the webpage: http://www.satv.tiesa.gov.lv/upload/2003-12-01.rtf
Brief summary: In this decision the provision of State Civil Service Law providing that upon reaching the pension age the person has to retire from the civil service unless the superior decides otherwise was upheld. The challenge concerned right to work (Art.106), right to hold a position in civil service (Art.101) and right not to be discriminated against (Art.91). The main argument related to discrimination was that persons of comparable qualifications are treated differently based on whether they have reached pensioning age, and also that gender-based discrimination had taken place, as pensioning age still differs for men and women.

The Constitutional court held that the regulation of civil service relationships may differ from that of employment relationships and that restrictions were proportionate,

keeping in mind the necessity to ensure good administration and the interest of the society in ensuring that the corps of civil servants does not age and the age equilibrium in it is maintained. One of the arguments of the court was that it is also a question of employment policy and that by restricting the right to work of persons who have other source of income – namely, a pension – the possibilities to work of persons who can only earn their living by work are broadened.

The court also took into account the empirical evidence that showed that only about 1/7 of the persons concerned by the norm were actually dismissed from the service, while the other 5/6 continued to work.

The case of Sanita Kozlovska v. SIA “Palso” mentioned above to date remains the only case actually brought by a Roma person. No new cases have been decided in 2011.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

At the constitutional level the principle of non-discrimination is enshrined in Art. 91 of the Satversme (the Latvian Constitution) providing that "All persons in Latvia shall be equal before the law and the courts. Human rights shall be observed without discrimination of any kind".

Art. 91 refers to "discrimination of any kind" without specifying the grounds and thus covering all possible grounds, including the grounds of the two Directives – thus also the discrimination based on sexual orientation also in relation to other fields, not only employment . As the Constitution stands highest in the hierarchy of norms, this permits an argument that a non-exhaustive list of grounds in fact applies also in cases of laws that only contain an exhaustive list of grounds in their non-discrimination clauses,[5] although in practice this would inevitably complicate the matters by requiring weighty arguments to counter the *inclusion of the one is the exclusion of another* argument.

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

While this recognises the binding force of international treaties without giving express indication as to the place of international treaties in the hierarchy of norms, the Constitutional court has adopted the doctrine that the norms of the Constitution have to be interpreted in the light of international human rights standards binding upon Latvia.[6] 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.

[5] 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.

[6] Constitutional Court 30 August 2000 judgment in case No.2000-03-01, http://www.satv.tiesa.gov.lv/upload/2000-03-01.rtf.

This also indicates the place of international treaties binding on Latvia in the hierarchy of norms: they are below the Constitution yet above the ordinary laws, and ordinary laws and all subordinate norms must comply with these treaties.[7]

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 which is by far a leader in using international legal instruments, but also courts of general jurisdiction are starting to rely on it, or at least refer to it increasingly. It also must be noted that the plaintiffs in the Constitutional Court are increasingly relying not only on the non-discrimination clause of the Satversme, but also on those of international treaties binding on Latvia – primarily the ECHR – and that the Constitutional Court has in certain cases examined, inter alia, whether Art. 14 of the ECHR has been violated.[8] Importantly, the Constitutional Court has also held that where the Constitution provides for a higher standard of protection that the one provided for by the international agreements binding on Latvia, the higher standard applied.

b) Are constitutional anti-discrimination provisions directly applicable?

The Constitution generally is regarded as directly applicable. It was first in the "Compensation of losses case"[9] that the Constitutional court held that Constitutional norms can be applied directly.

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

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

[9] The 5 December 2001 decision in the case No. 2001-07-0103, available at http://www.satv.tiesa.gov.lv/upload/2001-07-0103.rtf. 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.

While the petitioner argued discrimination because a change in the law failed to provide for the compensation of losses in his case, the Constitutional court held that Art.92 of the Constitution could be applied directly and that the absence of a concretising law cannot serve as the ground for refusal of the court to accept the claim.

For a while the situation was complicated by the uncertainty whether it was the right or possibly the duty of the courts of general jurisdiction to refer cases of doubt concerning the compliance of a norm with a norm of higher legal force to the Constitutional court,[10] but the Administrative procedure law was amended to provide also for referrals by the administrative courts if there is doubt about the compliance of a norm with the constitutional norm or a binding international law. As the number of court references, including the ones by the administrative courts, is gradually growing, it appears that the decision making on compliance of legal norms with the norms of Constitution or binding international document is being concentrated within the hands of the Constitutional court, while administrative courts retain the power to apply the highest norm if the discrepancy occurs on the lower levels of the hierarchy of norms.

This, however, raises the question to what extent is the Constitution directly applicable. At the current stage it would seem safe to state that the Constitution is directly applicable whenever it is the basis for the claim of the individual against the state, and this claim is not recognized by the legislation, as was the case in the "Compensation of losses case" referred to supra. In other cases, including, most probably, most of the more complicated "claims" cases, the case would have to go up to the Constitutional court – either by means of court referral or, after exhaustion of all other remedies, by the means of constitutional complaint, which can be introduced by any person after exhausting other available remedies.

c) *In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

The main problem is that the Constitution is generally not regarded as directly applicable to actions by private individuals, and thus lacking horizontal effect; hence, while it would be possible to argue the applicability of the principle of non-discrimination to the public sphere even in the absence of any implementing legislation, in the private sphere such legislation is crucial.

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

The recent case law suggests that the international norms – and probably also constitutional norms, although the courts generally still seem to be reluctant to refer, or more than just refer, going into substance instead, to them – can be of importance when interpreting the duties contained in ordinary legislation and thus, by the combination of the two, relied on to impose duties on private parties that may not be obvious from just looking at the legislation; however one has to keep in mind the need to comply with the requirement that the law be sufficiently precise to enable the individual to foresee the consequences of his actions.

Thus, in the Steel case[11] where the notion of "illegal attack on dignity and honour" contained in Art. 2352 a of the Civil Law was at issue, the court relied on, inter alia, Art. 89 of the Constitution and the Convention on the elimination of all forms of racial discrimination to conclude that the respondent's actions had in fact been illegal.

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

Similarly, in the Smagars case[12] the discrimination, even if nowhere expressly prohibited, was found "unacceptable in a democratic state based on the rule of law" and also held to constitute an attack on dignity on honour, and in the Sants case[13] the court referred to the constitutional non-discrimination clause – which contains no listing of grounds – to infer that the Labour Law prohibits differential treatment based on sexual orientation, even if at the time of the adjudication of the case at first instance this ground was not listed expressly.

[11] George Ronney Steel v. "Brivibas partija" [the Liberty party] and SIA "Latvijas Televizija" [The Latvian Television Ltd].
[12] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law.
[13] The 25.05.2005 Riga city Ziemeļu district court judgment in case No. C32242904047505, see under 0.3 Case law.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

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

The grounds which are commonly referred to in Latvian legislation are: race, ethnicity (sometimes called national origin, an equivalent of nationality), gender, language, party membership, religious or political, "or other" opinions – which encompasses belief, also non-religious, property or social status, position occupied and origin, and sometimes – also health condition,[14] place of residence and occupation.

The one ground that was expressly prohibited relatively recently – by 21.09.2006 amendments to the Labour Law - is sexual orientation. Thus, far the Labour Law remains the only law explicitly prohibiting discrimination on grounds of sexual orientation.

Sexual orientation remains a controversial topic, which was demonstrated both at the time of the adoption of the new Labour Law – the most advanced law in terms of outlawing discrimination – and when adopting the first amendments to it[15] aimed at removing some of the remaining deficiencies and at bringing the Labour Law into complete compliance with the requirements of the Directives. Both times during the examination of the draft law by the responsible Parliamentary committee the express reference to sexual orientation in the non-discrimination clause was deleted and "other circumstances" was added instead in order to leave the list open. The situation repeated itself in 2006 when on 15 June the Parliament again chose to remove the express reference from the draft amendments; the President vetoed the resulting law stating it did not comply with Latvia's EU obligations. On the repeated vote on the law on 21.09.2006, despite the upcoming Parliamentary election and hence the political climate which did not seem favourable, the law including reference to sexual orientation was adopted by 46 votes "for", 35 "against" and 3 abstentions, nine registered MPs failing to take part in the vote at all. The amendments to the Law on Social Security adopted on 01.12.2005 - in fact, the second Latvian law transposing the Race Directive – omits express reference to sexual orientation while listing a number of other grounds, the list being open-ended. Similarly, the anti-discrimination provision of the Law on self-employed persons omits a reference to sexual orientation, limiting the list to gender, race and ethnic origin, as does the Law on Consumer Protection. That the general attitude – including that of MPs – has not changed much was demonstrated once again when the Parliament, voting on the proposed amendments to the Code of administrative offences to prohibit differential treatment chose not to mention specific grounds. The initial version of the Patients'

[14] Izglītības likums [Law on Education], Bērna tiesību aizsardzības likums [Law on Protection of the rights of the child].
[15] First amendments dealing with discrimination adopted on 07.05.2004.

Rights Law elaborated in 2005, and adopted in the first reading on 14 December 2006 prohibited the restriction of patients' rights also on the ground of sexual orientation. On 20 December 2007 during the second reading following the proposals by the parliamentary Human Rights and Public Affairs Commission, Social and Labour Affairs Commission sexual orientation was omitted, and on 17 December 2009 the parliament adopted the law in the third reading leaving the list of prohibited discrimination grounds open ended. In January 2010 the parliamentary Education, Culture and Science Commission decided not to include sexual orientation among prohibited discrimination grounds in the amendments to the Education Law, arguing that the inclusion of the ground would jeopardise the adoption of the law.

However, even in the absence of such express reference, in the first case where discrimination based on sexual orientation was alleged[16] the court held the discrimination based on sexual orientation was prohibited.

In any case, the Civil Procedure Law requires that the Latvian legislation be applied to the extent it does not contradict the directly applicable EU legislation; this requires the courts to consider sexual orientation as a prohibited ground of discrimination even in the absence of its express inclusion in the law, at least in the cases concerning vertical relationships with the state, and as the judgment mentioned above showed it was not even an issue whether it was prohibited or not; one may only speculate whether the courts would consider it as coming under "other circumstances" only in claims against the state or in cases brought against private parties as well.

The Labour Law, one of the laws transposing the Directives and addressing the issue of discrimination systematically, lists "race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances";[17] it is the only law to mention sexual orientation, and along with the Law on Social Security amended 01.12.2005 which employs the same wording, and Consumer Rights Protection Law it is one of the three laws that specifically refer to disability, and along with Administrative Procedure law and Law on Advertising,[18] one of the four laws that refer to age. The Criminal Procedure Law adopted in 2005[19] lists origin, social and property status, occupation, citizenship, racial and ethnic origin, attitude towards religion (a euphemism for religious and non-religious belief), gender, education, language, place of residence and other circumstances.[20]

[16] The 25.05.2005 Ziemeļu district court judgment in case C32242904047505.
[17] At the 25.05.2005 Ziemeļu district court judgment in case C32242904047505 mentioned above indicates, so far at least sexual orientation has been considered to come under such "other circumstances'.
[18] Reklāmas likums, adopted 20.12.1999.
[19] Kriminālprocesa likums, adopted 21.04.2005.
[20] While sexual orientation has been considered to come under "other circumstances" at least in the context of labour law even prior to its express inclusion (see *Sants* case under 0.3 Case law), there is no case law confirming that also age and disability would be considered as coming under other circumstances in the absence of specific reference to them.

Whereas Law on self-employed persons neither refers to sexual orientation nor to age and disability, after having been finally adopted on 21.05.2009,[21] the law only contains gender, race and ethnic origin as forbidden grounds. In other laws predating the time when the transposition of EU legislation began the listing of grounds is random, never covering all of the required grounds and, most importantly, not all of them leave the list of grounds open.

One of such laws which contains a closed, yet not all-encompassing list of grounds is the Law on Scientific Activity[22] which provides, in Art. 3, that "Everybody has the right to engage in scientific activity regardless of race, ethnicity, gender, language, party membership, religious or political opinions, property or social status, position occupied and origin". It is also important to note that in certain areas the person's citizenship or other status is a condition for access to certain services. This applies, for example, to the law on Education[23] or to access to social security which is limited to Latvian citizens, non-citizens and third-country nationals to whom a personal ID number has been issued, with the exception of persons in possession of temporary residence permits only, but including persons receiving subsidiary protection (Art. 3.(1) of the Law On Social Services and Social Assistance).[24]

A similar provision on the possession of a 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 a 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 permits.[25]

The Law "On the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups"[26] 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:

[21] Fizisko personu – saimnieciskās darbības veicēju – diskriminācijas aizlieguma likums [Law on prohibition of discrimination of natural persons who are economic operators], adopted 21.05.2010.
[22] Likums par zinātnisko darbību, adopted 10.11.1992.
[23] "Every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by Latvia, or person to whom a permanent residence permit has been issued, as well as citizens of the European Union states to whom temporary residence permits have been issued and their children have equal rights to receive education independently from property and social status, race, ethnicity, gender, religious or political opinions, health condition , occupation and place of residence".
[24] Socālo pakalpojumu un sociālās palīdzības likums, adopted 31.10.2002.
[25] Constitutional Court judgment in the case No 2001-11-0106 adopted 25 February 2002, available at http://www.satv.tiesa.gov.lv/upload/2001-11-0106.rtf.
[26] Likums par Latvijas nacionālo un etnisko grupu brīvu attīstību un tiesībām uz kultūras autonomiju, adopted 19.03.1991.

> "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 to occupy a position according to their skills and qualifications, are prohibited."

While in those cases when the particular law provides a closed list of grounds or does not contain any anti-discrimination clause at all, as is, for example, the case with the Law on Housing,[27] it is possible to invoke Art. 91 of the Constitution as far as the public sphere is concerned; in the private sphere there are, in the absence of a general anti-discrimination law, no guarantees of equal treatment. As an exception, the protection against discrimination on two grounds has to be noted – Art. 78 of the Criminal Law[28] protects against instigation of national, ethnic or racial hatred and Art. 150 against hurting person's religious feelings and instigation of hatred based on person's attitude towards religion or atheism. Art. 149.1 provides a more general protection making punishable discrimination on the basis of ethnic or racial origin, as well as violation of prohibition of discrimination provided for in other legal acts (thus depending on the existence of such legal acts) if committed repeatedly within a year.

In early 2011, MPs from *All for Latvia/Fatherland and Freedom party /LNNK* (Visu Latvijai! Tēvzemei un Brīvībai/LNNK) submitted proposals to amend the Labour Law that would prohibit employers from requiring disproportionate foreign language proficiency from employees. The amendments referred to both the official EU and non-EU languages, but were primarily aimed at restricting the requirement for Russian language proficiency[29], to prevent the alleged discrimination of Latvians on the labour market. Throughout the year the proposals were voted down and submitted several times, and on July 14 the Parliament adopted the amendments in the 1st reading. The proposed amendments were strongly criticised by the largest employer organisations, including the Latvian Employer Confederation, Latvian Chamber of Trade and Commerce who called upon the responsible parliamentary commission not to change the law. They were also criticised by the Ministry of Foreign Affairs, Ministry of Justice, and domestic human rights organisations.

The following amendments to the Labour Law are being envisaged - Section 29 $1.^{1}$ prohibits employer from requiring specific foreign language proficiency if work duties do not require the use of this foreign language. Section 29 $3.^{1}$ foresees that in case of a dispute the employee indicates conditions that may be the basis of his/her direct or indirect discrimination on ground of language it is the duty of the employer to prove that differential treatment is based on objective criteria that are not linked to the employer's language proficiency, or that the specific language proficiency is an objective and justified requirement for the fulfilment of specific work or occupation.

[27] Likums par dzīvojamo telpu īri, adopted 16.02.1993; the issue of prohibition of differential treatment in access to housing since 2008 is covered by the amendments to the Law on Consumer Protection.
[28] Krimināllikums, adopted 17.06.1998.
[29] Russian is the second widest spoken language in Latvia. It is the first language of Russian minority as well as a significant number of Ukrainians, Byelorussians.

Section 32 2.[1] prohibits the indication of specific foreign language requirements in a job advertisement, except for cases when it is required for the fulfilment of a specific job or post. Section 32 2.[2] foresees that in case of a dispute the employee indicates conditions that may be the basis of his/her direct or indirect discrimination on ground of language it is the duty of the employer to prove that differential treatment is based on objective criteria that are not linked to the employer's language proficiency, or that the specific language proficiency is an objective and justified requirement for the fulfilment of specific work or occupation.

The language is not explicitly included among prohibited discrimination grounds in the Labour Law. The law leaves a non-exhaustive list. In 2006, in the case Sanita Kozlovska v. SIA "Palso" (see under 0.3 Case-law) whereby the employer had indicated the accent in Latvian of the plaintiff – a Roma - as the reason for refusal to employ her, the court held that the plaintiff had been discriminated against on the basis of her national origin.

To summarize, the Constitution prohibits any kind of discrimination, but it does not mention specific grounds; moreover, it only applies directly in the public sector and generally does not have horizontal effect, which means that there is no prohibition of discrimination in the private sphere unless a specific law is in place. A number of other laws contain the principle of non-discrimination, but only the Labour Law specifically mentions all of the grounds covered by the two Directives; moreover, some of these laws cover only specified grounds without leaving the list open.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

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

The Latvian anti-discrimination law does not contain any definitions of the grounds of discrimination, and they have not been at issue in any of the court cases decided so far; as the survey carried out by the Latvian Association of Personnel Management indicated, it appears that some of them, particularly the term "social origin" seem enigmatic and would need further explanation while it is clear that "race" would be interpreted using the definition contained in Convention on the elimination of all forms of racial discrimination, one may well imagine that when applying the non-discrimination provision of the Labour Law the courts in certain circumstances might have difficulties deciding whether the discrimination was based on person's race or skin colour, since this law contains a reference to both. Disability which is included in the Labour Law, the Law on Social Security, Consumer Rights Protection Law and

Patients' Rights Law (the Latvian term for it ("invaliditāte")) assumes a long-term or non-transitional very severe, severe or moderate level limited functioning , and it is divided into 3 possible degrees of disability in accordance with the provisions of the Disability Law[30] depending on the gravity of the impairment.

