

LATVIA

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1. National court system

The Constitution and the Law on Judicial Power establish a three-tier court system, which consists of district (city) courts, regional courts and the Supreme Court which are collectively considered courts of general jurisdiction. In Latvia, there are 35 district, five regional courts and the Supreme Court. District courts are first instance courts for all criminal and civil cases unless otherwise specified by law. District court decisions may be appealed to a regional court, and under a cassation procedure, to the Supreme Court. Regional courts are first instance courts for civil and criminal (grievous) cases as established by law, and courts of appeal for district court decisions. Each regional court consists of a criminal and civil case division. The Supreme Court consists of a Senate and a Civil and a Criminal Case Division. The divisions hear appeals against regional court decisions where regional courts have acted as first instance courts, while the Senate reviews appeals under the procedure of cassation.

Until the establishment of administrative courts on 1 February 2004, general jurisdiction courts also reviewed administrative cases. In administrative cases the court exercises judicial control over actions of the executive relating to specific public legal relations between the state and private persons.

Administrative court system consists of three levels – the Administrative District court, the Administrative Regional court, and the Administrative Case Department of the Senate of the Latvian Supreme Court. Until 1 January 2009, there was only one administrative district court, but to improve access to justice and reduce serious backlogs, four new administrative district courts were established in the regions.¹

Attached to the regional courts are Land Registry Offices, judges of the Land Registry Offices have the status of district judges.

There is a separate Constitutional Court which reviews laws and other legal enactments and their compliance with the Constitution. It is considered an independent institution of judicial power. There are seven Constitutional Court judges, and the term of office is ten years.²

There are no special courts in Latvia.

The Civil and Administrative Procedure Laws provide for the right to appeal. If the case was heard before a district (city) court as first instance court, the judgement, if it has not come into a force, may be appealed with the regional court. A judgment of a regional court as a court of first instance may be appealed under cassation procedure to the Supreme Court Civil Case Court Chamber.

In cases concerning the appeal of decisions on the forcible expulsion/inclusion in the black list and entry ban the Supreme Court Administrative Cases Department is the first instance court and its decisions are final.

The appeal complaint should include the extent to which the judgment is being appealed; how the error in judgment is manifested, whether new evidence is being submitted, what evidence, regarding what circumstances and why this evidence had not been submitted to the court of first instance.

¹ <http://www.tiesas.lv/index.php?id=3048> (15.09.2009)

² Latvia/Satversmes tiesas likums [Constitutional Court Law], Section 1,3,7 (available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Constitutional_Court_Law.doc (20.09.2009)

The appeal court adjudicates cases on the merits to the extent petitioned for in the appellate complaint. It adjudicates only those claims that have been adjudicated by the first instance court, and the amendment of the subject matter is not permissible. The appellate court shall itself decide which evidence is to be examined at a court sitting.

The law provides for several cases, when irrespective of the grounds for the appellate complaint, the appeal court can send the case back for re-adjudication to the first instance court, if it determines that 1) the court was unlawfully constituted when adjudicating the matter, 2) when norms of procedural laws concerning language of proceedings, notification of participants to the case of the time and place of the court sitting where breached, etc.

A judgment of an appellate instance court may be appealed pursuant to cassation procedures if the court has breached norms of substantive or procedural law or, in adjudicating a matter, has acted outside its competence.

The Senate does not examine the evidence established by lower instance courts, but decides only on the points of law. If it finds that the court has applied a wrong legal norm or has misinterpreted the law, it may overturn the whole judgment or its part and send it back for a new hearing at the appeal instance. It may confirm the judgment and dismiss the complaint. A cassation court judgement may not be appealed and comes into effect at the time it is pronounced.

2. Restrictions regarding access to justice

In administrative court proceedings, the time limit for bringing the case to court is one month (if indicated in writing in the administrative act to be appealed) and one year (if the time limit is not indicated or an applicant appeals the actual act of the institution).³

Labour Law, the Consumer Rights Protection Law⁴, the Law on Prohibition of Discrimination of Physical Persons Conducting Commercial Activities provide for access to court in discrimination cases.⁵ The Labour Law provides that in discrimination related employment cases and in cases of

³ Latvia/Administratīvā procesa likums (25.10.2001), Section 76 paragraph 2, Section 79 (1), available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (16.08.2009)

⁴ Latvia/Patērētāju tiesību aizsardzības likums (18.03.1999), Section 3.¹, available at <http://www.likumi.lv/doc.php?id=23309>

⁵ Latvia/Fizisko personu — saimnieciskās darbības veicēju — diskriminācijas aizlieguma likums (21.05.2009), Section 6, available at <http://www.likumi.lv/doc.php?id=193005>

dismissal from work, a claim is to be filed in court within one month.⁶ All other claims arising from employment legal relationships are subject to a limitation period of two years.⁷

On 8 October 2009, the Parliament approved amendments to the Labour Law, which, inter alia, foresee extension from one to three months the statutory limitation when a complainant can bring a claim to the court in cases concerning discrimination in employment relations (in establishing employment relations, in giving notice of termination of labour contract during trial period, concerning equal pay, in determining working conditions, professional training or promotion).⁸ In cases of termination of labour contract the time limit will remain the same – one month.