The new Disability Law adopted on 25 May 2010 further specifies moderate disability as the loss of 25-59% of the capacity to work, severe disability as the loss of 60-79% of the capacity to work, very severe disability as the loss of 80-100% of the capacity to work. These amendments specifying the loss of capacity will come into force on 1 January 2013. Until then the 3 degrees of disability as previously spelled out in Law on Medical and Social Protection of Disabled Persons without specifying loss of capacity to work will remain used.

The issue, though, may arise whether the term covers only those disabilities that have received official qualification and as the result of which the person's status as disabled have been officially recognized or whether it covers any de facto disability. This can be problematic and amount to insufficient implementation unless the courts, when confronted with this issue, will interpret the notion of disability in a compatible way.

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

There are no definitions of the grounds elsewhere in the law. Speaking of disability, although it is not defined, the term "disability" in Latvian assumes a long-term or non-transitional very severe, severe or moderate level limited functioning which depending on the gravity of the impairment is divided into 3 possible degrees of disability in accordance with the provisions of the Disability Law; the degree of disability to be recognized is decided on by a medical commission upon evaluating the person's condition. While Recital 17 of Directive 2000/78/EC is not expressly included in legislation, it is generally understood that the idea of anti-discrimination is not to require hiring of persons not capable of doing the work.

c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

The three laws that refer to age as a prohibited ground of discrimination are the Labour Law and the law on Social Security, Law on the Rights of Patients, and they do not limit the scope of "age".

[30] Disability Law (Invaliditātes likums) adopted on 25 May 2010.

Prior to the 21.09.2006, when sexual orientation was explicitly included among the prohibited discrimination grounds in the Labour Law, sexual orientation could only be argued be subsumed under "other circumstances", and as the only case on sexual orientation-based discrimination decided so far indicates, whether or not sexual orientation is covered did not seem to be an issue.[31]

d) Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.
Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

The issue of multiple discrimination has not been addressed in Latvia, and in the only case where multiple discrimination was found to exist – the Stūriņa case[32] - it was found at the court's own initiative, and the line of reasoning was not well developed. Given the general scarcity of anti-discrimination case-law in Latvia, it does not seem the lack of case law on multiple discrimination would be a separate issue; it is difficult to estimate whether the national courts might find a possible case on multiple discrimination so difficult as to warrant specific national or European level legislation on it, however, it seems safe to state that the courts would certainly draw upon the experience of courts of other member states if such an issue were to arise.

e) How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?

In the Stūriņa case, decided by the Cēsu district court on 05.07.2005, in which the court held that the plaintiff who from 1997-2004 had regularly been employed by the municipality for the winter season at the heating central had been discriminated against on the basis of her gender and property status by not being employed again in the 2005 season, the multiple discrimination was found at court's own initiative. The plaintiff had only argued gender discrimination, but not property status-based discrimination. The municipality had, instead of employing the plaintiff, employed another person who had not even responded to the call for applications and was already employed by the municipality, the municipality arguing that "the remuneration of the employees of the municipality is low", thus supposedly taking into account their low income ("property status"). However, this line of reasoning is not well developed, and it would be speculative to make any general conclusions about how the courts would handle multiple discrimination cases. In this particular case the court did not

[31] The 25.05.2005 Ziemeļu district court judgment in case C32242904047505, see under 0.3 Case law above.
[32] Cēsu district court, the 05.07.2005 judgment in case No. C11019405 Anga Stūriņa v. Straupe municipal council, see under 0.3 Case law.

specifically mention that the finding of multiple discrimination would have had an impact on the amount of moral or material damages awarded.

2.1.2 Assumed and associated discrimination

a) Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).

The national law does not explicitly prohibit discrimination on either assumed or perceived characteristics or the one based on association, with the exception of Art. 3 of the Law on the Rights of the child that refers to race etc. not only of the child himself, but also of his parents, guardians and family members, thus protecting against discrimination by association, although to a limited extent only. The wording of most of the anti-discrimination provisions in Latvian laws referring to a person being treated differently because of his/her (meaning – the particular person's who is invoking the provision) race, religious conviction etc. certainly would render it easier to address the discrimination based on assumed characteristics than the one based on association, although the latter could also be argued to be discrimination "based on other circumstances" (where the list of the grounds is left open). However, in the absence of relevant case law testing these two issues the only thing that can be said with certainty is that the law contains no express prohibitions.

b) Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?

There is no express prohibition of discrimination based on association, however, it might be possibly argued to exist as protection against discrimination "based on other circumstances" where the list of the grounds is left open. See under a).

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

a) How is direct discrimination defined in national law?

Art. 29(5) of the Labour Law states that "Direct discrimination exists if in comparable situation the person, based on her gender, is, was or may be treated less favourably than another person". Art. 29(9) applies the protection against discrimination, including this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances. This definition - but instead of the reference to gender only in the main clause directly listing the same grounds

with the exception of sexual orientation in an open-ended provision – is used also in the amended Law on Social Security.

The Law on Consumer Rights Protection limits the same definition to the grounds or gender, race, ethnic origin and disability, while Law on the Support for the Unemployed and Job Seekers to gender, race and ethnic origin. The Law on prohibition of discrimination of natural persons who are economic operators (gender, race and ethnic origin) and the Law on Education (property and social status, race, ethnicity, gender, religious or political opinions, health condition, occupation and place of residence) refers to the definitions used in the Law on Consumer Protection.

While technically the Labour Law applies only to employment relationships[33] (including pre-contractual relationships, as both the reference in Art. 29(1) to "establishing employment relationship" and Art. 34 dealing with the consequences of violating the prohibition of differential treatment when establishing employment relationship indicate) and employment-related claims, - thus by definition excluding self-employment and related claims which is a regulated in the Law on prohibition of discrimination of natural persons who are economic operators, it is not inconceivable and, indeed, very likely – at least as long as there is no general anti-discrimination law or definitions in other laws apart from the Law on Social Security and the Law on Consumer Protection - that this definition would be used in other cases when the issue of direct discrimination is raised, especially since it would also follow from the international treaties binding on Latvia.

The amended Criminal Law (amendments adopted on 29.06.2007) does not contain a definition of discrimination, but instead refers in Art. 149-1 to "race or ethnic discrimination or the violation of the prohibition of discrimination provided for in other legal acts" – thus de facto referring back to the Labour Law definitions.

b) Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)

Art. 32 of the Labour Law specifically prohibits indicating a particular gender in job vacancies announcements, unless a particular gender is an objective and substantiated requirement for the particular job, or mentioning age limits, except where according to the law persons of a certain age cannot perform the job in question. While the letter of the law thus would seem to limit the protection from discrimination in vacancy announcements to these two grounds, taking into account in particular with the Law on Advertising, Art. 4.2.1. of which prohibits discrimination on the grounds of person's "race, colour, gender, age, religious, political or other views, national or social origin, property status or other circumstances" and the case

[33] It must be noted that after the 02.11.2006 amendments to the State Civil Service Law the provisions of the Labour Law concerning prohibition of differential treatment apply to civil service relationships, including specialized civil service relationships; the latter includes policemen, border guards, individuals in diplomatic or consular service and certain other institutions.

law of the Centre for Consumer Protection which imposed two administrative fines in 2007 for discriminatory advertising based on race and sexual orientation and cases taken up by the State Labour Inspectorate [34] – such cases are considered as direct discrimination.

From 1 January 2008 until 31 July 2011, the State Labour Inspectorate took decisions in 11 cases concerning violation of prohibition of discrimination, two cases in 2008, two in 2009, one in 2010, and six in the first seven months of 2011. The majority of cases concern advertisements for job vacancies indicating unjustified requirements concerning potential employee's gender, age or ethnicity. In February 2008 a private company was fined 200 LVL (~285 EUR) for having indicated "preferably Latvian" in a job advertisement. In another case a private company was issued a warning for having placed a job advertisement for an accountant in an internet portal on 28 February 2008 and having indicated gender (women) and age (up to 30). On 13 July 2009 it issued a warning to a private company "SIA Brīvmežs" for having placed a discriminatory ad for a job vacancy indicating gender (women) and age (aged 25-40). On 18 January 2011 SLI issued a warning to a private company SIA "Fantasy park" for having placed a discriminatory ad for a job vacancy for waitresses indicating age 19-25. On 7 March 2011 SLI issued a warning to a private company SIA "Rosta Engineering" for having placed a job ad seeking managers for discriminating on ground of age by indicating preferable age 25-35. Other cases concerned job ads discriminating on grounds of gender, unequal pay.

The issue of discriminatory statements has a more mixed record; from the cases mentioned under 03.Case law it can be seen that in two cases (the Kristofers Edžugbo and Peteris Mensahs v. Liberty party and Latvian television (the so-called "Los Amigos case") and in the George Ronney Steel v. "Brivibas partija" [the Liberty party] and SIA "Latvijas Televizija" [The Latvian Television Ltd] case) the protection against discrimination was provided based on the Civil Law anti-defamation provisions, the court using its finding of discrimination as a means to find that defamation had taken place. However, in the I.Kozlovskis v. L.Ozoliņš case the analogous argument of the plaintiff failed.

Thus it could be said that the Latvian case law on this question is not yet sufficiently established to be able to claim that protection against discriminatory statements will be available in all cases in the absence of specific provisions in the law, even if in some cases discriminatory statements have been successfully challenged using the anti-defamation law.

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

[34] The 14.08.2007 decision in case E04-DAU-154, available electronically at http://www.humanrights.org.lv/upload_file/spriedumi%20datu%20bazei/reklama.pdf and the 17.04.2007 decision in case E03-RIG-132, available electronically at http://www.humanrights.org.lv/upload_file/FAMARDESI.pdf.

According to Art. 29(2) of the Labour Law the justification for differential treatment is possible "only in cases where a particular gender [and, by virtue of Art. 29(9), other grounds] is an objective and substantiated precondition, which is proportionate to the goal sought to be achieved, for performance of the relevant work or the relevant employment". Also Art. 2.1(6) of the Law on Social Security and, Art.3(1) of the Law on prohibition of discrimination of natural persons who are economic operators use the same general justification of direct discrimination.

d) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

There are no specific provisions specifying the comparison concerning the ground of age

2.2.1 Situation Testing

a) Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.

The national law is silent on the issue of situation testing, thus neither expressly permitting not prohibiting it, and there is no no case law on it.

To some extent it might be considered that in the Smagars case[35] the plaintiff himself did the situation testing, as after the first instance of being refused admittance to the nightclub he returned with the TV team for a "testing", yet it does not tell anything of how the courts would react to the testing carried out by a person other than the victim of discrimination himself. The crucial issue would be whether the court would consider situation testing as being of relevance to the case at hand, since according to Art. 94 of the Civil Procedure Law the court can only accept evidence which is of relevance to the case and the defendant might conceivably argue that the situation tested is distinct from the case under the consideration; in the absence of relevant case law it is not possible to predict how the courts would treat such testing, and the extent of the willingness of the courts to consider it as evidence based on the argument of experience of other countries would probably depend on each particular court, although it is undeniable that evolution in other countries would certainly influence also the Latvian courts and law on the books. The means of proof in this case thus would be the testimonies of the witnesses, and the general rules concerning such testimonies (such as prohibition of hearsay, rules on privileged witnesses etc.) would apply

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

b) Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc)

The Latvian Centre for Human Rights (LCHR), for the first time in Latvia, conducted situation testing at night clubs during the night of 5-6 March 2011.[36] The aim of it was to promote situation testing as a method for collecting information on treatment of different groups, as well as to highlight the risks of racial and ethnic discrimination. LCHR tested five nightclubs in Riga, using two groups of testers, as to whether the nightclubs treat differently customers depending on their skin colour. In all five nightclubs in Riga no discrimination of this sort was identified. However, the event led to media reporting, and awareness raising on the situation testing as a method to prove discrimination. The situation testing was conducted within a European-wide initiative "the first Europe-wide testing night against racial discrimination" coordinated by the European Grassroots Antiracist Movement (EGAM).[37] The activists tested the nightlife places in the main cities of 14 countries of Europe; in 15 cities, 35 nightlife places were found to be carrying out discriminatory practices.

c) Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

There is no specific reluctance, just presumably no suitable occasions and a lack of case law in general, and the developments on situation testing in other EU countries may impact on the use of situation testing as evidence in courts.

d) Outline <u>important</u> case law within the national legal system on this issue.

There is no case law.

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

a) How is indirect discrimination defined in national law?
The Labour Law contains the definition of indirect discrimination that complies with the definition used by the Directives. Art. 29(6) of this law now provides:

"Indirect discrimination exists if an apparently neutral provision, criterion or practice causes adverse consequences for persons belonging to one gender, except in cases where such provision, criterion or practice is objectively justified by a legitimate aim, the means for attaining which are proportionate." Again, Art. 29(9) applies the protection against discrimination, including this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other

[36] Latvian Centre for Human Rights, *Situācijas testēšanas eksperiments cīņā pret rasu diskrimināciju*, http://www.humanrights.org.lv/html/30516.html?yr=2011.
[37] Information about the first Europe-wide testing night is available in English at (accessed on 22 August 2011): http://www.scribd.com/doc/55608978/First-European-Testing-Night-EGAM-Report.

circumstances, and this definition (with the exclusion of direct reference to sexual orientation) is in the Consumer protection law[38] (in relation to four grounds).

Until amendments to the Labour Law in 04.03.2010 the definition was "indirect discrimination exists if in a comparable situation an apparently neutral provision, criterion or practice causes adverse consequences for persons belonging to one gender, except in cases where such provision, criterion or practice is objectively justified by a legitimate aim, the means for attaining which are proportionate."
"In a comparable situation" was deleted from the definition of indirect discrimination in the Labour Law following the reasoned opinion by the European Commission in infringement procedure case Nr 2006/2527 of 25 June 2009. The EC had highlighted that Latvia by requiring the comparability of situations had narrowed the definition of indirect discrimination. This is indicated in the position of Latvia to the reasoned opinion.[39]

Education Law[40] and the Law on the support to unemployed persons and job seekers refer to definitions used in the Consumer Protection law.[41] Also, it is very likely that this definition would be used for interpreting the notion of indirect discrimination in other laws that contain no definition of it. The Law on Social Security, however, retains the old definition of "indirect discrimination exists if in a comparable situation an apparently neutral provision, criterion or practice causes or may cause adverse consequences to persons in connection with grounds of race, ethnicity, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, or other circumstances."

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

The test for justification is the same one as for direct discrimination: legitimate aim and proportionate means ("where such provision, criterion or practice is objectively justified by a legitimate aim, the means for attaining which are proportionate."). Also the Law on Social Security and the Law on prohibition of discrimination of natural persons who are economic operators uses the same provision for both direct and indirect discrimination, stating that "differential treatment (with the exception of harassment) related to one of the [prohibited] grounds is permissible only if this treatment is objectively justified by a legitimate aim, the means for attaining which are

[38] The Law on prohibition of discrimination of natural persons who are economic operators refers to the definitions of the Consumer protection law.
[39] Informatīvais ziņojums. Latvijas Republikas nostāja uz 2009.gada 25.jūnija argumentēto atzinumu pārkāpuma procedūras lietā Nr 2006/2527.
[40] Izglītības likums, amendments adopted on 04.03.2010.
[41] Bezdarbnieku un darba meklētāju atbalsta likums, amendments adopted on 11.03.2010.

proportionate.". Art. 3.1.2. of the Law on Consumer Protection uses the same justification, but only in relation to indirect discrimination.

c) *Is this compatible with the Directives?*

The wording of the laws is compatible with that of the Directives, yet there exists no case law showing that also the courts interpret it in a compatible way.

d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

There are no specific provisions specifying the comparison concerning the ground of age, and no case law either.

e) *Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

In the case Sanita Kozlovska v. SIA "Palso" (see under 0.3 Case-law above) the employer had indicated the accent of the plaintiff – a Roma - as the reason for refusal to employ her.

The court held that the plaintiff had been discriminated against on the basis of her national origin, without specifying whether it considered it a direct or indirect discrimination; it noted that since there was no question that the Latvian of Kozlovska was adequate for fulfilling the tasks of a shop assistant, which, if it were not, would have been an objective reason for the refusal to employ her, refusal because of her accent was subjective and related to her national origin and hence discriminatory.

While there have been no other cases where language or accent was the issue, given the ethnic composition of Latvia and still very sensitive linguistic issues, this is an important case confirming that the anti-discrimination law applies also in this area.

2.3.1 Statistical Evidence

a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

The national law is silent on the issue of the use of statistical evidence, and there is no case law so far where it would have been used. The gathering of evidence for the purposes of civil proceedings is governed by the Civil procedure law, Arts. 110-112 of which determine the written evidence, which encompasses information on facts of relevance to the case, including data to show a prima facie case of discrimination, in any form. Art. 111 enables the party to request the court by means of a motivated request that certain evidence be provided, describing it and explaining why he thinks that this evidence is in the possession of the person concerned. Art. 112 provides for the right of the judge, at the request of one of the parties, to require that public entities or other legal or natural persons – which thus includes the respondents, even

if it is not expressly mentioned – provide the necessary evidence. If the person concerned does not provide the required evidence, while not denying that it is in her possession, the court may hold that the fact, for the proving of which this evidence was required, has been proved. However, if it is impossible for the person requested to provide this evidence, he/she has to notify the court explaining the reasons for this impossibility

Since so far these provisions have never been used in the context of discrimination cases by the courts of general jurisdiction, it is difficult to predict what might be the difficulties related to such requests, such as how specific the courts would require the description of the evidence sought to be, and how much extra effort to prepare the evidence for the presentation could be required from the respondent. However, the legal framework for requiring that certain data be provided certainly exists.

It must also be noted that one court that regularly makes use of statistical data is the Constitutional court, and both in the case where the age limit for occupying the post of university professor[42] and the case where the age limit for holding a position in civil service[43] was challenged the statistical evidence was important for the decision reached, as in one case it showed the inappropriate character of the limitation, namely, the inability to attain the aim sought, and in the other one, the lack of impact of the provision challenged. Hence also for the courts of general jurisdiction the idea of using statistical evidence would not be a complete novelty, and the reference to the experience of other countries might play some role as well, although at this stage it is entirely speculative.

b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*

The general lack of case law precludes discussion of any reluctance to use statistical data; concerning the Constitutional court, see under a).

c) *Please illustrate the most important case law in this area.*

None.

d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

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

The main law regulating the data collection is the Law on protection of data of natural persons,[44] which defines as sensitive data the data on a person's race, ethnic origin, religious, philosophical or political conviction, trade union membership, as well as data which provide information on person's health (which would cover also disability) or sexual life (apparently, even if not expressly, covering also sexual orientation).

Art. 11 in principle announces the prohibition of processing of sensitive data, but contains a range of exceptions, among which, in addition to written agreement of the data subject that his/her data be processed, are: when the legal norms governing an employment relationship provide for data procession without the agreement of the data subject; when the processing of data is necessary for the purposes of medical treatment; when processing is necessary for provision of social aid and is performed by the aid providers; or when processing of data is needed for statistical studies performed by the Central statistics department. All data processing systems need to be registered with the Data inspection office, which may refuse the registration if the law is not complied with.

Thus, in principle the employers are prohibited from keeping records in respect of ethnic or racial origin, disability, religion or belief or sexual orientation. However, obviously there are exceptions in the professions involving work with people where a medical certificate is needed, and in cases of disability in so far as it requires special accommodation. Theoretically, it might also be possible to keep a record of personnel's religious affiliation in case the employer wanted to enable the employees to observe their particular religious holidays; however, this is not the practice in Latvia.

As far as state registers are concerned, the 1998 Population register law requires that ethnicity of the person be recorded; Art. 12 of this law expressly prohibits including in the register information on a person's race or colour, religion or belief and membership of a denomination, political convictions or party membership, sexual orientation or illnesses, as well as – more generally – "other information not provided for in Art. 10 of this law", which would also encompass disability.

The person's ethnicity is determined by the ethnic origin of his/her parents, and in case of different ethnic origins of parents only one ethnicity can be recorded for the child,[45] although this entry can be changed only once by choosing the ethnicity of another parent or grandparent. Thus, the ethnicity entry does not necessarily permit to make conclusions about the person's race or colour. The classificatory of ethnicities drawn up by the Central Statistical bureau and used *inter alia* for the purposes of population census contains 180 possible ethnicities, including Roma.

[44] Fizisko personu datu aizsardzības likums, adopted 23.03.2000.
[45] After the entry into force on 15.04.2005 of the new Civil registry law the practice, according to the employee of the registry interviewed, in such cases is to record "ethnicity not chosen" to enable the child to chose the ethnicity of one parent when receiving a passport at the age of 16.

The recording of person's ethnicity was also done during the 2000 Population census, which also asked the question about person's native language, but not the question about his/her religious affiliation. In the 2011 Population census, among other questions, residents were asked to indicate their ID number (which includes info about the date of birth), gender, country of birth, country of nationality and type of citizenship (citizen, non-citizen, refugee, stateless), marital status, education, economic activity, place of residence, type and characteristics of dwelling, as well as ethnicity, main language used at home (Latvian, Russian, Byelorussian, Ukrainian, Polish, Lithuanian, Other) and the use of Latgallian language.[46] The 2011 Population Census did not ask questions about disability, sexual orientation, religion.[47] Recording of the ethnic origin in passports is optional, as is the recording of ethnic origin in the Civil registry when registering marriage or birth of a child according to the Civil Registry law;[48] the latter law also permits the recording of person's religion or belief and membership of a denomination, if the person so wishes when registering marriage or birth of a child.[49]

However, while the law itself does not limit the choice of religion or belief to be registered, in practice the possibility to enter it into the registry is limited to the eight denominations which according to the Civil Law have the right to conclude marriages recognized by the state, i.e., Evangelical Lutheran, Roman Catholic, Orthodox, Old Believers, Methodist, Baptist, Seventh Day Adventist or Judaism; apparently, the computer program does not permit the registration of other religions, and according to the employee of the Registry interviewed this place would be simply left blank if the person stated he/she belonged to a denomination or world view other than any of these eight.

As there are no positive action measures in Latvia – perhaps with the exception of disability-related measures - it is difficult to say how the statistical data could be used in designing them.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

The Labour Law defines harassment as the “subjection of a person to such conduct unwanted by this person, including conduct of sexual character, which is related to the gender of the person, if the purpose of effect of this conduct is violating the dignity of the person or creating an intimidating, hostile, degrading or offensive

[46] Central Statistical Bureau, *Population and Housing Census 2011 form in English*.
[47] Ibid.
[48] Civilstāvokļa aktu likums, adopted 17.03.2005.
[49] In practice, it seems, judging from the interview with an employee of the Registry, the person is actually asked about her religious affiliation, which is then recorded unless the person refuses to provide this information.

environment" (Art. 29(7)). Again, Art. 29(9) applies the protection against discrimination, including this definition, to differential treatment on grounds of race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances. This definition (with reference to prohibited grounds which in the case of the Law on Social Security do not expressly include sexual orientation) is further used in the amended Law on Social Security and the Law on Consumer Protection (in relation to covered grounds (gender, race and ethnic origin, disability) only). Art. 29(4) of the Labour Law specifically provides that also harassment shall also be considered discrimination., Art. 2.1.(2) of the Law on Social Security and Art. 3.1.(7) of the Law on Consumer Rights Protection and Art. 2.1.(5) of the amended Law on the support to unemployed persons and job seekers list it as one of forms of differential treatment.

So far only the Labour Law, the Law on Social Security and the Law on Consumer Rights Protection and the Law on the support to unemployed persons and job seekers are the only laws to contain both the definition of, and reference to harassment. One may argue that because harassment is qualified by these laws as a form of discrimination, the prohibition of harassment can be regarded as implied also in those anti-discrimination provisions contained in other laws that do not expressly refer to harassment, yet in the absence of any harassment-related case law it remains only a theoretical possibility.

One may also argue that the gravest cases of harassment are covered also by Art. 156 of the Criminal Law providing for punishment for intentional violations of a person's dignity or honour orally, in writing or by conduct, which could be applied to cases when the person's dignity is offended by reason of membership in some group or particular characteristic, for example, sexual orientation or gender. However, there is no case law confirming such an interpretation and this thus remains only a theoretical possibility.

b) Is harassment prohibited as a form of discrimination?

As mentioned under a), Art. 29(4) of the Labour Law specifically provides that harassment also shall be considered discrimination., Art. 2.1.(2) of the Law on Social Security ,Art. 3.1.(7) of the Law on Consumer Protection and Art.2.1 (7) of the Law on the support to unemployed persons and job seekers, Art. 3 (2) Patients' Rights Law list it as one of forms of differential treatment or discrimination.

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

There are no widely known additional sources on the concept of harassment, including codes of practice, although it is very likely that some companies, especially of foreign origin, do have internal regulations on harassment.

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

Art. 29(4) of the Labour Law expressly states that "the instruction to discriminate shall also be considered discrimination".

This position is adhered to in Consumer Rights Protection law and the Law on Social Security, as well as in amendments to the Law on the support to unemployed persons and job seekers, Patients' Rights Law, Education Law (reference is made to definition of discrimination and forms of discrimination in Consumer Rights Protection Law) and while there is no comparable provision in any other law in force, due to the fact that instruction to discriminate is considered by the Labour Law as being discrimination, one may argue that it could be applied also to other laws containing anti-discrimination provisions, but no express reference to instructions to discriminate.[50]

Additionally, Art. 149-1 of the Criminal Law refers to "violation of the prohibition of discrimination provided for in other legal acts". Thus by using the Labour Law definition it could be argued that the instruction to discriminate is also covered. Besides, under the general provisions of Criminal Law the instruction to discriminate could qualify as incitement to discrimination.

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

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

a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial*

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

assistance from the State taken into account in assessing whether there is a disproportionate burden?
Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

Art 7(3) of the Labour Law provides that "To ensure implementation of the principle of equal rights in relation to the persons with disabilities it is the duty of the employer to take measures required by the circumstances in order to adapt the working environment, promote the possibilities of the persons with disabilities to establish labour relationships, fulfil work duties, be promoted or undergo professional training to the extent that such measures do not create a disproportionate burden for the employer." There are no more detailed provisions permitting assessment of the disproportionality of the burden, and no case law. However, according to the Cabinet of Ministers regulations No.166 adopted 10.03.2008 the costs of providing reasonable accommodation for employers hiring the unemployed persons with disabilities can be reimbursed up to 500 LVL (700 EUR), as well as a contribution (at least in the amount of the official minimum salary) to the salary of disabled person for up to 36 months, thus helping to alleviate the burden on the employer.

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

It must also be noted that the very concept of disability may be problematic, since Latvian law requires official recognition of disability (see footnote 33) and hence the issue may arise whether it covers only those disabilities that have received official qualification and as the result of which the person's status as disabled has been officially recognized, or whether it covers any *de facto* disability. This can be problematic and amount to insufficient implementation unless the courts, when confronted with this issue, will interpret the notion of disability in a compatible way.

The definition issue, of course, would have an impact not only on the protection against disability-based discrimination in general, but also on the issue of reasonable accommodation in particular. Thus far a court case concerning the dismissal on grounds of disability (See Case law, case No. C40066110) where it was established that the employer had breached equality principle by failing to provide for reasonable accommodation), has concerned an employee who had been officially conferred the status of a disabled person.

b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

Art. 12 of the Law on Social Security stating that persons with disabilities have the right to such social security as necessary for their involvement in the society, by creating for them suitable conditions for employment that correspond to their ability to work and interests might seem to indicate that reasonable accommodation might be required in areas outside employment. However, it is perceived as a declarative norm, and there are no express references to reasonable accommodation in any law with the exception of the Labour Law, although the Law on Education does speak of special education adapted to the needs of persons with special needs or health problems. The government Regulations No.579/2003 list the special equipment and measures, as well as personnel needed, for such a person based on their diagnosis, however, no concepts of reasonable accommodation or disproportionate burden are used.

c) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

Art. 7(3) of the Labour Law quoted under a) is part of Art. 7 dealing with the principle of equal rights, Art. 7(1) stating that "Everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair working remuneration" and Art. 7(2) specifically providing that the rights provided for in Art. 7(1) shall be ensured without any direct or indirect discrimination.

Thus the context in which the duty of reasonable accommodation is placed is that of equal rights and non-discrimination, even if the law does not expressly qualify the failure to provide reasonable accommodation as discrimination. Nevertheless, from the fact that amendments adopted on the same day expressly state in Art. 29(4) that harassment and instruction to discriminate shall be considered discrimination one could, using the inclusion of the one is the exclusion of another principle, argue that the legislator did not intend to regard failure to provide reasonable accommodation as discrimination. However, the absence of case law makes it impossible to draw any more exact conclusions.

d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

The Latvian law provides for no duty to provide reasonable accommodation on any of the other grounds.

e) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?

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

f) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

While the Latvian law (Construction Law Art. 3 (3))[51] does require that buildings and infrastructures meant for public use be designed in a way enabling the access of persons with disabilities, it has never been viewed in the context of the Directive, and there is no case law on it.

For some reason this requirement is often disregarded or observed only in a formal way; it can be the problem of the formulation of the law that does not make it sufficiently clear that this is a compulsory requirement and the lack of awareness in general. However, it could be said that the awareness of disability-related issues is rising. Nevertheless, for the time being access to public buildings, including courts, often remains difficult.

There is no monitoring mechanism on compliance with requirements concerning access to public buildings in issuing construction permits and putting the building into operation. The local authorities have been tasked with issuance of construction permits and approving buildings put into operation.

On 20 May 2011 the Riga Administrative District Court ruled in the case of G.M. v the Riga City Council (Rīgas Dome)[52] concerning the accessibility to Ilguciems Outpatient's Clinic (SIA "Iļģuciema poliklīnika") by a disabled person, a wheelchair user, to receive primary medical care. The plaintiff had not been able to access the outpatient's clinic since 2003. A ramp was built at the clinic in June 2009, higher than the required norm, and the applicant continued to face difficulties in accessing doctor's offices in the absence of elevator and other technical arrangements. G.M.

[51] The term '**accessibility of the environment'** — a possibility for people with movement, visual or hearing impairments to move in the environment in conformity with the planned function of a structure was introduced in the Construction Law with amendments on 7 March 2002.
[52] G.M. v Riga City Council, Administrative District Court, Case No A420745010 A02947-11/23.

filed a complaint with the Riga City Council in August 2009 and claimed moral compensation in the amount of 15,000 LVL (21,428 EUR)

The Medical Treatment Law (Ārstniecības likums, Art. 1 (3)) defines medical treatment institutions – doctors' practices, State and local government institutions, commercial companies which are registered in the Register of Medical Treatment Institutions, conform with the mandatory requirements for medical treatment institutions and territorial units specified in regulatory enactments and provide medical treatment services. The Construction Law indicates that accessibility requirements in relation to medical treatment institutions are to be met by 4th quarter of 2012 and government regulations spell out the requirements in detail. On 20 January 2009 the Cabinet of Ministers adopted Regulations Nr 60 "Mandatory Requirements for Medical Treatment Institutions and their Structural Units" which requires the institution head to provide for access to the medical treatment facility by persons with reduced functional abilities (Article 3), and technically equipping the treatment facility to provide for such access if it is situated higher than the ground (first) floor and that the requirements are to be met by 1 January 2014. The Riga City Council maintained that the construction requirements in the Cabinet of Ministers Regulations Nr 411 (in force from 28 November 2000 until 31 August 2008) and Regulations Nr 567 (in force from 1 September 2008) are mandatory for those constructions that were approved after the coming into force of the requirements and did not refer to the clinic.

The court ruled that the medical treatment institution could not disregard the requirement of a higher legislative act, namely Construction Law which makes the compliance with requirements of accessibility of environment in relation to public buildings and constructions mandatory. It also referred to Latvia's obligations under UNCRPD. The court ruled that although the plaintiff was not denied primary health services and that ways to accommodate his needs had been found (GP visits at home, medical prescriptions had been given to his relatives, etc.), it had been humiliating for him to be aware that the outpatient's clinic that was close to his place of residence and where medical care could be received, could not be accessed without the assistance of other people. The court established that the unlawful action of the outpatient's clinic by not providing him access to the building to receive medical services had caused the plaintiff moral harm. Taking into account the fact that restrictions in access to outpatient's clinic had been of long duration, but the facility had within its means tried to eliminate deficiencies, the court assessed the moral compensation only at 1,000 LVL. (EUR 1,428). The case has been appealed by the Riga City Council.

g) *Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

There is no such obligation in Latvian law.

h) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

Art. 12 of the Law on Social Security reiterates that persons with disabilities have the right to such social security as necessary for their involvement in the society, by creating for them suitable conditions for employment that correspond to their ability to work and interests. However, these norms are considered declarative and the reality leaves much to be desired.

This is not limited to the sphere of employment, but applies to all spheres of life, also to education and access to government institutions, including the courts, the vast majority of which simply remain physically inaccessible for persons with physical disabilities.

On 1 January 2011, the new Law on Disability (Invaliditātes likums) came into effect. The Law was adopted on 20 May 2010, and replaced the Law on Medical and Social Protection of Disabled Persons. The Law prescribes the procedure by which a predictable disability and disability expert examination shall be performed as well as the aid measures necessary to reduce the risk of disability and the consequences of disability.

The Law provides that persons with very severe visual disability who do not receive state benefit for the disabled person who requires care have the right to receive a benefit for the use of an assistant for ten hours per week (until 31 December 2012). It foresees the right of disabled persons with 1st and 2nd degree disability[53] and disabled children, if this has been included in their individual rehabilitation plan, to receive services of assistants for up to 40 hours per week paid by the state from 1 January 2013 (Section 12 (1) 2, 3). The Law provides for the right of the disabled person whose hearing impairment cannot be compensated for with technical aids, receive the services of a sign language interpreter paid by the state for up to 480 academic hours during a school year for acquiring a programme of basic vocational education, secondary vocational education and higher education. It envisages that from 1 January 2013 the right of the disabled person to receive the service of a sign language interpreter paid by the state for up to ten hours per month for providing contacts with other natural and legal persons.

It also envisages the right to use public transportation free of charge for those with 1st and 2nd disability, persons with a disability under 18, and person accompanying a person with 1st degree (very severe) disability or persons under 18 with a disability

[53] Disability Law. Classification of Disability, Section 6. Group I disability, if the loss of ability to work is in the amount of 80-100 per cent, - very severe disability, Group II disability, if the loss of ability to work is in the amount of 60-79 per cent, - severe disability, Group III disability, if the loss of ability to work is in the amount of 25-59 per cent, - moderately expressed disability.

The law also provides for the right of a disabled child for whom a disability has been determined for the first time and who lives with his/her family to receive the services of a psychologist paid from the state budget. It envisages the possibility to receive assistance for adapting a dwelling for persons with the 1st degree (very severe) disability, persons with 2nd degree visual disability and hearing impairment and disabled children.

In addition, people with disabilities receive a disability pension, in cases where they do not receive an old age pension. Since 1 January 2008 those with serious functional impairments needing special care[54] can receive a monthly state social benefit (benefit for a disabled person in need of care) in the amount of 100 LVL (about EUR 140); besides, an additional non-taxable minimum for the purposes of income tax applies. There is also benefit to compensate transport expenses of persons with mobility disabilities payable once in six months in the amount of 56 LVL (EUR 80).

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

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

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?

There has been no case law where the employment-or not nature of these projects would have been at issue.

[54] Opinion on the need for special care is issued by the State Health and Workability Expertise Doctors' Commission (State Social Benefits Law, Section 12.1).

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

Since the main law transposing the Directives - the Labour Law - does not refer to citizenship requirements, it can be generally said that the protection against discrimination applies to all persons regardless of their citizenship. However, there are some laws where the citizenship or status in Latvia is the precondition for the guarantee of equal rights or access to certain services, notably, the Law on education, which restricts its protection to citizens and non-citizens of the Republic of Latvia, as well as different categories of persons to whom residence permits have been issued; in case of illegal migrants the right of education exists for the time period for voluntary repatriation, as well as during detention. Also, access to social security is limited to Latvian citizens, non-citizens, third-country nationals and stateless persons to whom a personal ID number has been issued, with the exception of persons in possession of temporary residence permits only (Art. 3 of the Law On Social Services and Social Assistance); a similar provision on the possession of a 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 a temporary residence permit.[55] Also, it may be interesting to note that the Law on Ombudsman provides that a person with double nationality cannot be appointed as ombudsman; the same prohibition applies to the President of the State.

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

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

The Latvian laws dealing with discrimination do not specifically distinguish between natural and legal persons as far as protection and liability are concerned.