Concern about short limitation period in bringing claims to court in discrimination cases as opposed to other claims arising from employment legal relationships was raised by the Ombudsman's Office in the inter-governmental working group elaborating the amendments. It is not fully clear why the limitation period of three months was chosen, but it coincides with the limitation period of three months, when a verification procedure by the Ombudsman's Office has to be completed in response to a complaint received by the office.

3. Length of judicial proceedings

Procedural time periods in civil and administrative procedure are either specified by law or determined by a judge or a court.⁹ At the same time, neither the Civil Procedure Law (CPL), nor the Administrative Procedure Law (APL) fixes statutory limits when the case should be prepared and tried by the court. The Law on Judicial Power provides that “a judge shall adjudicate a matter as fast as possible.”¹⁰ According to the APL, a court shall adjudicate the matter within a reasonable time.¹¹

⁶ Latvia/Darba likums [Labour Law], Section 34, 48, 60, 95, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc (15.08.2009)

⁷ Latvia/Darba likums [Labour Law], Section 31, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc (15.08.2009)

⁸ Latvia/Grozījumi Darba likumā (adopted in 2nd reading), Art 34, 48, 60, 95, available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/5DAAF56642D2B5E3C22576430021DDDF?OpenDocument> (09.10.2009)

⁹ Latvia/Civilprocesa likums (14.10.1998), Section 46 para 1, available at http://www.ttc.lv/advantagecms/docs/LRTA/Likumi/Civil_Procedure_Law.rtf (17.08.2009).

¹⁰ Latvia/Likums par tiesu varu (16.12.1993), Section 28 para 1, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Judicial_Power.doc (17.08.2009).

¹¹ Latvia/Administratīvā procesa likums [The Law on Administrative Procedure], Section 103, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (27.08.2009)

Of the 20 reviewed discrimination cases, 15 cases concerning discrimination have been reviewed by general jurisdiction courts (civil cases), while five – by administrative courts. The length of proceedings was not available for all civil cases, as they have not been included in the data base where proceedings in a case can be followed according to the case number as the entry of all court decisions is mandatory since 18 April 2007.

In the court cases where such information was available, the length of proceedings before the first instance courts lasted from two to 15 months. The majority of cases were reviewed within three to six months. Three cases with longest proceedings before the first instance court (8.5 months – 1 case, 2 cases – 13 and 15 months respectively) came from one district court in the capital Riga.

Length of proceedings in civil cases before the appeal court lasted from two to seven months (9 cases), and in one case reached 13 months.

Lengths of proceedings under cassation (5 cases) lasted from two to five months. In three cases the cassation court sent the case back to the appellate court for review. In two cases, there is a final decision and in one instance, the case is still pending.

Length of proceedings in administrative cases has been a cause for concern ever since the administrative courts began operating in 2005. In 2005, 63% of cases were tried by the only administrative district court between 6-12 months, while in 2008 length of proceedings had significantly increased, and 39% of cases were tried between 18-24 months, and 25% of cases – between 12-18 months. Similar backlogs occurred in the regional court. In 2005, 73% of cases were tried between 6-12 months, while in 2008 51% of cases were tried between 12-18 months and 25% between – 6-12 months. The average length of proceedings before administrative district court in 2005 was 8.3 months, while in 2008 it had more than doubled – 17.2 months. The average length of proceedings in administrative regional court was 7.2 months in 2005, and 8.6 months in 2008. The average length of proceedings before the Supreme Court Senate Administrative Case department remained 3 months in 2005 and 2008.¹² On 1 January, an additional four administrative courts began operating in the regions, to improve access to administrative court outside the capital Riga and reduce backlogs.

In the five discrimination cases before the administrative courts, length of proceedings before administrative courts were known in four cases. In three cases, the length of proceedings before

¹² Mg.iur.Litvins Gatis, “Administratīvo tiesu efektivitāte Latvijā un Lietuvā” [Effectiveness of Administrative Courts in Latvia and Lithuania], *Jurista Vārds*, Latvijas Vēstnesis. 19 May 2009.

administrative district courts was 14, 15 and 21 months respectively. All three cases have been appealed, and the hearing before administrative regional court has been scheduled within 10 months.

4. Are procedures concluded within a reasonable time?

Length of proceedings in discrimination cases before administrative courts appear to be excessive and reflect the general problem with backlogs in the administrative courts.