[55] Constitutional Court judgment in the case No 2001-11-0106 adopted 25 February 2002, available at http://www.satv.tiesa.gov.lv/upload/2001-11-0106.rtf.

3.1.3 Scope of liability

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

Since the Labour Law as well as the Law on Social Security, the Law on Consumer Rights Protection and the Law on the support to unemployed persons and job seekers provide for instruction to discriminate as a separate form of discrimination, it can be argued that in such cases most probably both the instructor and the direct perpetuator would be held liable for two separate offences. Similarly, in the cases that might come under the Criminal Law provisions, it would be two offences of discrimination and of incitement.

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

In the case of employers, additionally Article 1782 of the Civil Law could be applied, stating that the employer has to exercise due care when selecting his employees and verify their ability to fulfil their duties, otherwise he may be held liable for the damages caused by them; in cases where the employer is the state, municipality or some other public law legal persons and which are covered by the provisions of the Administrative procedure law, compensation for losses and also moral damages can be asked from the employer. The responsibility of the employer was at issue in the Smagars case[56] where the respondent argued that the employer can only be held responsible for pecuniary damages caused by its employees, not for moral damages; however, the court held that the anti-defamation provision of the Civil Law does not exclude legal persons from its scope.

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

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

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

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

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

Access to employment in all its aspects is governed by the Labour Law which regulates employment relationships, including access to employment, trial periods, working conditions, pay, promotion and dismissals and prohibits differential treatment, providing protection against it as required by the Directives and covering all fields mentioned therein, although sexual orientation is not expressly spelled out. It applies both to the public and private sectors, including – by virtue of Art. 2(4) of the State Civil Service Law[57] - the state civil service and specialised civil service, but excluding military service and contract work of self-employed person which does not qualify as an employment relationship and is based on the provisions of the Civil Law. The Law on prohibition of discrimination of natural persons who are economic operators applies only to discrimination on the basis of race, ethnic origin and gender in relation to supply of, and access to, goods and services and also in relation to access to self-employment.

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

The age limit of 65 for occupying the post of university professor or associated professor, as well as highest administrative positions in universities and scientific institutions was invalidated as contrary to the constitution by the 20 May 2003 Constitutional Court decision.[58]

[57] Valsts civildienesta likums, adopted 07.09.2000.
[58] The 20 May 2003 decision in the case No. 2002-21-01, available electronically at http://www.satv.tiesa.gov.lv/upload/2002-21-01.rtf, see under 0.3 Case law above.

However, the case was decided on the basis of the constitutional article 106 providing for the right to freely choose employment and workplace, and, since the age-based restriction was found to violate this article, the Constitutional Court did not consider whether it was also discriminatory. Theoretically the outcome of the case might have entailed – or at least asked for - reassessment of other age limits contained in legislation.

However, an apparently similar age limit contained in Art. 41(1)(f) of the State Civil Service Law establishing that the civil service relationship shall be terminated when the civil servant has reached the age of retirement unless there is a decision by the head of the institution to the contrary was found by the Constitutional Court to violate neither the right to choose freely employment and workplace nor the prohibition of differential treatment[59] – somewhat unexpectedly after the university professors' case, the general feeling being that the Constitutional court has not sufficiently substantiated the distinguishing of the two cases.

The court held that the state civil service differs from the work in private sector in both the legal aspects of creating the legal relationship and the aims of the work to be performed. Namely, unlike in the employment relationship, there is no contract and no equality of the parties to the contract, the civil servant being appointed to his post by the competent institution; it is the state that one-sidedly regulates the competence of the civil servants and other aspects of the civil service relationship, including the termination of the service. To ensure that the executive branch can discharge its functions, the state has to regulate the status of civil servants, one of the preconditions of such status being age, both minimum and maximum age. The legitimate aim of the restriction, in the court' s opinion, is the balancing of the age structure of the civil service, as well as ensuring to the younger generation the possibility to perform state civil service. In holding that the restriction is proportionate the court refers*, inter alia*, to Directive 2000/78, namely, to recital 25 providing for differential treatment if it is justified by legitimate employment policy.

One of the arguments of the court was that it is also a question of employment policy and that by restricting the right to work of persons who have another source of income – namely, the pension – the possibilities to work of persons who can only earn their living by work are broadened, which admittedly is an argument that does not explain the different result in the previous case.

The court also took into account the empirical evidence that showed that only about 1/7 of the persons concerned by the norm were actually dismissed from the service, while the other 5/6 continued to work, concluding that the contested norm strikes the right balance by both permitting the possibility to serve to civil servants who have reached the pension age and ensuring the principle of good administration.

[59] The December 18 2003 decision in the case No. 2003-12-23.,see under 0.3 Case law above.

This argument developed in relation to the right to freely choose employment argument, the court said, applies also to the challenge on age-based discrimination. As far as the argument on gender-based discrimination was concerned – based on the fact that in the period of transition the pensioning age differs for men and women, and hence the age when persons of different gender may be discharged from the state civil service – the Constitutional Court held that the norms of the State Civil Service Law should have been applied in conjunction with the norm of the Law on Pensions providing for the same pensioning age for men and women, not in conjunction with the norm of transition provisions of this law, which provides for gradual raising of the pension age for women to equalise this age for men and women. Thus the Constitutional court held that the application of the challenged norm had been discriminatory, but did not invalidate the norm as such.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?

The Labour Law anti-discrimination provision in Art. 29(1) specifically mentions establishing the employment relationship and promotion, and in explicitly protects in Art. 29(9) against differential treatment based on grounds of race, age, religious conviction, disability and sexual orientation.

The Labour Law - and hence its guarantees - applies both to the public and private sector, state civil service and specialized civil service included.

There is no explicit equality guarantee, other than the general constitutional equality clause, related to any of the grounds concerning access to employment and promotion in the military service. However, since the 2010 amendments an equality guarantee applies in relation to access to self-employment or contract work, but to limited grounds only, namely, racial or ethnic origin and gender, thus leaving age, disability and sexual orientation uncovered. True, to the extent that Art.91 of the Constitution applies to all public bodies acting in all spheres, access to self-employment would be covered also in relation to these grounds, although not explicitly, in as far as it involves certain registration procedures performed by public bodies, however, it is clear that express guarantee is preferable.

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

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

Article 29 (1) of the Labour Law also specifically mentions working conditions, remuneration and giving notice of termination of an employment contract. The protection against differential treatment based on grounds of race, age, religious conviction, sexual orientation and disability is now explicit, the list being left open by mention of "other circumstances", and applies also to civil service (including specialized civil service) relationships. Additionally, Art. 60 (1) of the Labour Law reiterates that equal remuneration has to be paid to men and women for the same kind of work or work of equal value. The Ministry of Welfare explained that at the time of drafting it was felt that the need to re-emphasise equal pay independently of gender existed because it was one of the most problematic areas in practice. No explicit guarantee concerning the working conditions, pay or dismissals - to the extent they apply to a particular sphere - exists within the sphere of military service. The Law on prohibition of discrimination of natural persons who are economic operators applies only to discrimination on the basis of race, ethnic origin and gender – and only in relation to supply of, and access to, goods and services of such persons and does not cover working conditions and pay.

Occupational pension schemes are a new phenomenon in Latvia, and a very limited one; hence occupational pension schemes have never been an issue and there is also no information available on their arrangements. Art. 11(3) of the Law on Private Pension foundations[60] prohibits the employer – once it has decided to contribute to a pension plan – from discriminating on the basis of (exhaustive listing of grounds) origin, property status, racial or ethnic origin, gender or attitude towards religion (which it the traditional Latvian wording for religion or belief); note that the list does not include disability and sexual orientation, which may be a breach of the Employment Directive. Additionally, the working conditions and remuneration mentioned in Art. 29(1) of the Labour Law could be interpreted as covering also occupational pensions, which would thus be in line with the ECJ judgment in the Maruko case, and thus also grounds not covered by the Law on Private Pension foundations.

However, it could be noted that the Law on Private Pension foundations is a *lex specialis* in relation to the Labour Law, and besides this construction is somewhat complicated by the reference in this provision to prohibition of differential treatment in "establishing the employment relationship, as well as *during the period of existence of employment relationship*" (emphasis added). This might be a problem and possibly a breach of the Directive if a person attempted to challenge a discriminatory arrangement in the pension scheme already after the end of the employment relationship – even if one could argue that the differential treatment already was present during the existence of the labour relationship. Thus it remains to be seen

[60] Likums par privātajiem pensiju fondiem, adopted 05.06.1997.

whether the courts will find actually interpret the relevant provisions in a way that is compatible with the requirements of the directives – as they ought to.

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

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

Access to vocational guidance and training in both the public and private sectors (with the exception of military service as described above) in the context of employment relationships is covered by Art. 29(1) of the Labour Law referring to "occupational training"; race, age, religious conviction, disability and sexual orientation are explicitly covered.

No explicit guarantee concerning the access to vocational guidance, vocational training or education exists specifically within the sphere military service, self-employment[61] or contract work; however, to the extent that the Law on education applies – and it applies also to vocational training which is regarded as a form of education - it applies to both public and private sectors, and also to vocational training provided by, for example, technical schools and universities. The problem, however, is that this law contains a closed list of grounds which does not include age, disability and sexual orientation, but only "property and social status, race, ethnicity, gender, religious or political opinions, health condition,[62] occupation and place of residence." This closed list has been maintained after the adoption of amendments to the Law on Education on 04.03.2010. To some extent it could be argued, though, that the protection against disability-based discrimination can be subsumed under the heading of "health condition".

As far as its application to the public sector is concerned, the reference to Art. 91 of the Constitution can cure the deficiency of the lack of reference to particular grounds, even if it is somewhat complicated, especially since in cases when the particular ground for discrimination is not expressly mentioned, the burden of proof which rests on the plaintiff is clearly even more significant, as he also has to argue against the *inclusion of the one is the exclusion of another* principle; there is nothing to make up for these missing grounds in the private sphere. Also, this means there is no

[61] Except to the extent it can be considered provision of services to the self-employed person – yet an explicit reference to vocational guidance and training is clearly desirable.
[62] 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 enter a class. The case was well-publicised, raising, *inter alia*, the issue of the protection of sensitive data, and a disciplinary action was taken against the teacher.

implementation mechanism in this law and, naturally, no shared burden of proof. Similarly, amendments to the Law on the support to unemployed persons and job seekers adopted on 11.03.2010– which cover access to vocational retraining – apply only to three grounds (gender, race and ethnic origin), completely ignoring Directive 2000/78.

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

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

Art. 2 of the Law on Trade Unions[63] refers to the right of all persons residing in Latvia, who are employed or study, to establish trade unions.

However, there is no specific prohibition of discrimination in the exercise of this right. Art. 2(2) of the Law on Organisations of Employers and Their Associations[64] similarly provides that a natural or legal person who employs at least one person on the basis of a contract can become a member of an employers' organisation, but does not contain any on-discrimination clause.

However, after the 05.07.2004 amendments to the Labour Law, Art. 8 of the Labour Law which reiterates the right of employees and employers to freely create and join organisations to protect their interests, specifically provides for these rights "without any direct or indirect discrimination related to any of the grounds referred to in Art. 7(2) of this law"; Art. 7(2) among other refers to race, religious conviction, age, disability and sexual orientation, as well as "other circumstances".

As regards professional organisations, the Law on the Bar[65] 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.

[63] Likums "Par arodbiedrībām", adopted 13.12.1990.
[64] Darba devēju organizāciju un to apvienību likums, adopted 29.04.1999.
[65] Advokatūras likums, adopted 27.04.1993.

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

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

In addition to constitutional guarantees of equality, Art. 109 of the Constitution provides that everyone has the right to social security in old age, for work disability, for unemployment and in other cases provided for by law, while Art. 111 states that the state shall protect human health and guarantee a basic level of medical care for everyone. Art. 2 of the Law on Social Security[66] refers to "prohibition of differential treatment" as one of the principles of provision of social services, and the 01.12.2005 amendments have introduced Art. 2.1. specifying that in provision of social services differential treatment based on person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances is prohibited; in this law sexual orientation as a prohibited ground is not spelled out, but could be argued to come under "other circumstances".

These amendments have also redefined social services, thus extending the application of this law and the equality guarantee now contained herein, in the following way: "Social services in the meaning of this law are measures ensured by state or municipality as monetary or material support or other services to promote the full realization of person's social rights" (Art. 13).

Art. 16 of the Medical Care Law[67] provides that everyone has the right to receive urgent medical care as provided for by the Cabinet of Ministers, while Art. 17 of that law states that the right to medical care guaranteed by the state is enjoyed by Latvian citizens, non-citizens, foreign citizens and stateless persons who are registered in the Population Register and have received a personal ID number, as well as by imprisoned and detained persons; there is no express guarantee of equality, yet given the new definition of social services it appears that the equality guarantee now contained in the Law on Social Security applies also in the sphere covered by this law.

Thus, it can be observed that while in some cases in the particular laws the explicit guarantee of equality is missing and in some other cases it might not encompass all grounds, the guarantee contained in the Law on Social Security, which is not limited to racial or ethnic origin, but extends to other grounds in an open-ended way, covers the whole field of social protection as long as it falls within the public sphere. However, the services provided by the private sphere (private medical care, for example) are not covered by the wording of the Law on Social Security, nor does the constitutional guarantee apply to it.

[66] Likums par sociālo drošību, adopted 07.09.1995.
[67] Ārstniecības likums, adopted 12.06.1997.

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

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

In addition to the constitutional guarantee of equality, Art.3 of the Law on Social Services and Social Assistance[68] provides that Latvian citizens, non-citizens, foreign citizens and stateless persons who have received a personal ID number, except persons who have received temporary residence permits, but including persons with the alternative protection status (who do not qualify for refugee status yet are in need of temporary protection) have the right to social services and social security.

Art. 2.1. of the law on Social Security provides that social services – broadly defined as "measures ensured by state or municipality as monetary or material support or other services to promote the full realization of person's social rights" - shall be provided without discrimination on the basis of person's race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances, as long as they are provided by state or municipal institutions.

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

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

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

[68] Sociālo pakalpojumu un sociālās palīdzības likums, adopted 31.10.2002.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

The Law on Education applies to both the public and private spheres and contains a closed-list non-discrimination clause which does not include all the grounds required by the Directives,[69] excluding, namely, age, disability and sexual orientation; the 2010 amendments fail to remedy this gap.

It has to be noted that in reality the access of disabled children and adults to education remains a problem.

School and university buildings, as a rule, are inadequately accessible for a person in a wheel-chair, so most often physically disabled children would be offered instruction at home instead of integration in mainstream education despite the official theoretical preference for integration. The same applies also to people with learning disabilities where specialised education and instruction at home is a *de facto* clear preference.

According to the statistical data provided by the State centre on special education (Valsts speciālās izglītības centrs) in the academic year 2011/12 out of the total of 198,394 pupils 6,974 or 3.5%, were attending special schools. The decision of which school to attend theoretically rests with the parents who are advised by a the state and municipal pedagogical-medical commissions, yet in practice it is difficult to fight their recommendations. The parents can appeal the recommendations of the municipal commission to the State commission, yet the possibilities of obtaining a different outcome are slim.

The funding to support integration in mainstream education is up to the local governments; theoretically parents can apply for such funding, but even in more prosperous municipalities it is difficult to obtain.

In 2003/2004 specialized Roma classes existed in seven educational institutions, in 2005/2006 six, in 2007/2008 in three schools. According to the Ministry of Education and Kuldiga City Council in 2011/2012 separate Roma classes remain to exist in two schools - evening school attended by 77 Roma students and in a school in Kuldiga. Three multi-cultural classes for five –six year olds and first graders have been created within three mainstream schools, attended by 18 Roma children who follow the general education curriculum through Step by Step methodology.[70]

[69] Art. 3 of the Law on Education provides: "Every citizen of the Republic of Latvia and every person who has the right to a non-citizen passport issued by Latvia, or person to whom a permanent residence permit has been issued, as well as citizens of the European Union states to whom temporary residence permits have been issued and their children have equal rights to receive education independently from property and social status, race, ethnicity, gender, religious or political opinions, health condition , occupation and place of residence."

[70] Information provided by the Ministry of Education and Science and Centre for Educational Initiatives on 21 March 2012.

Thus, according to the Ministry of Education in 2011/2012 922 Roma children were enrolled in general educational establishments, 17 in specialised classes in general educational establishments and 189 in special educational institutions.[71] There is no information available as to the number of Roma children of mandatory school age who are not attending school.

Many of the former classes had the status of pedagogical correction classes (i.e., classes intended for pupils with special educational needs) and were intended as a learning aid to help the children with the problem of the language of instruction and also with the problem of the pupil not fitting in the class because of age, because of an earlier dropout. However, it is not mandatory that the child attend one of these classes, and the attitude of the Roma themselves towards theses classes varies.

While some perceive it as a learning aid, others think that the education provided in these classes is of lower quality, while still others would choose these classes to spare their children discriminatory remarks they might face in ordinary classes. While the declared idea of these classes is to integrate the Roma children into the educational process as such and later to insure their transfer to ordinary classes, in the only municipality that has had longer experience with specialized classes it appears that the integration into the mainstream does not work. In some instances the schooling in these specialized classes takes place in the afternoon, unlike it is the case with the ordinary classes, thus contributing to segregation and isolation.[72] It also appears that in two municipalities 40% of the Roma children attend schools for pupils with special needs.[73]

Provisional data of the Population Census 2011 shows that only 9.3 per cent of Roma have secondary education and only 0.8 per cent or 40 Roma have university education. Among 4, 888 Roma over 15, 31.7 per cent had primary education, 23.3 per cent had elementary education (four years of school), while 18.5 per cent had less than elementary (four years of school) education.[74] Only small percentage of those who are able to work find permanent employment and most of Roma belong to the very poorest stratum of the population with little possibility of improving their situation. In January 2012, out of 132 575 officially registered unemployed in Latvia, 914 (0.7 per cent) were Roma, including 553 women and 250 men.[75]

There are no complete data on illiteracy in the Roma community, yet is indicative that in February 2003 85% (or in absolute numbers, 39 persons) of illiterates who had

[71] Information provided by the Ministry of Education and Science and Centre for Educational Initiatives on 21 March 2012.
[72] Čigānu stāvoklis Latvijā [The situation of Roma in Latvia], Latvian Centre for Human Rights and Ethnic Studies, Riga, 2003, p. 27.
[73] Ibid., p. 26.
[74] Letter of the Central Statistical Bureau to the Latvian Centre for Human Rights (Nr 0708-10/222, 10 February 2012.
[75] Latvia/ State Employment Agency (Valsts nodarbinātības dienests), *Izvērstā statistika par bezdarba situāciju latvijā un region: bezdarbnieka statistiskais portrets*. Available in Latvian: http://www.nva.lv/index.php?cid=6&mid=404&txt=405&t=stat, accessed on 17.04.2012.

registered with the State employment agency as looking for employment were Roma.[76]

No information is available that the government would be planning to take any action in response to the recent ECtHR judgments, yet there is no doubt that it is has to revisit the situation and review its policies taking into account their conclusions.

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

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

After the entry into force of the amendments to the Law on Consumer Rights Protection on 28.10.2008 discrimination in relation to access to and supply of goods and services based on person's gender, race or ethnic origin, and disability is prohibited; the law does not distinguish between the goods and services available to the public and those available privately, thus it should apply to these both categories. There is no case law yet.

b) Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?

The law does not explicitly allow for differences in treatment on the grounds of age and disability in the provision of financial services.

The Law on Consumer Protection applies the prohibition of discrimination to the grounds of race, ethnic origin, gender and disability it does not apply to age, thus it cannot be said that the law prohibits it, either.

However, it could be argued that the constitutional guarantee applies in the public sphere, to the extent that it can be relevant; as the Smagars case[77] indicated, some protection against discrimination in access to goods and services in the private sphere could be provided by the anti-defamation provision of the Civil Law.

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

[76] Čigānu stāvoklis Latvijā [The situation of Roma in Latvia], Latvian Centre for Human Rights and Ethnic Studies, Riga, 2003, p. 19.
[77] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law above.

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

The Law on Housing does not contain a non-discrimination clause, but this sphere is covered by the amendments to the Law on Consumer Protection prohibiting discrimination in access to, and supply of, goods and services, but only in relation to the grounds of race, ethnic origin and gender.

In addition to that, it can be argued that the amended Law on Social Security (see under 3.2.6.) containing a more extensive and open-ended list of grounds (i.e., race, colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances) amongst those social services provided by state or municipal institutions and intended to promote the realization of person's social rights comprises also access to housing, even if not referring to it expressly; access to private housing thus is covered only to the extent that it comes under the Law on Consumer Rights Protection. The law does not specifically either promote or require housing accessible to people with disabilities and older people.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

The only statute that refers to occupational requirements is the Labour Law. Art. 29 (2) provides that "differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition for performance of the relevant work or for the relevant employment"; Art. 29(9) applies this also to differential treatment based on a person's race, colour, age, disability, religious, political or other opinions, national or social origin, property or family status, sexual orientation and other circumstances. There is no further explanation of such preconditions. In the only case - the case of Kozlovska v. SIA "Palso"[78] - where the court does refer to "objective precondition" there is no real discussion of it since the employer claimed that the he had indicated the "accent" as the refusal to employ at the request of the plaintiff and that the real reasons behind it had been the lack of the required secondary education and the appearance unsuitable for the available position, thus he did not actually argue that the lack of accent was an objective and substantiated precondition. The court concluded that there was no dispute as to the plaintiff's knowledge of the Latvian language – which would have been an objective precondition - and that the respondent has not shown that the lack of accent would be such a precondition.

Prior to the entry into force of the Labour Law on 1 June 2002 the situation was different as the Labour Code in force until then prohibited differential treatment except where restrictions or advantages had been provided for by a statute or other normative act; two such acts were the 1992 regulations of the Council of Ministers No.292 on Hard jobs and jobs in a harmful environment where it is forbidden to employ women and on Hard jobs and jobs in a harmful environment where it is forbidden to employ persons below eighteen years of age. Thus, the criterion was a formal one – inclusion of a particular job title in such list or in any law. The result was that in the first pure gender discrimination case in Latvia, Muhina v. Central Prison, where a woman had been denied employment as a prison warder by virtue of being a woman, the case was decided in favour of the plaintiff exactly because the respondent had not shown that a statute or any other normative act provides for an exception in relation to the position of a prison warder.[79]

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

[79] 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 created the possibility of being subjected to discrimination, which should be taken into account when deciding on damages. See under 0.3 Case law above.

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

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

a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?

The 21.09.2006 amendments to the Labour Law included a provision stating that "in a religious organisation differential treatment based on person's religious belief is admissible where, taking into account the ethos of the organisation, a particular religious belief is an objective and substantiated precondition for the work or activity in question. According to the wording this only applies to a religious organisation, thus excluding other beliefs, and the wording seems to create a broader exception than the one provided for in Article 4(2) of Directive 2000/78, yet it remains to be seen how it will be interpreted by the courts. This provision is a counterpart of Art. 14(1) of the Law on Religious Organisations providing that religious organisations elect or appoint their religious personnel in accordance with their regulations, while other employees are employed and dismissed in accordance with the law regulating employment; in other aspects of employment the Labour Law applies.

b) Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)

There are no specific provision on conflicts between the rights of organisations and other rights to non-discrimination, and there is no case law on exemptions based on religion or belief. In 2002 a Lutheran minister[80] was dismissed by the archbishop for being a practicing homosexual; however, while the case received considerable publicity, the minister chose not to pursue a legal case against the church.

c) Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?

[80] The same minister that later sued the Riga Cultures secondary school for discrimination based on sexual orientation, see under 0.3 Case law.

The religious institutions do nominate religion teachers for work at schools – although they all have to be approved by the Education Inspection. According to the regulations adopted by the Cabinet of Ministers they also nominate chaplains for armed forces, detention institutions, hospitals and the like. However, it is always for the relevant administration (in the case of the armed forces, the commander of the armed forces) to appoint, and to dismiss them. The law does not explicitly regulate the cases of conflict or when the nominating religious institution wants to recall its nominee, and there have been no known cases of such conflicts.

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

The Military service law[81] provides for age limits of 27, 35 or 40 years depending on the seniority for admission to military education establishments; the maximum age limits for professional military service ranges from 36 to 60 years depending on seniority in active service and from 55 to 65 in reserve (limited extensions are possible), whereas the person can be admitted to professional military service if he/she will be able to serve at least 5 years before reaching the prescribed age limit.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

None of the laws regulating employment in police, prison or emergency services contains an equality guarantee, and hence provides for no exceptions. However, after the 02.11.2006 amendments to the State Civil Service Law the equality guarantees contained in the Labour Law apply also to civil service and specialized civil service; access to all of these occupations is restricted to Latvian citizens. Art. 28 of the Law on fire safety and fire fighting[82] provides that in the state fire security and fire fighting service only persons aged 18-40 are accepted; the service can be performed until the person reaches the age of 50, yet it can be prolonged until 60 if the person so wishes and after the evaluation of his/her physical and professional abilities. The law also requires that the applicant's physical condition and health condition correspond to the requirements of the service. The Law on Police sets 50 years as the maximum age for service in the police and permits for unlimited extensions for higher echelons, as well as limitation to the ages between 18 and 35 for access to the service in the police; also the requirement of physical condition and health condition enabling the person to fulfil the police duties is also contained in the law.

[81] Militarā dienesta likums, adopted on 30.05.2002.
[82] Ugunsdrošības un ugunsdzēsības likums, adopted on 24.10.2002.

4.4 Nationality discrimination (Art. 3(2)

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?

There are no provisions in national laws that would rely specifically on the exception contained in Art. 3(2) of the Directives, yet in a number of cases nationality – usually in relation to the person' s status in Latvia, as a rule requiring that the person be issued an ID number and sometimes excluding persons in possession of temporary residence permits only - is a condition for access to certain professions or benefits. Thus, all employment in civil service and specialized service, as well as military service is restricted to Latvian citizens; also, the Law on the bar restricts the access to practice of the legal profession to Latvian citizens and – since 2004 – also to EU nationals admitted to the bar in other EU member states. In some cases, however, the difference of treatment exists which may be hard to justify. Thus Art. 1 of the transition provisions of the Law on state pensions provides for different calculations of pensions for Latvian citizens and Latvian non-citizens, as well as foreigners and stateless persons who have worked outside Latvia before 1991: for citizens the years worked are taken into the account when calculating their pensions, but not for the other categories. The issue is particularly important for Latvian non-citizens, yet unfortunately when this provision was challenged in the Constitutional court ,[83] the court, based on the fact that non-citizens were not mentioned in this provision and it only expressly deals with citizens, foreigners and stateless persons, considered it as a legislative omission it could not decide upon.

Given the ethnic composition of Latvia one can easily imagine the cases of overlapping nationality and ethnic discrimination.[84]

[83] The26.06.2001 judgment in case No. 2001-02-0106, available electronically at http://www.satv.tiesa.gov.lv/upload/2001-02-0106.rtf.
[84] In 2008 the Ombudsman's Office addressed Ryanair concerning the impossibility, at that point, for persons who are not EU citizens, to register for the flights online, thus entailing additional fee for registering at the airport. The Ombudsman considered it to be indirect ethnic discrimination. The opinion of the Ombudsman is available for downloading at http://www.tiesibsargs.lv/lat/petijumi_un_viedokli/viedokli/?doc=426 (in Latvian)

On 17 February 2011 the Constitutional Court of the Republic of Latvia adopted a judgment dismissing the claim of five non-citizens regarding their complaint about the allegedly discriminatory old-age state pension system of Latvia.[85]

In 2008 the Latvian parliament amended the law „On State Pensions", providing that:

The accrued work and the equivalent periods thereof for Latvian citizens in the territory of Latvia and the territory of the former USSR up to 31 December 1990, as well as the periods accrued outside of Latvia as prescribed by Sub-paragraph 10 of this Paragraph shall be equivalent to length of period of insurance. The length of period of insurance of aliens, stateless persons and non-citizens of Latvia is equivalent to the work and the equivalent periods accrued in the territory of Latvia, as well the work and the equivalent periods accrued in the territory of the former USSR, that are referred to in Sub-paragraphs 4 and 5 of this Paragraph, and the periods accrued outside of Latvia referred to in Sub-paragraph 10 of this Paragraph. Up to 31 December 1990 [..] the length of period of insurance shall be equated to the following work equivalent periods [..]: 4) periods of study at institutions of higher education, as well as at other educational institutions after the acquisition of secondary education, but not longer than five years [..]; 5) the period of time of full time doctoral studies, but not longer than three years, the period of post-graduate education and the period when qualifications were raised; 10) politically repressed persons' [86] in places of imprisonment [..

The Applicants submitted a constitutional complaint, arguing that the legal provision does not comply with Article 14 of the ECHR in conjunction with Article 1 of Protocol No. 1, as well as with Article 91 of the Latvian Constitution. They claimed that the contested norm discriminates the rights of non-citizens of Latvia because the working period and the length of obligatory military service accrued outside the territory of Latvia before 31 December 1990 has not been included into the length of insurance, which has had a considerable effect on the amount of their pension. They also stated that they enjoy comparable situation with that of citizens of Latvia who receive old age pension. A differential treatment of non-citizens, if compared with citizens, can be regarded as discrimination by nationality which has also been concluded by the European Court of Human Rights in the case "Andrejeva v. Latvia".

The Court first pointed out that the state enjoys a wide margin of discretion when establishing its social security system, including pension system and the Court has to assess whether the differential treatment is justifiable or not and whether it has an objective and reasonable grounds. The Court then referred to Latvian state continuity, stating that the Republic of Latvia is not the successor of the rights and liabilities of the former USSR and pursuant to the doctrine of state continuity a renewed state does not have the duty to undertake any liabilities that follow from liabilities of the occupant state. Then the Court indicated that the majority of Latvia's

[85] Constitutional Court of the Republic of Latvia (Satversmes tiesa), Case No. 2010-20-0106, available in English at http://www.satv.tiesa.gov.lv/upload/judg_2010_20_0106.htm.
[86] Persons who sufferred from soviet deportations to Gulag camps.

non-citizens travelled to the territory of Latvia as a result of immigration policy implemented by the USSR and during work periods accrued by these persons outside territory of Latvia, they made not contribution to the improvement of Latvia's national economy and development of the State. Therefore, the context of State continuity is the determining factor and serves as a crucial aspect to regard differences in the procedure for calculating pensions of citizens and non-citizens as grounded. Finally, the Court drew attention that when solving the problem of cross-border pensions, bilateral international agreements regarding cooperation have to be used. The Court thus regarded the differential treatment as proportional and in compliance with Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, as well as with Article 91 of the Latvian Constitution.

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

There are no specific exceptions in anti-discrimination law relying on Art.3(2).

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?

The Latvian law provides for no family-related benefits, hence, also there is neither exclusion nor inclusion of either non-married couples or same-sex partnerships which, moreover, are not recognized in Latvia. On the other hand, the broad equality guarantee contained in Art. 29 (1) of the Labour Law prohibiting differential treatment generally "during the period of existence of employment legal relationships" presumably would apply also to work-related family benefits provided by the employer.

Also, Art. 29 of the Labour Law provides for family status ("ģimenes stāvoklis") as one of the prohibited grounds for differential treatment, which presumably might prohibit the provision of any benefits to married couples only as opposed to unmarried couples. However, things seem to be more complicated as far as same-sex partnerships are concerned. Although the phrase "ģimenes stāvoklis" literally means family status, in practise it is taken to mean "marital status", evidenced by various administrative forms. The possibility to read it as "family status" is essential after the 15.12.2005 Constitutional amendment (adopted on the same day as

amendments to the Labour Law explicitly prohibiting discrimination on the ground of sexual orientation in employment relations)) that explicitly provides that marriage is a union of a man and a woman (Article .110). Thus reading it as “marital status” would exclude same-sex partnerships from the express protection accorded by the Labour Law, even if one might still refer to sexual orientation as a prohibited ground for differential treatment”. However this can only be tested by case law which currently does not exist, so at this point it can only be said that the law does not explicitly protect same-sex relationships, nor does it explicitly limit work-related family benefits to opposite-sex partners.

b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?

The law does not forbid the employers to provide benefits limited to employees with opposite-sex partners only, atlhough, one could refer to sexual orientation as prohibited ground for differential treatment. See under a).

4.6 Health and safety (Art. 7(2) Directive 2000/78)

a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

None.

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

There are no exceptions from occupational health and safety rules for disabled persons, or specific provisions relating to any of the other grounds, nor any case-law.

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?

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

restrictions on work of minors, while 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. However, there is no relevant case law yet and thus no interpretation of the "objective and substantiated precondition" test by the courts.

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

Age-based restrictions apply to access to certain professions – military or police service (age between 18-35 years; see under 4.3 below), membership of the judiciary (30 years), membership of the bar (25 years). On retirement ages and the Constitutional court cases where age limits were challenged, see under 4.7.4 below and 3.2.1 above.

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

c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2) ?

Art. 11.(3) of the Law on Private Pension Foundations prohibits the employer – once he has decided to contribute to a pension plan – from discriminating on the basis of origin, property status, racial or ethnic origin, gender or attitude towards religion. Age is not listed among these, nor are disability and sexual orientation; however, during the existence of the employment relationship this deficiency might be remedied by a reference to Art. 29 of the Labor Law (see under 3.2.3 b). The beneficiary can accede to the benefits of the pension plan after reaching the age provided for by this pension plan; however, that age cannot be less than 55 years, with the exception of certain professions as decided by the Cabinet of Ministers.

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

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

There are no special conditions for integration of such persons or their protection, with the exception provided for in Art. 108 of the Labour Law: in cases of redundancies one of the groups of persons with priority to remain employed includes those raising a child up to the age of 14, a disabled child up to the age of 16, or who have at least two dependant persons. Another such group is persons for whom less than five years remain until reaching the age of retirement.

4.7.3 Minimum and maximum age requirements

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

In certain training programs, for example, military or police training programs, age restrictions apply. The Military service law[87] provides for age limits of 27, 35 or 40 years depending on the seniority for admission to military education establishments; the maximum age limits for professional military service ranges from 36 to 60 years depending on seniority in active service and from 55 to 65 in reserve (limited extensions are possible), whereas a person can be admitted to professional military service if he.she will be able to serve at least five years before reaching the prescribed age limit.

The Law on Police sets the age between 18 and 35 for access to service in the police. State civil service law does not provide for minimum age, yet contains an equivalent higher education requirement; the maximum age for civil service is the retirement age; see under 4.7.4. Retirement below. The Law on judiciary sets the minimum age limit of 30 years, while the Law on the bar sets the minimum age of 25 years for access to the bar.

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

4.7.4 Retirement

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

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

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

According to Art. 11 of the Law on State Pensions[88] the right to a state pension arises when the person has reached 62 years of age; this was the age to be reached at the

[87] Militarā dienesta likums, adopted on 30.05.2002.
[88] Likums "Par valsts pensijām", adopted 02.11.1995.

end of the pension reform, and has been accomplished in 2003 for men and in July 2008 for women; prior to the reform, the retirement age was 55 years for women and 60 years for men. In certain professions, for example, in the military or in certain services of the Ministry of the Interior, depending on the term of service, the right to a pension arises earlier. However, it is not mandatory that the person who has reached the state pension age actually receive the pension; on the other hand, the person can both work and receive the full amount of the state pension,[89] so there is actually no reason not to collect the pension.

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

Occupational pension schemes are a new and still a rather limited phenomenon in Latvia, hence occupational pension schemes has never been an issue and there is also no information available on their actual arrangements. Art. 11(5) of the Law on Private Pension provides that the beneficiary can accede to the benefits of the pension plan after reaching the age provided for by this pension plan, however, that age cannot be less than 55 years, with the exception of certain professions as decided by the Cabinet of Ministers. After reaching the required age the person has to choose whether to receive the pension or to continue membership in the plan; according to the formulation of the law these two possibilities seem to be mutually exclusive.

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

While there are generally no mandatory retirement ages requiring a person to retire upon reaching the pension age, access to certain positions, for example, to the civil service, is conditioned on the person not having reached the pension age; upon reaching the pension age the person has to retire from the civil service unless the superior decides otherwise.