Due to serious backlogs in administrative courts, the majority of cases, including discrimination cases, are not reviewed within a reasonable neither before administrative district, nor administrative regional courts. In cases when statutory limitations on the length of proceedings before the administrative courts are fixed by law the cases are generally reviewed within a reasonable time.

5. Does provision exist for speedy resolution of particular cases?

The Civil Procedure Law provides for expedited procedure in cases concerning the reinstatement of an employee in work and in cases concerning the annulment of an employer's notice of termination. The examined discrimination cases did not include such cases.

6. Is it possible to waive the right of access to a judicial body?

There are no provisions on waiving the right of access to judicial body in discrimination cases.

7. Access to non-judicial procedures

The Latvian legislation provides for limited opportunities for alternative dispute resolution before non-judicial bodies. The Civil Procedure Law (CPL) also provides for arbitration courts. Any

civil disputes may be referred to arbitration court except for disputes where one of the parties is a state or local government institution, labour disputes (individual labour disputes) concerning employment contracts, application or interpretation of legal provisions, eviction, etc. A Constitutional Court has ruled that labour relations is a field where one of the parties – an employer – remains in an economically weaker position, therefore an agreement cannot be “imposed” upon an employer by an arbitration court.¹³

On 5 May, 2009 the Latvian government approved a report on “Measures to Improve Effectiveness of Labour Dispute Resolution” by the Ministry of Justice and Ministry of Welfare. The report notes the increasing number of complaints concerning labour related disputes received by the State Labour Inspection in recent years, recognises general lack of awareness concerning alternative dispute resolution by employees, and highlights the need for the creation of special non-judicial bodies, examining such options as labour tribunals or a labour dispute commission at the State Labour Inspectorate. The Ministry of Welfare has been mandated to draft a concept until 1 February 2010 on the establishment of effective pre-court labour dispute resolution body on the basis on the State Labour Inspectorate.¹⁴

Concerning non-judicial procedure in cases of discrimination individuals can submit complaints, petitions and proposals to the Ombudsman¹⁵, which is the designated equality body under the Racial Equality Directive, but also responsible for promoting the principle of equality and combating discrimination on all grounds. It is not mandatory to proceed to the Ombudsman before going to court. The procedure before non-judicial bodies in non-discrimination cases is not exclusive.

The Ombudsman may initiate an examination procedure, which should be completed within three months, but in exceptional cases the period can be extended for up to two years.¹⁶ The examination procedure does not lead to the suspension of other procedural time limits prescribed by other laws.¹⁷ The outcome of the examination procedure is completed by the conciliation of

¹³ Informative report by the Ministry of Justice and Ministry of Welfare, 05.05.2009, available at <http://polsis.mk.gov.lv/LoadAtt/file25698.doc> (20.09.2009)

¹⁴ Protocol of the Meeting of the Cabinet of Ministers. On Measures to Improve Effectiveness of Labour Dispute Resolution Body, 05.05.2009, <http://polsis.mk.gov.lv/LoadAtt/file25697.doc> (20.09.2009)

¹⁵ Latvia/Tiesībsarga likums [Ombudsman Law] (06.04.2006), Section 23, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Ombudsman_Law.doc

¹⁶ Latvia/Tiesībsarga likums [Ombudsman Law] (06.04.2006), Section 24 para 4, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Ombudsman_Law.doc

¹⁷ Latvia/Tiesībsarga likums [Ombudsman Law] (06.04.2006), Section 24 para 3, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Ombudsman_Law.doc

the persons involved in the case or an opinion of the Ombudsman.¹⁸ The Ombudsman has a right, upon termination of an examination procedure and establishment of a violation, to defend the rights and interests of a private individual in administrative court, if that is necessary in the public interest; as well as upon termination of a examination 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.¹⁹ The Ombudsman has a right, but not an obligation to represent the victims of discrimination in court.

There is no established practise of the use of alternative dispute resolution, including mediation in discrimination cases in Latvia, although the Ombudsman may facilitate a conciliation agreement between the parties. In 2008, the Ombudsman was involved in facilitating conciliation agreement in two discrimination cases on grounds of gender (one – after the claimant had already filed a case in the first instance court, one – at the appeal stage).²⁰ The Ombudsman may also issue an opinion, but it is not binding. It cannot impose sanctions.

8. Legal aid

Prior to coming into force of the Law on State Provided Legal Aid on 1 June 2005²¹ concerning state support in granting legal aid in criminal, civil and administrative cases²², free legal aid could be sought pursuant to application to the Council of Sworn Advocates which rarely granted such aid in civil cases.