This provision of the State Civil Service Law was challenged in the Constitutional court which, however, held that it did not violate the prohibition of differential

[89] Prior to the judgment of the Constitutional Court invalidating the relevant norm the person who continued to work could only receive part (around 100 EUR at that time) of her pension. A second similar case No. 2009-43-01 was decided by the Constitutional Court on 21.12.2009, invalidating - albeit not on the basis of the anti-discrimination article of the constitution- the provision of the "crisis law" providing that the persons who continued to work can only receive 30 % of the amount of the state pension; the judgment is available electronically at http://www.satv.tiesa.gov.lv/upload/spriedums_2009_43_01.htm.

treatment;[90] since this seems to be established practice in other member states, no significant further debate on the compatibility of this arrangement with the directives has followed. Prior to this case the age limit of 65 for occupying the post of university professor or associated professor, as well as the highest administrative positions in universities and scientific institutions was invalidated as discriminatory by the 20 May 2003 Constitutional Court decision,[91] although even in this case the prohibition to occupy the posts concerned was not absolute: the Law on Higher Educational Establishments provided for the possibility to continue to work on the basis of an individual contract to be concluded at the discretion of the university rector, or to receive the status of professor emeritus. After the Constitutional Court decision the age limit thus does not apply any more.

A similar provision establishing the retirement age of 50 years which can be extended till 60 years is contained in Art. 35 of the Law on fire safety and fire fighting.

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

Setting of retirement ages by an employer has never been an issue, either; since there is generally no state-imposed retirement age, it seems safe to argue that the guarantee contained in Art.6 of the Labour Law stating that "provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments [that is, laws or secondary legislation], erode the legal status of an employee, are void and can be declared such by courts of general jurisdiction" would apply to any retirement age or an age when the termination of the employment contract becomes possible, set by contract or collective bargaining, or unilaterally by the employer. There has been no discussion on the possible impact of the Directive or the *Mangold* decision on application of this clause.

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

The Labour Law does not provide for the right of the employer to give notice to the person who has reached retirement age. Hence the protection against age-based differential treatment and against dismissal is not limited to pre-retirement age, but continues after its attainment and indeed applies independently of age, although in practice there is a widespread feeling that exactly those persons who have reached

[90] The December 18 2003 decision in the case No. 2003-12-01 , available electronically at http://www.satv.tiesa.gov.lv/upload/2003-12-01.rtf.

[91] The 20 May 2003 decision in the case No. 2002-21-01, available electronically at http://www.satv.tiesa.gov.lv/upload/2002-21-01.rtf.

retirement age would be the first targets for dismissal based on considerations of social justice.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

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

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

The compensation for redundancy ranges from 1 to 4 months salary depending on the person's length of employment by the particular employer, so in the context of compensation the seniority matters, but the age does not– although admittedly they can be related.

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

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

There are no such exceptions in the law.

4.9 Any other exceptions

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

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

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

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.

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 religion or belief, or sexual orientation; however, the Employment State Service runs a project on active employment measures for certain groups of unemployed persons, and among the eligible categories are persons aged over 50 years and persons belonging to ethnic minorities who need to consolidate their knowledge of state language, professional knowledge or professional experience in order to increase their chances of obtaining a permanent job; within the framework of the project 50% (but up to the official minimal salary) of the salary of the person is paid by the state for up to 12 months; there are no current data on the total number of persons who have benefitted from this project. Similarly, there is a project on work placements for persons with disabilities (discussed under b), as well as a traineeship project for unemployed young people aged 18-24.

b) Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.

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. However, there is a project run by the Employment State Service aimed at the creation of subsidised work placements for persons with disabilities. The expenses related to the adjustment of the work place up to 500 LVL (around 700 EUR) are covered, as well as 50% of the salary (but at least the amount of the official minimal salary, up to the 300 % of this amount) to the person employed and a monthly subsidy in the amount of 50% of the official minimal salary to the supervisor of the disabled person employed, for a period of 24 months. The total number of such work placements since the beginning of the project exceeds 2500.[92]

[92] http://www.nva.gov.lv/esf/index.php?cid=3&mid=3&mode=video&v_id=3.

There are no quotas for access of disabled persons to the labour market, and no relevant case law.

Government report "Information on Roma integration policy measures in Latvia"[93] (hereafter – Report) elaborated by the Ministry of Culture in 2011 describes a series of national Roma integration tasks and measures, which have been included in the policy planning document "National Identity, Civil Society and Integration Policy Guidelines 2012-2018", approved by the Cabinet of Ministers on 20 October 2011.[94] The Report describes the current situation of Roma in Latvia and identifies challenges to the socio-economic integration of Roma in the education, employment, housing and healthcare, as well as general enjoyment of human rights, civic participation and tolerance. Some of the measures could be considered as "positive action" measures. However, the Report does not use the notion of "positive action" and uses the wording of "targeted approach" instead and applies it to a broader range of activities.

The Report distinguishes two types of measures: mainstream approach - fostering tolerance in the society, defending the rights and interests of ethnic minorities (also Roma), fostering civic participation etc.), and targeted approach – policy measures directly aimed at Roma minority and specific aspects of their situation. The latter can be grouped into six categories: dialogue, data collection, education, social inclusion, labour, housing and culture. Dialogue measures envisage developing dialogue between the Roma community, social partners and NGOs, establishment of an advisory board on a national level on implementing Roma integration policy. Measures under data collection include gathering data on the situation of Roma in various socio-economic areas (employment, education, healthcare and access to housing). Under education, a training seminar for 15 teaching assistants of Roma background, round-table discussions on Roma education (exchange of good practice) are envisaged. Measures to research and improve the professional skills of Roma, facilitate their inclusion in the labour market and entrepreneurship are planned. Support measures for groups at risk of social exclusion, including Roma, to ensure access and provision of social services and healthcare services, support measures for Roma families to resolve housing issues, based on the findings of study, grants through project competition for the support ethnic minorities, including Roma, to preserve and develop their ethnic, local and European identity and culture, support for research on Roma Holocaust, and a conference on the Holocaust of Roma and Jews is envisaged.

Implementation of the measures is foreseen from 2012-2017 but will remain dependant on funding which has been seriously reduced in the last five years.

[93] Information on Roma integration policy measures in Latvia http://ec.europa.eu/justice/discrimination/files/roma_latvia_strategy_en.pdf.
[94] Nacionālās identitātes, pilsoniskās sabiedrības un integrācijas politikas pamatnostādnes 2012–2018.gadam http://polsis.mk.gov.lv/view.do?id=3782.

6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.
In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).
Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?

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

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

Art. 76(2) of the Administrative Procedure Law that entered into force on 1 February 2004 permits challenging an administrative act or factual action – which would also include discriminatory acts and behaviour in civil service relationships in the public sector - before a higher institution, and then (or, if such higher institution does not exist or it fails to notify the applicant of the outcome of his or her submission, directly) in the administrative court.

The Administrative Procedure Law contains several novelties designed to make the challenge easier for the individual and speed up the procedure while at the same time minimizing the representation costs. The principle of objective investigation by the court and the possibility to opt for written procedure if both parties agree, which is still used rather reluctantly. All three instances of administrative courts are located in Riga, so in some cases written procedure was the only realistically feasible option, but the first instance administrative courts have also been created in other regions.

According to Art.38 of this law any person, not only a lawyer, may be a representative in an administrative procedure, and pursuant to the law on state-sponsored legal aid the individuals can apply for such aid in administrative cases.

Article 16 of the Law on the Public Prosecutor's Office provides for the prosecutor's involvement in the protection of rights and lawful interests of disabled, under-aged and others 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.

In 2010 and 2011, there were five known discrimination (gender, calculation of unemployment benefits) cases against the State Social Insurance Agency (Valsts sociālās apdrošināšanas aģentūra) and gender discrimination case (employment, dismissal) before administrative courts. There have been no prosecutions based on anti-discrimination aspect of Art.149.

2) Courts of general jurisdiction

The provision of Article 92 of the Constitution stating that 'Everyone has the right to defend their rights and lawful interests in an impartial court' has been further elaborated by the Judicial Powers Law. Article 5 provides that, in civil cases, the court shall hear cases related to the protection of civil rights, labour rights, family rights, and other rights and lawful interests of individuals and legal entities. Administrative cases concerning acts of institutions of state authority and state officials, including civil service relationships, are now heard by administrative courts. The procedure for adjudicating non-administrative cases, which also includes cases arising from labour relationships in the private sector and also in the public sector outside the civil service is determined by the Civil Procedure Law.

The payment of court expenses, as well as the state levy, is waived in cases based on an employment relationship and when the case has been initiated by the prosecutor (Article 43(1), paras.1 and 5 of the Civil Procedure Law, Article 218 of the Labour Law). However, this does not include lawyers' fees, however, since the adoption of the law on legal aid provides for by the state[95] in 2005, a mechanism has been set up whereby persons in need can be granted free legal assistance in criminal and civil cases. Cabinet of Ministers Regulations No 558 set conditions for receiving legal aid, which is that the person's particular situation, property status and income level do not suffice for partial or full protection of their rights. Free legal aid is to be provided to persons whose status is defined as low-income or indigent, and the person who seeks such aid is required to submit documents attesting his/her income level, property status and special situation.

It has to be noted separately that access to legal aid has already been made easier after the judgement of the Constitutional Court which invalidated the provision of the Civil procedure law adopted in 2002 providing for representation of individuals, if not by close relatives, then only by sworn advocates.[96]

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

This was held, in absence of the state system of legal aid at that point, to be contrary to the right to fair trial, and in another case the provision of the same law providing for compulsory representation by a lawyer at the cassation instance was likewise invalidated. After the invalidation of these norms the Parliament amended the law so that now a person can be represented by anybody, not just sworn advocates.

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

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

3) State Labour Inspectorate

The State Labour Inspectorate was established by the Law reinstating the force of the 28th of April, 1939 statute "On Labour Inspection",[97] and its work is currently regulated by the new State Labour Inspectorate law.[98] Among its functions is the monitoring of compliance with legislation regulating the sphere of employment and the observance of the rights of employees. Employees can turn to the Inspectorate with their complaints, which the Inspectorate investigates. The SLI is mandated to investigate administrative offences in employment relations as envisaged by Article 204.[17] Violation of Prohibition of Discrimination in the Code of Administrative Offences and can impose fines from 100 to LVL 500 (from 142 to 714 EUR). Thus, 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.

On cases decided by SLI, see 2.2.b

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

4) Ombudsman (the Ombudsman's Office)

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

[97] Likums "Par Latvijas Republikas 1939. gada 28. aprīļa likuma «Par darba inspekciju» spēka atjaunošanu", adopted 04.05.1993.
[98] Valsts darba inspekcijas likums, adopted 13.12.2001.

The Ombudsman then has to attempt to resolve a conflict through conciliation. If this fails, the Ombudsman advises the parties of his opinion and proposals in the form of recommendations, and also presents his suggestions and recommendations for the prevention of human rights violations to the relevant institution or official; however, the Ombudsman's Office cannot enforce its recommendations,[99] nor can it apply any fines. After the examination of the complaint it can bring a case in an administrative court, if it is in public interest, and given its mandate it could be presumed that resolving any cases of discrimination would be in the public interest – or a civil case – only in cases where differential treatment is at issue.

The Ombudsman also has 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. For more information, see under 7. Specialized bodies.

5) The Constitutional Court.

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

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

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

There has been a limited, yet steadily growing number of judicial referrals so far, while constitutional complaints have been widely used. Although there have been no complaints of discrimination on the grounds of gender, racial or ethnic origin, sexual orientation or disability, in two cases age discrimination has been alleged. In the first case, the provisions of the Law on Higher Educational Establishments and of the law on Scientific Activity setting the age limit of for occupying administrative positions in scientific institutions and higher educational establishments and higher academic positions were successfully challenged, although the court did not decide the case based on the discrimination argument, while in the second case a similar challenge to age limit in civil service failed.

b) Are these binding or non-binding?

The decisions by a higher institution, administrative court, public prosecutor's office, courts of general jurisdiction, Constitutional court and State Labour Inspectorate are binding; the opinion of the Ombudsman is non-binding.

c) What is the time limit within which a procedure must be initiated?

The person can submit a constitutional complaint within 6 months after the last decision if the constitutionality of a legal norm is at issue.

Art. 34 (1) Labour law used to provide for a one month time limit for bringing the case to the court in cases of discrimination when establishing a labour relationship – thus being an exception from the general two year time limit for employment-related claims; the same applied to unequal remuneration to men and women (Art. 60 (1)) and unequal treatment in relation to work conditions, vocational training and promotions (Art. 95); however, the amendments to the Labour Law adopted on 04.03.2010 and in force from 25.03.2010 replaced all these one-month limits with three-month limits. However, it seems obvious – in the absence of a specific contrary provision in the law – that the general two year time limit applies to cases of discrimination in termination of the labour relationship (however, there is a one month time limit if the person wants to have the dismissal declared null and void for whatever reason). The general time limit prescribed by Art. 1895 of the Civil Law for cases when no other time limit applies is 10 years. Importantly, there are no provisions excluding the bringing of a case after the end of the employment relationship as long as the time limits are complied with.

d) Can a person bring a case after the employment relationship has ended?

A person can bring a case after the end of the employment relationship, however, it has to be noted that the time limit for bringing the case to the court in cases of discrimination (with the exception of discriminatory dismissal) is one month, thus an exception from the general two year time limit for employment-related claims –and a rather short one.

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

Another separate issue that needs to be addressed is that of disability-related accessibility to these remedies. The absolute majority of central and local government institutions remain physically inaccessible;[100] while those buildings that are built recently have to address the accessibility issue, the accessibility often stops at getting into the building, the relocation within the building remaining a problem. There are no rules on provision of information in Braille, and the only context within which sign language interpretation must be provided by the state is that of court proceedings.

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

Please list the ways in which associations may engage in judicial or other procedures

a) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).

After the 02.11.2006 amendments to the Law on Organizations and Foundations[101] in force from 23.11.2006 such organisations and foundations whose aims provided for in their regulations are the protection of human rights and individual rights can, with the agreement of the natural (legal persons are thus excluded) person affected turn to the state institutions and courts in order to protect the rights and legal interests of the person in cases related to the violation of the prohibition of differential treatment. Prior to these amendments only the National Human Rights Office (the predecessor of the Ombudsmen's Office) could bring a case on behalf of the victim since the end of 2005, and the rights of members only - leaving non-members without the protection - could be protected by trade unions pursuant to Art. 14 of the Law on Trade Unions and Art.8 of the Law On Labour disputes[102] and by voluntary organisations pursuant to Art. 10 of the Law on Organisations and Foundations, within the sphere of the aims and tasks of the voluntary organisation.

Looking at the procedural laws, while the Civil Procedure law still is silent on the issue, which does not affect the right provided for in other laws, the Administrative Procedure law provides that "in cases provided for in law, public legal entities and

[100] According to the 2010 Report of the Ombudsman's Office, only in 26 % of the cases the local governments have indicated that their services are accessible to persons with disability. –Tiesībsarga 2010. gada ziņojums, available for downloading at http://www.tiesibsargs.lv/files/gada_ziņojumi/tiesībsarga_gada_ziņojums_2010.pdf, p. 74.
[101] Biedrību un nodibinājumu likums, adopted 30.10.2003.
[102] Darba strīdu likums, adopted 26.09.2002.

persons within the jurisdiction of private law have the right to submit a submission to an institution or an application to a court in order to defend the rights and legal interests of persons".

Art.183 of the Administrative Procedure Law also introduces the institution of *amicus curiae* by providing that "an association of persons which is considered a recognised representative of interests in some sector and from which expert opinions may be expected may petition the court in writing to permit it to submit its opinion regarding facts or rights in the relevant sector".

b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

Law on Organizations and Foundations only permits to bring a case on behalf of the complainant. The agreement of the person is required, and the association or organization needs to be registered. No additional requirements apply.
The Law On Labour disputes specified that trade unions are entitled to bring a case "in the interests of their members" to the court without a special authorisation. While the wording leaves a potential for conflicts –seemingly implying that the agreement of the person is not required – it has never been an issue

c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

No specific form of authorization is required, thus the usual provision of the Law on Civil procedure apply, namely, it can be either an authorization certified by a notary, or an oral authorization expressed during the court sitting.

d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

There is no legal duty to act, hence it is always discretionary.

e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

The laws do not specify the types of proceedings, but by their nature they are likely to be either civil or administrative.

f) What type of remedies may associations sek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify

There are no more detailed provisions concerning the standing of associations –in fact, the laws only provide for their right to engage on behalf of the victim – thus associations only may seek to obtain what the victim himself or herself could seek to obtain.

g) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

No.

*h) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

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

*i) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

While there is nothing to prevent engagement on behalf of several complaints, there is also nothing to specifically authorize them, thus the law is silent on this issue and the issue of possible class actions remains unresolved; since class actions have so far been foreign to the Latvian legal system, it seems safe to state that in the absence of legislative action they remain impossible.

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

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

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

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

thus complying with the requirements of the respective articles of the two Directives and Directive 97/80/EC in so far as employment relationships are concerned. It must be remembered that para.(9) provides that the provisions of this article (thus including those on the burden of proof) also apply to the prohibition of differential treatment based on race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or family status, sexual orientation or other circumstances of an employee. Art.9 specifically applies the shared burden of proof to victimisation cases, while harassment and instructions to discriminate come under Art.29. So far the provision has been applied in a number cases involving access to employment and coming under the terms of the Labour Law – in a three gender-based discrimination cases, race-based discrimination case and in a case on sexual orientation.

At the same time, in practise it is not infrequent that in a court hearing the claimant has himself/herself to prove that he/she has been discriminated, as the general procedure of adversarial argumentation was followed. This is evidenced by a Supreme Court judgement (see case law) where lower court was criticised for failing to shift the burden of proof in discrimination case (2007 - employment, disability Case No 40066110). There are also cases when the court formally refers to the provision on the burden of proof nevertheless the plaintiff is required to prove the claim.

The shift of the burden of proof is also provided for by the Law on Consumer Rights Protection (Art. 3.1.(5)), thus in the sphere of access to goods and services, and by the Law on prohibition of discrimination of natural persons who are economic operators (Art.4) –since the 25.02.2010 amendments applicable also to access to self-employment, in both cases in relation to gender, race and ethnic origin only. Two other laws were amended in 2010, and now also the Law in Education and Law on the support to unemployed persons and job seekers provide for the shift of the burden of proof. However, the latter law only applies to gender, race and ethnic origin – thus leaving without protection the other the Directive 2000/78 grounds, and the Law on Education list of grounds does not include age, disability (which may be interpreted as coming under health condition) and sexual orientation, thus similarly remaining an incomplete transposition of the Employment directive.

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

Additionally, Art.150 on the burden of proof provides that the institution has to prove the facts on which it relies as the grounds for its objections and the plaintiff, according to his or her possibilities, shall participate in collecting of evidence and that if the evidence submitted by parties is not sufficient the court shall collect it on its own initiative. Five discrimination cases (gender, calculation of unemployment benefits) have been brought under this law. Note that this law also applies in civil service cases to which the Labour Law does not apply.

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

It can be concluded that the requirements of the three Directives concerning the burden of proof are currently complied with in relation to all grounds only in cases related to employment relationship, including civil service relationships, and are generally complied with in administrative cases, which would include state-provided social security cases, however, how effective the principle of "objective investigation" is in discrimination cases will only become apparent with case law.

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

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint)

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

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

This would include cases of victimisation on grounds of a person's complaints about the violation of the principle of equal treatment. After the 05.07.2004 amendments part 2 of this Article applies to victimization cases the sharing of burden of proof.

Similarly, Art. 8(2) of the Labour Law protects against any unfavourable consequences resulting from a person's membership in a workers' organisation:

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

Even if Art. 9(2) does not expressly mention discrimination or differential treatment, only the "adverse consequences", the Abramova case described below gives grounds to think that the courts might be prepared to view victimisation in the context of discrimination, and the provision of Art. 29(8) of the Labour Law establishing the right to compensation refers both to differential treatment and the creation of adverse consequences.

Protection against victimization is provided also in Art. 34(2) of the Law on Social Security providing that:

"Infliction of a punishment on a person as well as creation directly or indirectly of adverse consequences to him/her because due to the fact that the person in a permissible manner avails herself of the protection of his/her rights in relation to the prohibition of differential treatment shall be prohibited", and in Art.3.1.(10) of the Law on Consumer Rights Protection.

It must be noted that both under the Labour Law and under the amendments to the Law on Social Security the wording of the victimization clause, by referring to "his (or her) rights" seems to confine the prohibition against discrimination to the actual victim of the discrimination, witnesses and other persons assisting the complainant thus being excluded.

Similarly, victimization is prohibited by Law on prohibition of discrimination of natural persons who are economic operators (Art.7), Consumer Protection law (Art. 3.1.(10)), Law on the support to unemployed persons and job seekers (Art.2.1(8)) and Education Law (Art. 3.1 (4)), Patients' Rights Law (Art. 3 (4).

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

All other cases – with the exception of the already mentioned ones – 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 leading court case on victimisation, which, however, was decided before the new Labour Law entered into force.

The plaintiff, Dagmara Abramova, who had been dismissed as a result of the reduction of the number of employees was reinstated to her position by a court decision. She brought another court case when she learned that she was the only employee whose salary was not linked to the work performed and her salary remained constantly low, arguing that she had been discriminated against due to her activities in the trade union. Abramova received a positive decision in the court of the first instance and her claim was rejected in the court of appeal. The Latgale Regional Court found a violation of the principle of equality guaranteed by Article 1 of the Labour Code and of the principle of equal pay for equal work, referring to Article 23 of the Universal Declaration of Human Rights. Interestingly, the discrimination was found to be on the grounds of victimisation due to the fact of defence of her rights, even if this ground was not listed in the exhaustive list of grounds prohibiting discrimination in Article 1 of the old Labour Code. 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.

Another case on victimisation, R.K. vs. Valsts Mežu dienests, was decided in 2005 (1st and 2nd instance) and in 2006 (the Supreme Court Senate). The plaintiff had been subjected to various disciplinary measures, all of which were repealed by the State civil service office or by a court; since, unlike other of his colleagues performing the same job R.K. was not paid the regular premiums, he considered he had been victimized because of defending his rights. The court held for the plaintiff and also awarded him moral damages.

It can be concluded that prohibition on victimisation exists only in the framework of the employment relationships, including civil service relationships, coming under the terms of the Labour Law, Law on prohibition of discrimination of natural persons who are economic operators covering self-employment, Law on the support to unemployed persons and job seekers, Law on Social Security, Law on Consumer Protection, Law on Education, Patients' Rights Law and in relation to a complaint to the Ombudsman's office, within their respective spheres of application and in relation to the grounds covered by them –which are incomplete; thus, the requirements of the directives are only partially complied with.

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

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

Speaking specifically about anti-discrimination law, it is possible currently to speak of specific sanctions contained in Labour Law, Law on Consumer Protection, Law on prohibition of discrimination of natural persons who are economic operators, Law on Education and in Criminal Law.

Art. 78 of the Criminal Law - as amended on 29.06.2007 - provides:

1) For acts knowingly directed towards instigating national or racial hatred or enmity, the applicable sentence is deprivation of liberty for a term not exceeding three years, community service or a fine not exceeding sixty times the minimum monthly wage.
2) For 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. 149.-1 provides:

1) For race or ethnical discrimination or the violation of the prohibition of discrimination provided for in other legal acts, if it has been repeatedly committed within a year, he applicable sanction is a fine not exceeding thirty times minimum monthly wage.
2) For the same acts, if considerable harm has been caused or 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, or if they have been committed by using an automated system of data processing, the applicable sentence is deprivation of liberty for a term not exceeding two years, community service or a fine not exceeding fifty times the minimum monthly wage."

Art. 150 of the Criminal Law provides:

1) For hurting the religious feelings of persons or instigation of hatred in relation with the person's attitude 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.

2) For the same acts, if considerable harm has been caused or 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, or if they have been committed by using an automated system of data processing, the applicable sentence is deprivation of liberty for a term not exceeding four years, community service or a fine not exceeding eighty times the minimum monthly wage".

Art. 149.[1] has as its counterpart the art. 204.[17] of the Administrative offences code inserted in the Code by amendments adopted on 17.05.2007 and providing that for violation of the prohibition of discrimination provided for in other legal acts the applicable sanction is from 100 to 500 Latvian LVL (~143 EUR to 714 EUR), as the Criminal Law applies only for an offence repeated within a year; it remains to be seen how efficient this new construction will be. The earlier Criminal Law construction requiring showing of an intent to discriminate had been criticised as making its application nearly impossible.

Art. 29(8) of the Labour Law provides:
"If the prohibition of differential treatment and prohibition to cause adverse consequences is violated, the employee, in addition to other rights provided for by this law has the right to request compensation for damages and compensation for moral damages. In case of a dispute the amount of compensation for moral damages shall be determined by the court at its discretion".

The possibility to claim moral damages is expressly provided for also in the Law on Consumer Protection (Art. 3.1.(11)), Law on prohibition of discrimination of natural persons who are economic operators (Art.5) and Law on Education (Art.3.1.(6)

Similarly, Art. 92 of the Administrative Procedure Code provides that "Everyone is entitled to claim compensation for financial loss or personal harm, including moral harm, which has been caused him or her by an administrative act or an actual action of an institution". The amount of compensation for financial loss, which has been caused by an administrative act of an institution, is provided in the Law on Reparation of Damages caused by State Administrative institutions.[103]

[103] Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums, adopted 02.06.2005, entered into force on 01.02.2006.

Generally, non-pecuniary damages is a field under development in Latvian law; until the adoption of the Law on Reparation of Damages caused by the State Administrative Institutions, the only case when Latvian law allowed for non-pecuniary damages was that provided for in Arts. 2349, 2352., 2352.a and 2353 of Civil Law in cases of mutilation, unlawful deprivation of liberty, defamation[104] and rape, and it appears that only the defamation provision has been used so far to award moral damages.

In the two defamation cases brought under Civil Law and related to defamation and incitement to racial discrimination the damages awarded were 3000 LVL (around 4800 EUR) to each of the plaintiffs in the Los Amigos case[105] out of 30.001 LVL claimed by them and a symbolic 30 (around 50 EUR) LVL in the Steel case,[106] while in the Smagars case[107] on disability-based discrimination in access to a public place the amount of damages awarded was 3000 LVL (around 4800 EUR) out of the 30.001 LVL claimed. In the three discrimination cases from 2004-2006 brought under the Labour Law the amounts awarded were 2000 LVL (around 3000 EUR) by the court of the first instance in the sexual orientation-based discrimination case,[108] the claim later being rejected on appeal, which was the amount asked for by the plaintiff[109] and 1000 LVL (around 1500 EUR) in the gender discrimination case,[110] also awarding the whole amount the plaintiff had asked for and also 1000 LVL (around 1500 EUR) in the race discrimination case[111] where the plaintiff had asked for 3000 LVL (around 4800 EUR). It must be noted that in all four cases decided in 2005 and 2006 the courts, when deciding on the amount of damages to be awarded, specifically and expressly use the considerations of the need for the sanction to fulfil the preventive function.

From 2007 through 2011, there are ten known discrimination cases before the courts which have resulted in the favourable outcome for the victim (eight - concerning discrimination on ground of gender, two - on ground of disability). Two are conciliation agreements confirmed by courts in 2008, the claimants were awarded 5,000 LVL (~7,142 EUR, gender (pregnancy, dismissal), claimed 10,000 LVL (14,285 EUR) and 800 LVL (1,142 EUR, gender, job interview), one conciliation agreement in

[104] 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.
[105] The 09.04.2003 Supreme court judgement in the case PAC-244.
[106] The 08.09.2003 Latgale district court of Riga judgment in case C29240503., see under 0.3 Case law above.
[107] The 11.07.2005 Riga regional court judgment in case C04386004, see under 0.3 Case law above.
[108] The 25.05.2005 Ziemeļu district court judgment in case C32242904047505, see under 0.3 Case law above.
[109] The court rejected the claim for pecuniary damages, though, as it considered the amount of damages was not proved as it would have been difficult for how long would the employment have lasted had the plaintiff been employed.
[110] The 05.07.2005 Cesis region court judgment in case C11019405, see under 0.3 Case law above.
[111] The 25.05.2006 Jelgava court judgment in case No.15066406, see under 0.3 Case law above.

2007, the claimant was awarded 3,000 LVL (4,285 EUR, disability, dismissal). In 2010, the claimant was awarded 300 LVL (~428 EUR, gender, recruitment, claimed 5,000 LVL (7,142 EUR). In 2011 one claimant was awarded 1,000 LVL (1,428 EUR) as compensation for non-material damages by appeal court, but the case is pending with the Supreme Court. Five cases in 2010-2011 (gender) concerned recalculation of unemployment benefits and have been tried by administrative courts. Although the courts established indirect discrimination leading to recalculation of unemployment benefits, it is not known whether the claimants have also sought moral compensation.

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 with 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 Ombudsman's Office where the outcome can be a friendly settlement; or the court (in relation to discrimination in all spheres) or administrative court. The Centre for Consumer Protection has twice applied fines for discriminatory advertising in the amount of 1500 LVL (around 2250 EUR) and 5000 LVL (around 8000 EUR). Individuals may seek a halt to the discriminatory practices before the court (of either a representative of the public authorities or a private person), restoration of violated rights or status and compensation for damages if one can prove their existence.

All in all, the addition of express reference to moral damages in the Labour Law and in the Law on Consumer Protection and the adoption of the Law on Reparation of Damages caused by the State Administrative Institutions is certainly a welcome recent development, however, as not all spheres required by the Directives are covered by Latvian legislation there are inevitably gaps also relating to sanctions in these uncovered fields – although the latter law admittedly would cover most of the public sphere.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

There is no maximum amount for damages under the Civil Law, yet Art. 14 of the Law on Reparation of Damages caused by the State Administrative Institutions sets the maximum amount of non-pecuniary damages for personal harm at 5000 LVL (around 8000 EUR) or 7000 LVL (around 10,000 EUR) in cases of grave personal harm, and 20.000 LVL (around 24.000 EUR) if harm has been caused to life or grave harm has been caused to health. The maximum amount of damages for moral harm is set at 3000 LVL (around 4800 EUR) or 5000 LVL (around 8000 EUR) in cases of grave moral harm and 20.000 LVL (around 24.000 EUR) if harm has been caused to life or grave harm has been caused to health.

It is difficult to predict, in the absence of any case law, whether in cases of discrimination by the state institutions in final instance the courts would be ready to award both the damages for personal harm and moral harm; the definition of personal harm and moral harm in the law permits the cases of discrimination to come under the terms of both of them, and the law itself permits applying for several kinds of damages at the same time. It has to be noted that the Latvian law does not have punitive damages.

c) Is there any information available concerning:
the average amount of compensation available to victims
the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?

The number of court cases concerning discrimination on grounds of ethnicity, religion, disability, age, and sexual orientation resulting in the compensation for the victim remains small.[112] The average moral compensation awarded in known discrimination cases is 1,000 LVL (1,428 EUR). In one case the compensation awarded through a conciliation agreement was 3,000 LVL (4,285 EUR), but also included wages and payable income tax. Small amount of compensation can hardly be considered effective, proportionate and dissuasive.

[112] One of grounds of ethnicity (2006), two on grounds of disability (2007, 2011).

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

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

a) Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin?(Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so.)

The National Human rights office was replaced by, or rather transformed, into the Ombudsman's Office in 2007 after the Parliament appointed the first ombudsman on 01.03.2007, two months after the office was supposed to begin its work. The second Ombudsman was appointed on 3 March 2011.[113] The mandate of the office is more general: the protection of human rights and ensuring that the principle of good governance be observed, thus promotion of equal treatment is only one of its tasks. According to Art. 11 (2) of the Law on Ombudsman the ombudsman promotes observation of the principle of equal treatment and elimination of all kinds of discrimination, without specifying the grounds.

b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.

The Ombudsman is appointed by the Saeima (the Parliament) upon the proposition of five MPs for a period of four years and can be dismissed from his office following his conviction or – by a vote of the Parliament – for acts incompatible with his status of an ombudsman or for failing to carry out his duties. The work of the Office is financed from the state budget, and once a year it has to report to the Parliament and the President of the State about its activities. In his activities the ombudsman is independent and governed only by law.

The general financial crisis and Office's weakness due to internal conflict inevitably affected the Ombudsman's Office and its effectiveness. Its budget has been significantly cut from 2008 - 1,257,384 LVL (1,797,626 EUR), 2009 - 903,807 LVL (1,291,152 EUR), 2010 - 558,276 (797,537 EUR), 2011 - 581,149 (830,212 EUR), 2012 - 681, 149 LVL (973,070 EUR).[114] And the number of employees has gone

[113] Latvijas Republikas Tiesībsargs (2011), available in Latvian at http://www.tiesibsargs.lv/files/gada_ziņojumi/tiesībsarga_gada_ziņojums_2011.pdf.
[114] Ministry of Finance (2011). Law on State Budget, Explanatory Report, p. 124, available in Latvian at http://www.fm.gov.lv/files/files/E2B59325674000133069394877052 3.doc.

down from 51 at the end of 2008 to 40 at the end of 2010[115] and 35 in early 2012. In the end of 2011, there were only two person working specifically with the issues of discrimination,. Since 2009 the Office has not published any informative materials and instead emphasizes participation in awareness raising events organized by other governmental and nongovernmental entities, for example, the Riga city council, the Ministry of Welfare, the Red Cross etc.

In 2011 Office considered 72 written complaints about discrimination (221 (78 written) in 2010, 181 (101 written) complaints in 2009). In October 2011 the Office conducted a survey on the prevalence of discrimination in employment.[116] 30% of respondents had heard that their relatives, friends and acquaintances had encountered discrimination at work. The respondents thought that discrimination occurred on grounds of age (32%), ethnic origin (28%), gender (19%). 16% of respondents thought that discrimination occurs due to language proficiency and other job requirements, 9% - due to state of health or disability, 7% - due to sexual orientation.

Ombudsman's mid-term strategy for 2011 – 2013 in the area of prevention of discrimination has set the following priorities:

1. prevention of discrimination in the labour market;
2. prevention of hate crime;
3. provision of equal access to goods and services without discrimination based on gender, race, nationality or disability;
4. facilitation of the implementation of the UN Convention on Rights of the Persons with Disabilities.

c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.

The competence of the ombudsman includes promotion of protection of the rights and lawful interests of an individual; promotion of the compliance with the principles of equal treatment and prevention of any kind of discrimination, also in the private sphere; to evaluate and promote the compliance with the principles of good administration in the State administration; to discover deficiencies in the legislation and the application thereof regarding the issues related to the observance of human rights and the principle of good administration, as well as to promote the rectification of such deficiencies; to promote the public awareness and understanding of human rights (as mentioned under b), there is no public relations division anymore, though),

[115] The annual report for 2010, available online at http://www.tiesibsargs.lv/files/gada_ziņojumi/tiesībsarga_gada_ziņojums_2010.pdf, p.128.
[116] Tiesībsargs (2011). Diskriminācijas izplatība nodarbinātības jomā (Prevalence of Discrimination in the Realm of Employment), available in Latvian at http://www.tiesibsargs.lv/files/diskriminācijas_izplatība_nodarbinātības_vidē_latvijā.pdf.

of the mechanisms for the protection of such rights and the activities of the ombudsman.

According to Art. 12 of the Law, the Ombudsman shall:

1) accept and examine submissions, complaints and proposals of private individuals;
2) initiate a verification procedure for the clarification of circumstances;
3) request that institutions within the scope of their competence and within the time limits provided for by the law clarify the necessary circumstances of the matter and inform the Ombudsman thereof;
4) upon the examination of the verification procedure or after the termination thereof, shall provide the institution with (nonbinding) recommendations and opinions regarding the lawfulness and effectiveness of their activities, as well as the compliance with the principle of good administration;
5) in accordance with the procedures specified by this Law, shall resolve disputes between private individuals and institutions, as well as disputes in respect of human rights between private individuals;
6) facilitate conciliation between the parties to the dispute;
7) in resolving disputes in respect of human rights issues, shall provide opinions and recommendations to private individuals regarding the prevention of human rights violations;
8) provide the *Saeima*, the Cabinet, local governments or other institutions with recommendations in respect of the issuance of or amendments to the legislation;
9) provide persons with consultations regarding human rights issues; and
10) conduct research and analyse the situation in the field of human rights, as well as provide opinions regarding the topical human rights issues.