The categories of those entitled to state funded legal aid are Latvian citizens and non-citizens, stateless persons, EU nationals and third country nationals legally residing in Latvia and granted a permanent residence permit, persons entitled to legal aid provided by the state according to international agreements concluded by the Republic of Latvia, asylum seekers, refugees, and persons under subsidiary protection.²³

¹⁸ Latvia/Tiesībsarga likums [Ombudsman Law] (06.04.2006), Section 12 para 6,7 available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Ombudsman_Law.doc

¹⁹ Latvia/Tiesībsarga likums (06.04.2006), Art. 13 Section 10, available at: http://www.saeima.lv/saeima8/mek_reg_fre (19.04.2009).

²⁰ Latvia/Tiesībsarga likums [Ombudsman Law] (06.04.2006), Section 13 para 9,10, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Ombudsman_Law.doc

²¹ Latvia/Valsts nodrošinātās juridiskās palīdzības likums [Law on State-provided Legal Aid] (17.03.2005), available at http://www.likumi.lv/body_print.php?id=104831 (20.08.2009).

²² Legal aid by the State Legal Aid Administration has been discontinued since 1 July 2009.

²³ Latvia/Valsts nodrošinātās juridiskās palīdzības likums [Law on State-Provided Legal Aid], Section 3, available at http://www.likumi.lv/body_print.php?id=104831 (20.08.2009).

The condition for receiving legal aid, further regulated by Regulations no 558 of the Cabinet of Ministers²⁴, is that the person's particular situation, property status, and income level does not suffice for partial or full protection of their rights. The State is required to provide free legal aid to persons whose status is defined as low-income or indigent. In order to receive legal aid, the person seeking such aid is required to submit documents attesting his/her income level, property status and special situation.

The decisions to grant legal aid are taken on case-by-case basis. In civil cases legal aid can be sought by the individual in applying directly to the Legal Aid Administration. The decision to grant legal aid is taken within 21 days, while in cases affecting the rights of children – in 14 days after the application with request for legal aid has been received.²⁵

Free legal aid can include: 1) up to three hours of consultations, 2) preparation of up to three procedural documents, 3) representation in court not exceeding 40 hours.²⁶ The granted legal aid does not cover all legal costs related to the case, and excludes costs of adjudication.²⁷

Legal aid in administrative cases was discontinued on 1 July 2009, after the parliament adopted amendments to the above law. Legal assistance in the appeal stage in cases of asylum request procedure will remain an exception.²⁸ The amendments come as part of a package of economic austerity measures. At the same time, the Administrative Procedure Law (APL) foresees that in administrative matters complicated for the addressee, the court, taking into account the financial circumstances of the natural person, can decide that remuneration to his/her representative be paid from the state budget.²⁹

The new amendments also introduce new restrictions when legal aid shall not be granted, and, will inter alia include cases when the matter is linked to seeking compensation for moral

²⁴ Latvia/ MK noteikumi Nr.558 "Noteikumi par personas īpašās situācijas, īpašuma stāvokļa un ienākumu līmeņa atbilstību valsts nodrošinātās juridiskās palīdzības piešķiršanai" [Regulations no 558 of the Cabinet of Ministers 'Regulations on Compliance of Person's Particular Situation, Property Status and Income Level for the Granting of State Provided Legal Aid] (04.07.2006), available at <http://www.likumi.lv/doc.php?id=139847&from=off> (13.09.2009)

²⁵ Latvia/ Latvia/Valsts nodrošinātās juridiskās palīdzības likums [Law on State-provided Legal Aid] (17.03.2005), Section 23, available at: http://www.likumi.lv/body_print.php?id=104831 (27.08.2009).

²⁶ Latvia/Valsts nodrošinātās juridiskās palīdzības likums [Law on State-provided Legal Aid] (17.03.2005), Section 6 para 11 available at http://www.likumi.lv/body_print.php?id=104831 : (27.08.2009).

²⁷ Latvia/Valsts nodrošinātās juridiskās palīdzības likums [Law on State-provided Legal Aid] (17.03.2005), Section 5 para 6, available at http://www.likumi.lv/body_print.php?id=104831: (27.08.2009).

²⁸ Latvia/Valsts nodrošinātās juridiskās palīdzības likums [Law on State-provided Legal Aid] (17.03.2005), Section 15 available at http://www.likumi.lv/body_print.php?id=104831: (27.08.2009).

²⁹ Latvia/Administratīvā procesa likums (25.10.2001), Section 18 para 4, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (27.08.2009).

damages.³⁰ This provision will prevent, amongst others, individuals, alleging discrimination and claiming moral compensation in seeking legal aid.

In Latvia legal assistance and representation in discrimination cases is not institutionalised, and there are no publicly funded NGOs or associations, or public bodies, other than equality body, performing this function.