In particular, the ombudsman may upon termination of a verification procedure and establishment of a violation, to defend the rights and interests of a private individual in an administrative court, if that is necessary in the public interest, as well as – of direct relevance to discrimination cases - upon termination of a verification procedure and establishment of a violation, to apply to a court in such civil cases, where the nature of the action is related to a violation of the prohibition of differential treatment. It has to be noted that the ombudsman can initiate a verification procedure not only reacting to a complaint submitted to him, but also on his own initiative.

d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?

Yes, the ombudsman can conduct independent research and analyse the situation in the field of human rights, as well as provide opinions regarding the topical human rights issues, provide opinions and recommendations to private individuals regarding the prevention of human rights violations, provide the state institutions with

(nonbinding) recommendations and opinions, provide persons with advice regarding human rights issues (Art.12 of the Law on Ombudsman), thus providing independent assistance to the victims.

e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

Yes, the ombudsman may upon termination of a verification procedure and establishment of a violation, to defend the rights and interests of a private individual in an administrative court, if that is necessary in the public interest, as well as – of direct relevance to discrimination cases - upon termination of a verification procedure and establishment of a violation, to apply to a court in such civil cases, where the nature of the action is related to a violation of the prohibition of differential treatment. In 2010 the Ombudsman has brought one case concerning differential treatment on the ground of disability, but the case has not been decided yet.

f) Is the independence of the body / bodies stipulated in the law? If not, can the body/bodies be considered to be independent ? Please explain why.

Art. 4 (1) of the Law on Ombudsman stipulated that the ombudsman is independent and subject only to law. However, with no legally guaranteed minimal funding – and significant budget cuts in the last years – it could be said that the independence is not sufficiently guaranteed.

g) Are the tasks undertaken by the body / bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports)

The Ombudsman is entitled to undertake all these tasks (see the list of competencies described under c)) However, the surveys organized by the ombudsman have always been very scarce even in the initial period when the allocated budget was significant, and with the budget cuts it did not publish any surveys or reports in 2011. However, it has provided a number of opinions, including to the Constitutional Court.

h) Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions)

The ombudsman is not a quasi-judicial institution and its functioning is based on the idea of authority and persuasion, not enforcement. Its decisions are only recommendations; it cannot impose any sanctions. The law provides for no appeal concerning the decisions of the ombudsman on their merits, and the 2007 judgment

of the Administrative Affairs Department of the Supreme Court Senate confirmed that the actions of the ombudsman cannot be appealed in the court. However, a case has been brought to the administrative court against predecessor of the Ombudsman's office – the National Human Rights Office – for non-observation of the time limits for providing answers to person's submissions, and a symbolic fine was imposed on it.

There are no data concerning the extent to which the ombudsman's recommendations are followed, but the previous ombudsman himself publicly admitted that "local governments, ministries and other institutions tend to ignore the opinion of the Ombudsman."[117]

Turning to the ombudsman does not preclude a person from subsequently (or simultaneously; there is no law to preclude it, although it is difficult to imagine it as the ombudsman is perceived more as an alternative to the court, and used by people who could not afford bringing a court case) bringing a court case.
While it normally would mean that the time limits for bringing the case would be missed, in the Kozlovska case (see under 0.3 Case law) the court held that in the cases where a person has first turned to the ombudsman - and the time limit has been missed for this reason – the time limit provision has to be interpreted broadly so as not to deny to the person the protection of his/her rights. The finding of the ombudsman is not binding on the court, so the court is free to follow or not follow it, if any of the parties brings it to the court's notice.

i) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

It was only in May 2011 that a person to specialise on Roma issues was hired in the Ombudsman's Office. The person has been tasked with promotion of Roma integration, organising Office's activities in the realm of non-discrimination, consulting Roma on issues related to the receipt of social assistance and advising on legislative changes. The Office also plans to facilitate Roma access to law enforcement institutions.[118]

[117] Luckāns, Uldis. Apsītis: Pašvaldības un ministrijas mēdz ignorēt tiesībsarga viedoklis [Apsītis: Local Governments and Ministries Tend to Ignore Opinion of the Ombudsman]. *Leta*, 27 May, 2009, at http://www.apollo.lv/portal/news/articles/168321.
[118] Information provided by the consultant on Roma issues at the Ombudsman's Office on 8 August 2011.

8 IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The Ombudsman's office and what used to be the Secretariat for the minister with special assignments for the integration of society, then, after reorganisation, from 01.01.2009.-01.07.2009, a department in the Ministry of Children, Family and Integration Affairs (and after second reorganisation – in the Ministry of Justice and third - in the Ministry of Education), as well as the Ministry of Welfare are the bodies that have taken measures specifically directed at disseminating information on anti-discrimination legislation to the public at large or to the representatives of the authorities; the Ombudsman's office has produced and disseminated an information booklet specifically dealing with differential treatment and avenues of redress. The Secretariat for the minister with special assignments for the integration of society conducted a number of activities in 2007, including organising the week against racism and a conference on tolerance, co-financed a number NGO-realized of LED II projects directed at promotion of tolerance. Also it was responsible for the State Program "Gipsies (Roma) in Latvia 2007-2009" which emphasizes inclusion by promoting equal opportunities in the sphere of education, employment and human rights. However while initially the draft National program on the promotion of tolerance for the years 2009-2013 listed sexual minorities as one of the target groups, it was struck out of the program, deleting the whole list of target groups, after the heads of the main religious persuasions represented in Latvia objected against inclusion of sexual minorities in the program. 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. Admittedly the efforts at dissemination information have increased considerably, as well as the dialogue with, and involvement of, NGOs, in particular as far as the activities of the Secretariat for the minister with special assignments for the integration of society were concerned.

Latvia provides training on the discrimination and tolerance related issues for different target groups with active involvement of the NGOs. Thus, the Latvian Centre for Human Rights has organised over 30 training seminars on non-discrimination, diversity management of various duration (8-30 hours) for NGOs, trade union representatives, police officers, judges, health and social workers, civil servants, students of journalism. LCHR has published different informative brochures and reports on non-discrimination, and created an anti-discrimination data base on the organisation's website which is the largest online resource in Latvia on policy

documents, anti-discrimination legislation, court cases, surveys, reports and publications.[119]

For several years Latvia has implemented the project “Latvia - Equality in Diversity" Since 2009 in a framework of European Integration Fund for Third country nationals several projects have been implemented in order to educate professionals

b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and

See under a). The situation concerning the dialogue with NGOs is improving; in 2005 the Prime Minister and NGO representatives signed a memorandum on the cooperation of the Cabinet of Ministers and NGOs; while the memorandum does not specifically address the issue of discrimination, it clearly recognizes the importance of NGO participation in the decision-making process and aims at ensuring such participation, as well as its effectiveness.

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

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, the Labour Tripartite Co-operation Sub-Council, deals with issues of employment law, labour protection and equal opportunities. Issues of discrimination have been discussed in the work of the sub-councils and the NTCC to a limited extent only, i.e., only as far as they relate to employment law, and mostly in relation to gender-based discrimination. Issues of gender related discrimination have been examined more closely.

The social dialogue concerning discrimination related issues related to gender-based discrimination and disability-based discrimination has to be noted 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

[119] See Latvian Centre for Human Rights www.humanrights.org.lv.

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 May 2010 the Gender Equality Committee was created and replaced the Gender Equality Council. The replacement of the Council by the Committee was motivated by the need to renew its members. At the same time its hierarchical subordination changed - the Council was advisory and co-ordinating state institution attached to the Cabinet of Ministers and its members were approved for a three year term by the Prime Minister, while the Committee is subordinated to the Minister of Welfare and operates on the basis of an order issued by the Minister. 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, the reality leaves much to be desired.

d) to specifically address the situation of Roma and Travellers

As far as Roma are concerned, Secretariat for the minister with special assignments for the integration of society was the responsible institution for the State Program "Gypsies (Roma) in Latvia 2007-2009" which emphasizes inclusion by promoting equal opportunities in the sphere of education, employment and human rights. Most of the activities focused on the improvement of Roma educational opportunities, promotion of Roma culture and preservation of ethnic identity. During the three years none of the planned activities aimed at the improvement of Roma employment opportunities were carried out. One of the reasons preventing the implementation of the programme was reduced funding (in 2007 - 66%, in 2008 - 36%, in 2009 - 17% of the planned funding). The Roma integration issues have been marginally included in the National Identity, Civil Society and Integration Policy Fundamental Principles 2012-2018 adopted in October 2011.

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

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

There is no specific regulation in national law establishing a mechanism designed to screen and eventually abolish laws, provisions and regulations that do not comply with the principle of non-discrimination; if it is the legal norm itself that is discriminatory, the person who has suffered from discrimination on the basis of this norm can, by first initiating procedure in the courts of general jurisdiction, submit a constitutional complaint to the Constitutional Court which may declare null and void

legal norms that are contrary to the norms of a higher legal force up to the Constitution; this, however, is a cumbersome procedure requiring the prior exhaustion of all other remedies, although the alternative would be turning to the Ombudsman's Office asking the Office to bring the complaint. However, the Office can only bring abstract review cases, and since the unconstitutional law usually loses its force only prospectively, the result of the case will be of no avail to the particular complainant. In case of a concrete review as a result of constitutional complaint the constitutional court can make, and has made in the past, an exception to allow the author of the complaint to benefit from the positive result of the case.

There does exist a mechanism, however, for ensuring that contracts, collective agreements and internal rules incompatible with the principle of equal treatment be abolished – or, more exactly, recognized by the courts as being void. Art.6 of the Labour Law provides that "provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments, erode the legal status of an employee, are void and can be declared such by courts of general jurisdiction". According to Article 43(1) of the Civil Procedure Law claims concerning labour disputes are exempt from judicial costs, which means that the applicant does not have to pay state duty or other costs directly related to the proceedings. However, this does not include lawyers' fees, although since the adoption in 2005 of a law to provide for state-paid legal aid it has become possible to ask for state aid to cover lawyer's fees.

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

It is difficult to estimate whether any laws etc. that are contrary to the principle of equality are still in force; at least there are no such apparent cases. Rather, more often the laws would not be discriminatory in themselves, but would just fail to provide adequate protection against discrimination.

The principle of *lex posteriori derogat legi priori* (more recent rules prevail over less recent rules) could be easily used to hold invalid the older incompatible norms, while it might be more difficult with the principle of "*lex specialis derogat legi generali*"(special rules prevail over general rules) as it would have to be determined whether, for example, the more specific law in particular field is the special norm, or the character of the special norm would be recognized to the norm in the field of non-discrimination. However, in practice it should not be a problem, given also the constitutional prohibition of discrimination.

9 CO-ORDINATION AT NATIONAL LEVEL

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

Is there an anti-racism or anti-discrimination National Action Plan ? If yes, please describe it briefly.

After the transposition of anti-discrimination Directives and the closure of the Secretariat of the Special Assignments Minister for Integration Affairs (SSAMIA) on 1 January 2009, there is no national authority co-ordinating issues regarding anti-discrimination.

The Ministry of Welfare is responsible for issues relating to the discrimination in the field of employment relationships, social security, children and family affairs as well as in relation to equal opportunities by the disabled persons and gender equality, thus covering grounds of gender, disability and age. On 1 January 2009, the SSAMIA was closed and its functions, tasks and obligations in relation to society integration were handed over to Ministry of Child, Family and Society Integration Affairs which was closed in mid 2009, and the responsibility for elaboration of national policy in society integration affairs was taken over by the Ministry of Justice. The regulations governing the work of both ministries did not include an explicit reference to anti-discrimination. From 1 January 2011 society integration issues, including intercultural dialogue and civil society, were handed over to the Department for society integration affairs of the Ministry of Culture. The regulations on the Ministry of Culture do not explicitly mention anti-discrimination functions however the competence of the Ministry of Culture in the realm of society integration and the promotion of civil society also includes “to ensure the observance of the rights of minorities, including Roma, by facilitating elimination of racial and ethnic discrimination.” The Ombudsperson’s Office has not assumed a co-ordinating role nationally on non-discrimination issues.

There is no National Action plan on anti-discrimination, but the government has adopted Action Plan 2010-2012 for the implementation of the Convention on the Rights of Persons with Disabilities and its Additional Protocol. In May 2011 the Ministry of Welfare began elaborating a Framework document for the Implementation of the Convention 2013-2019, and the submission of the draft document to the Cabinet of Ministers has been scheduled by 31 October 2012.

From 2004-2009 the national program for the promotion of tolerance existed, a new draft programme elaborated in 2008 sparked a controversy as the leaders of churches objected against inclusion in the program of sexual minorities, and the responsible Minister for Social Integration Affairs decided not to name any grounds of discrimination. On a political level it was decided that a new Framework Document

on Guidelines on National identity, Civil Society and Society Integration policy 2012-2018 is to be elaborated.

The Guidelines were adopted on 20 October 2011.[120] The 25 page policy document includes a brief paragraph on anti-discrimination: "An institutional mechanism has been developed in Latvia for introduction and evaluation of the policy on non-discrimination. An anti-discrimination normative framework has been developed. The main problem is the society's attitude: discrimination often is not recognized, whereas when it does get recognized, it often goes unpunished. In such a situation particular groups of population have the greatest risk of discrimination, for example the Roma. There is little case-law and there are no regular surveys and information campaigns which would make this problem more visible in public consciousness. A positive attitude to diversity should be promoted in the society in order to ensure a tolerant and respectful attitude to diversity and those who are different."

The Action Plan, though, envisages a range of activities, such as development of a system of data collection, including on the situation of Roma in various socio-economic areas (employment, education, health care and affordable housing), conducting of surveys, training on non-discrimination for different target groups, improvement of methods to better identify discrimination, etc. The implementation of different activities is foreseen through different EU funded programmes and bilateral financial instruments.

There is the Program for strengthening of Civil Society for 2008-2012, but it does not focus on issues of discrimination.

[120] Guidelines on National Identity, Civil Participation and Society Integration 2012-2018 (Nacionālās identitātes, pilsoniskās sabiedrības un sabiedrības integrācijas politikas pamatnostādnes 2012.-2018.gadam) available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Citi/Guidelines_on_National_Identityx_Civil_Society_and_Integration_Policy.doc.

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Latvia Date: 1 January 2012

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.		Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
Labour Law http://www.likumi.lv/doc.php?id=26019	20.06.2001	01.06.2002 amendment adding sexual orientation as a protected ground in force from	Race, skin colour, age, disability, religious, political or other conviction, national or social origin,	Civil	Employment relationships proper (civil service and specialized civil service excepted	Prohibition of discrimination in relation to all aspects of employment relationships; prohibition and definition of direct/indirect

		25.10.2006	property or marital status, sexual orientation "or other circumstances"			discrimination, instruction to discriminate, victimization and harassment
Law on Social Security http://www.likumi.lv/doc.php?id=36850	07.09.1995	05.10.1995, amendment containing the equality guarantee in force from 03.01.2006	Race, skin colour, gender, age, disability, health condition, religious, political or other conviction, national or social origin, property or family status or other circumstances	Administrative	Social services - measures ensured by state or municipality as monetary or material support or other services to promote the full realization of person's social rights	Prohibition of differential treatment in provision of social services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment
State Civil Service Law http://www.likumi.lv/doc.php?id=10944	07.09.2000	01.01.2001, amendment in force from 10.11.2006	Grounds not specified	Administrative	Civil service relationships	Application of Labour Law provisions on protection against discrimination to civil service relationships

Law on Organisations and Foundations http://www.likumi.lv/doc.php?id=81050	30.10.2003	01.04.2004, amendment in force from 23.11.2006	Grounds not specified	Civil	principles for the activity, organisational structure, liquidation and re-organisation of associations and foundations	Right on behalf of the victim to turn to the state institutions and courts in order to protect the rights and legal interests of the person in cases related to the violation of the prohibition of differential treatment
Law on Ombudsman http://www.likumi.lv/doc.php?id=133535	06.04.2006	01.01.2007	Grounds not specified	administrative	legal status, functions and tasks of the Ombudsman, as well as the procedures by which the Ombudsman shall perform the functions and tasks specified by the Law	Entrusts the ombudsman with promotion of observation of the principle of equal treatment and elimination of all kinds of discrimination

Law on Consumer Rights Protection http://www.likumi.lv/doc.php?id=23309	18.03.1999	01.04.1999, amend-ments adopted on 19.06.2008, 28.10.2010	Gender, race, ethnic origin, disability	Civil	Access to goods and services	Amendments prohibit discrimination in access to goods and services; prohibition and definition of direct/indirect discrimination, instruction to discriminate, victimization and harassment
Law on Education http://www.likumi.lv/doc.php?id=50759	29.10.1998	01.06.1999, amendments adopted 04.03.2010 and in force from 26.03.2010	property and social status, race, ethnicity, gender, religious or political opinions, health condition , occupation and place of residence	Administrative	Access to education	Prohibition of discrimination in access to all types of education, prohibition of victimisation, reversal of burden of proof
Law on prohibition of discrimination of natural persons who	21.05.2009	10.06.2009, amendments adopted	Gender, race, ethnic origin	Civil	Access to self-employment; access to goods	Prohibition of discrimination in Access to self-

are economic operators http://www.likumi.lv/doc.php?id=193005		25.02.2010 and in force in force from 31.03.2010			and services of a self-employed person	employment; access to goods and services of a self-employed person; prohibition and definition of victimization

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Latvia Date: 1 January 2011

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	10.02.1995	27.06.1997.	No	Yes	Yes
Protocol 12, ECHR	04.11.2000	Not ratified			
Revised European Social Charter	29.05.2007	Not ratified[121]		Ratified collective complaints protocol? No	No
International Covenant on Civil and Political Rights	Not available	14.04.1992	No	Yes	Yes

[121] The ratification process is on the way. On 24 November 2011 the ratification law was adopted in the 1st reading in the Parliament.

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Framework Convention for the Protection of National Minorities	11.05.1995	06.06.2005	No, but definition of minority		Yes
International Convention on Economic, Social and Cultural Rights	Not available	14.04.1992	No		Yes
Convention on the Elimination of All Forms of Racial Discrimination	Not available	14.04.1992	No	No	Yes
Convention on the Elimination of Discrimination Against Women	Not available	14.04.1992	No	No	Yes
ILO Convention No. 111 on Discrimination		14.04.1992 (27.01.1992 –ILO database)	No		Yes

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	Not available	14.04.1992	No		Yes
Convention on the Rights of Persons with Disabilities	18.06.2008	01.03.2010		Yes	Yes