In line with the Racial Equality Directive, the Law on Associations and Foundations provides that associations and foundations have the right to turn to the authorities or to the court, with the consent of concerned individual, and defend the rights or legal interests of this individual in cases related to the breach of prohibition of differential treatment. In Latvia, there are only three NGOs (Latvian Centre for Human Rights, Latvian Human Rights Committee, Afro-Latvian Association “Afrolat”) providing support in cases of discrimination on the grounds of race or ethnic origin, and only the first two provide legal consultations and have had experience with discrimination cases in court. This is largely due to lack of NGO capacity and financial resources. There are no known cases when NGOs have used the provision of the Law on Foundations and Associations to represent clients in court, including discrimination cases on grounds of race and ethnic origin. NGOs continue resorting to the procedure fixed by the Civil Procedure Law – when a client orally authorises an individual or an individual is confirmed by a notary,³¹ as also courts seem to continue to refer to Civil Procedure Law requirements.³²

In those cases where victims of discrimination have turned for assistance to NGOs with capacity to provide legal aid, consultation, etc. in discrimination cases, they have received adequate information and assistance. While efforts to raise awareness and capacity among other NGOs on discrimination issues and promote accessible information through NGO networks to potential victims of discrimination have been undertaken, complaints on discrimination handled by NGOs remain small. However, in several cases NGOs with no sufficient capacity to provide legal aid, including Roma organisations, have referred victims alleging discrimination to the Ombudsman’s Office.

The Administrative Procedure Law foresees the possibility of submitting in writing opinion on facts or rights in the relevant sector to the court by associations of persons (*Amicus curiae*), who

³⁰ Latvia/Valsts nodrošinātās juridiskās palīdzības likums (17.03.2005), Section 6 para 11, available at: <http://www.likumi.lv/doc.php?id=104831&mode=DOC> (27.08.2009).

³¹ Information provided by the Latvian Human Rights Committee on 05.05.2009.

³² Pūce, I. *Report on situation of fundamental rights in Latvia 2005* (EU Network of Independent Experts on Fundamental Rights (2005).

are considered a recognised representative of interests in some sector. If the court considers that such opinion of the relevant association of persons may assist the court in taking an objective decision in the matter, it puts forward questions regarding which the association of persons may submit its opinion. Such questions must relate to the matter to be adjudicated. The association of persons may not give factual or legal assessment in the specific administrative matter. If the court considers that the received opinion complies with the requirements, it shall forward the opinion to all participants in the administrative proceeding and set a time period during which the participants in the procedure may express their opinions.³³ There are no publicly known cases where courts have requested such opinions from NGOs.

The legislation permits trade unions to represent and defend their members before state institutions, including bringing a case to court if the case relates to the discriminatory employment relationship, redress for health damages, housing or other social and economic rights, solving of individual or collective disputes.³⁴

The Labour Dispute Law stipulates that trade unions have the right to represent their members without special authorisation in the settlement of individual disputes regarding rights, as well as to bring an action in court in the interests of their members.³⁵ In cases of collective labour disputes regarding interests, the Labour Dispute Law also provides for conciliation commission which shall consist of equal number of employer and trade union representatives,³⁶ and in cases when agreement is not reached by a conciliation commission, the law provides for mediation by a third person as an independent and impartial mediator whose role is to assist the parties to the collective dispute regarding interests to settle differences of opinions and to reach an agreement.³⁷ Thus, in cases of individual labour disputes concerning prohibition of differential treatment, including discrimination on grounds of ethnic origin or race, apart from addressing complaints to employer, the legislation does not explicitly foresee other types of alternative dispute resolution, and the persons alleging discrimination can only turn to court.

³³ Latvia/Administratīvā Procesa likums (25.10.2001), Art.183, available at: http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc

³⁴ Latvia/Likums Par arodbiedrībām (13.12.1990), Art. 14, available at: <http://www.likumi.lv/doc.php?id=64867&mode=KDOC> (16.04.2009).

³⁵ Latvia/Darba strīdu likums (26.09.2002), Art. 8, available at: <http://www.ttc.lv/index.php?skip=120&itid=likumi&id=10&tid=59&l=LV> (25.03.2009).

³⁶ Latvia/Darba strīdu likums (26.09.2002), Art. 8, available at: <http://www.ttc.lv/index.php?skip=120&itid=likumi&id=10&tid=59&l=LV> (25.03.2009).

³⁷ Latvia/Darba strīdu likums (26.09.2002), Art. 8, available at: <http://www.ttc.lv/index.php?skip=120&itid=likumi&id=10&tid=59&l=LV> (25.03.2009).

Although the law foresees that trade unions can represent their members in court in discrimination cases, this is not being done in practice yet as trade unions in Latvia have only recently started to engage on issues related to discrimination and awareness about discrimination issues, including on grounds of race and ethnic origin, remains low. There is reported lack of complaints from trade union members concerning discrimination, including on grounds of race or ethnic origin.³⁸

The information provided by *Latvijas Brīvo arodbiedrību savienība* (Latvian Free Trade Union Association, LBAS) indicates that in the majority of cases there is no special anti-discrimination provision included in collective labour agreements. As noted by the Chair of LBAS “the principles of equal rights and prohibition of discrimination are included in the Labour Law therefore we do not specifically recommend to include them in collective labour agreements.”³⁹ This is also a prevalent view among specific trade unions that there is no need to reiterate legislative provisions in the collective labour agreement and that prohibition of discrimination need not be specifically included in the agreement.⁴⁰

9. Forms of satisfaction available to a vindicated party

Article 92 of the Latvian Constitution provides that “everyone, where their rights are violated without basis, has a right to commensurate compensation.”⁴¹

The Civil Law provides for the right to claim compensation (including moral compensation)⁴². In employment related discrimination cases, the Labour Law foresees compensation for losses and compensation for moral harm through civil claims.⁴³ In cases of dispute, the court shall at its own discretion determine the compensation for moral harm.

³⁸ Latvijas Cilvēktiesību centrs (2007). Diskriminācijas novēršana Latvijā: likumi, institūcijas un tiesu prakse [Preventing Discrimination in Latvia: Laws, Institutions and Court Case Law], p.33, available at <http://www.humanrights.org.lv/html/lv/aktual/publ/29507.html?yr=2008> (21.05.2008)

³⁹ Information provided by the President of Free Trade Union Confederation of Latvia on 23.04.2009

⁴⁰ Information provided by the Railway Workers Trade Union; Trade Union „Energija”, Education and Science Workers Trade Union on 23.04.2009

⁴¹ Latvia/Satversme, [Constitution] (15.02.1922 with amendments until 31.05.2007) Article 92, available at <http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Constitution.doc>

⁴² Latvia/Civillikums (14.10.1998), Section 1635, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/The_Civil_Law.doc (12.08.2009)

⁴³ Latvia/Darba likums, Section 29 Paragraph 8, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc (06.09.2008)

The Administrative Procedure Law (APL) entitles to claim due compensation for financial loss or a personal harm, including moral harm caused by an administrative act or an actual action of an institution.⁴⁴ The APL provides that in determining the pre-conditions of the financial loss and personal harm and the amount of compensation, the principles of civil law shall be applied if the law does not specify otherwise.⁴⁵

The Law on Reparation of Damages caused by the State Administrative Institutions came into force from 1 July 2005. The Law fixes maximum amount of compensation for *personal harm* at 5,000 Lats (~7,100 Euros) or 7,000 Lats (~10,000 Euros) in cases of grave personal harm, and 20,000 Lats (around 28,500 Euros) if harm has been caused to life or grave harm has been caused to health; the maximum amount or damages for *moral harm* is set at 3000 Lats (~4,300 Euros) or 5000 Lats (~7,100 Euros) in cases of grave moral harm and 20,000 Lats (around 28,500 Euros) if harm has been caused to life or grave harm has been caused to health. If the institution or court, upon evaluating specific case, decides that the violation of rights is not grave, it also foresees written or public apology of the institution as principal or additional compensation for moral harm.⁴⁶ The compensation is initially to be asked from the relevant institution.

The Civil Law does not fix a maximum amount for damages.

20 court cases concerning discrimination were reviewed for study purposes. The court cases refer to the period after 1 May 2004 when Latvia joined the EU and when it was obliged to have transposed the relevant directives. Of the 20 cases 15 fall under Race Equality Directive 2000/43/EC, Employment Equality Directive 2000/78/EC and Equal Treatment Directive (recast) 2006/54. The majority of cases falling under the Directives – are related to alleged discrimination in employment relations, two – access to goods and services (discriminatory advertising), and one – the calculation of social benefits.

Eight cases (six under *acquis*) concerning discrimination have ended with moral compensation awarded to the victim. As the concept of non-pecuniary damages is a recent development in Latvia, all cases have been included in the study to provide a better overview. In three cases (all under *acquis*) courts confirmed conciliation agreements between the parties, in five cases there is

⁴⁴ Latvia/Administratīvā procesa likums, Section 92, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (27.08.2009).

⁴⁵ Latvia/Administratīvā procesa likums, Section 97, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (27.08.2009).

⁴⁶ Latvia/Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums (02.06.2005), Section 14, available at <http://www.likumi.lv/doc.php?id=110746> (27.08.2009).

a final court judgement and the victim has been awarded compensation by the court. One case, where the appeal court did not establish discrimination, but, nevertheless awarded moral compensation for “psychological terror” in the workplace, has been sent back for review to the appeal court by the Supreme Court Senate.

In one case moral compensation was determined at 800 Ls (conciliation agreement), in three cases – 1000 Ls (~1,430 euros), in two cases – 3000 Ls (~3,900 euros), in one case – 4080 Ls (~5,570 euros), and in one case – 5000 Ls (~ 7,140 euros). In several judgements courts have specifically argued that this is just and proportional compensation, which also would serve a dissuasive function as a sign to other employers. However, the amounts awarded remain relatively low, and with the exception of two court cases, absence of any publicity about court judgments, limits any potential dissuasive effect on other employers.

In the case *A.S. vs Straupe Municipality* (2005, employment, gender & property status), the first case of multiple discrimination in Latvia, the victim was awarded material losses (unearned wages) – 585, 30 Ls (~830 euros) and moral compensation -1,000 Ls (1,430 euros). The victim had claimed 1,000 Ls in moral compensation. In the case *S.K. vs SIA “Palso”* (2006, employment, ethnic origin) the first instance court awarded moral compensation in the amount of 1,000 Ls (1,430 euros). The victim claimed 5,000 Ls in moral compensation. In the case *V.Č. vs Share Holding Company “Falck Apsargs”* (2007, equal pay, gender) the victim was awarded compensation for material damages (difference in payment) in the amount of 2,095 Ls (~ 3,000 euros) and moral compensation in the amount of 1,000 Ls (1,430 euros).

In the case *O.O. vs SIA Sabiles Baroni* (2008, gender) concerning discrimination on gender grounds when applying for a waiter’s job, the first instance court did not establish that discrimination had taken place. The claimant appealed the decision in the regional court, which confirmed a conciliation agreement between the parties, and the company agreed to pay the victim moral compensation of 800 lats (~ 1,140 euros), 200 Ls for four months. In the case *S.K. vs SIA “Ziemeļu nafta”* (2008, employment, gender), the company paid the victim moral compensation in the amount of 5,000 Ls (~7,140 euros). The victim had claimed moral compensation in the amount of 10,000 Ls. Thus far, it is the highest amount of moral compensation paid to a victim of discrimination. According to the Ombudsman’s Annual Report

2008, the office was involved in both cases in facilitating the conclusion of conciliation agreements (at first instance court level and at appeal stage).⁴⁷

The case *R.S. vs Congregation of the Riga New St. Gertrude's Evangelical Lutheran Church* (employment, disability) was reviewed by three instance courts, and sent back by the Supreme Court to the appeal court for repeat review and ended in a conciliation agreement between the parties. The parties agreed on the compensation in the amount of 3000 Ls (~3,900 euros), which also included income tax payable by the claimant.

In the case *R.K. vs State Forestry Agency* (prohibition of differential treatment, victimisation, 2005), the appeal court awarded victim moral compensation in the amount of 4,080 Ls (~5,800 euros) and ordered the employer to cease victimisation. In an earlier case *R.S. vs SIA "Vernisāžas centrs"* (access to a public place, disability 2005), the court awarded moral compensation in the amount of LVL 3,000 (~3,900 euros). The claimant, a wheel-chair user had been twice denied access to a night club in 2002, used a Civil Law provision concerning anti-defamation (offence to honour and dignity).

In three cases administrative acts of state institutions have been appealed. In two cases, *Patērētāju tiesību aizsardzības centrs* [Consumer Rights Protection Centre] imposed fines in the amount of 1,500 Ls (~2,140 euros) and (~5,000 Ls (~7,140 euros) for discriminatory advertisements by a newspaper and a construction company, but the decisions have been appealed in the administrative court. The first case was reviewed by administrative district court in July 2009, but has been appealed in the administrative regional court and the hearing has been scheduled for June 2010. The case *D.P. vs State Social Insurance Agency* on recalculation of social benefits is pending with appeal court.

10. Adequacy of compensation

In the 20 cases examined compensation was awarded in eight cases, several cases were still pending with appeal or cassation courts. Of the eight cases, three were conciliation agreements concluded between the parties, and in five cases did the court award compensation. Amount of moral compensation ranged from 800 Ls (1,140 EUR) to 5000 Ls (7,140 EUR).

⁴⁷ 2008 Report of the Ombudsman (in Latvian), p. 40, available at http://www.tiesibsargs.lv/lat/publikacijas/gada_zinojumi/?doc=596 (12.09.2009)

The amounts awarded remain relatively low, and with the exception of two court cases, absence of any publicity about court judgments, limits any potential dissuasive effect on other employers.

11. Rules relating to the payment of legal costs

Costs of adjudication include court costs (state, office fees, costs related to adjudication) and costs related to conducting a matter (lawyer's costs, costs related to attending court sittings and gathering evidence).⁴⁸

In civil cases concerning employment relations, including discrimination, a plaintiff is exempt from paying a state fee,⁴⁹ while in civil cases related to discrimination in other spheres the plaintiff is required to pay a state fee. The state fee is fixed depending on the amount claimed.⁵⁰ On 5 February 2009 amendments to the Civil Procedure Law (CPL) were adopted, which introduced new and raised previously established state fees for filing court claims. In a significant number of cases the fees have been doubled. As in the past, the court or a judge, upon considering the material situation of a natural person may exempt the plaintiff partly or fully from the payment of court costs.⁵¹

If the complaint alleging discrimination is filed against a state or local government institution, the Administrative Procedure Law (APL) foresees a state fee of 20 Lats (~ 29 euros) for submission of an application regarding initiation of a matter in court, and a fee of 10 Lats (~ 14 euros) for an appellate complaint. No payment of state fees is required for cassation or ancillary complaints.⁵² A plaintiff may request the court to lower the fee or be exempted from the payment of the fee, and a court or a judge, taking into account the financial situation of a natural person, may decrease it.⁵³ At the same time, amendments to the APL in December 2008, now foresee that if

⁴⁸ Latvia/Civilprocesa likums (14.10.1998), Section 33, available at <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV>

⁴⁹ Latvia/Civilprocesa likums (14.10.1998), Section 43, Sect 1) 1), available at <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV>

⁵⁰ Latvia/Civilprocesa likums (14.10.1998), Section 34 available at <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV>

⁵¹ Latvia/Civilprocesa likums (14.10.1998), Section 43, available at <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV>,

⁵² Latvia/Administratīvā procesa likums (25.10.2001), Section 124, 128 available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (27.08.2009).

⁵³ Latvia/Administratīvā procesa (25.10.2001), Section 18 para 4 available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (27.08.2009).

the case has been dismissed by the court, the plaintiff is required to repay the state fee in full after the judgment has come into force, except for plaintiffs which have challenged an administrative act related to social security (pensions, benefits).⁵⁴ Previously, if a plaintiff was exempted by the court from paying the state fee, in the event the case was dismissed, he/she was not required to repay the fee.

Concerning the reimbursement of court costs the winning party shall be reimbursed all court costs paid, by the losing party.⁵⁵

12. Rules on burden of proof

Of the laws and amendments to the laws that have been adopted to transpose the requirements of the EU Race Equality and Employment Directives, two laws – Labour Law⁵⁶ and Consumer Protection Law⁵⁷ explicitly refer to the shift of burden of proof in discrimination cases related to employment relations and access to goods and services, including on grounds of race and ethnic origin. The Employment Law envisages a shift of the burden of proof in cases of employment relations⁵⁸ and victimisation⁵⁹. Amendments to the Civil Law adopted by the Saeima in the 1st reading on 23 November 2006, and the draft Law on Prohibition of Discrimination of Physical Persons Conducting Commercial Activities, adopted by the Saeima in the 2nd reading on 23 April 2009 also explicitly envisage the shift of burden of proof in discrimination cases of physical persons conducting commercial activities in accessing goods and services⁶⁰.

The Civil Procedure Law follows an adversarial approach with parties arguing their case before the judge. In Latvia, case law shows that the shift in the burden of proof is referred to by the court, albeit inconsistently, but in practice the proceedings then continue in the usual civil law procedure fashion, with plaintiff and respondent taking turns to argue their case in front of the

⁵⁴ Latvia/Grozījumi Administratīvā procesa likumā [Amendments to the Administrative Procedure Law] (25.10.2001), Section 126 para 3 available at http://www.likumi.lv/doc.php?mode=DOC&id=55567&version_date=01.01.2009 (27.08.2009).

⁵⁵ Latvia/Civilprocesa likums (14.10.1998), Section 41, available at http://www.ttc.lv/advantagecms/docs/LRTA/Likumi/Civil_Procedure_Law.rtf (16.08.2009)

⁵⁶ Latvia/Darba likums, Art 29, Section 9, Art 9, Sect, available at <http://www.likumi.lv/doc.php?id=26019>

⁵⁷ Latvia/ Patērētāju tiesību aizsardzības likums, Section 3.¹, available at <http://www.likumi.lv/doc.php?id=23309>

⁵⁸ Latvia/Darba likums, Section 29, Paragraphs 9, Section 125, available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc

⁵⁹ Latvia/Darba likums, Article 9, Paragraph 1 available at http://www.ttc.lv/export/sites/default/docs/LRTA/Likumi/Labour_Law_.doc

⁶⁰ Latvia/ Fizisko personu, kuras veic saimniecisko darbību, diskriminācijas aizlieguma likums [Law on Physical Persons Engaged in Conducting Commercial Activities], (adopted in the 2nd reading on 23.04.2009), available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/887E8E9D823DAE6AC22575920036969F?OpenDocument>

judge. From the limited case law available it is also not clear what is prima facie evidence in the interpretation of Latvian courts.⁶¹

⁶¹ Brands-Kehris, I. (2008), Development of Anti-discrimination Legislation and Practice in Latvia: EU Accession and remaining challenges. *Emilie: A European Approach to Multi-Cultural Citizenship*, p.14 (unpublished paper)