

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Latvia

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Executive summary

Implementation of Employment Directive 2000/78/EC

Most main requirements of the Employment Directive 2000/78/EC have been implemented into the Latvian legislation; however, the provisions prohibiting discrimination on the grounds of sexual orientation were adopted with notable reluctance.

The legislator has gone beyond the minimum requirements of the Employment Directive 2000/78/EC, and discrimination on the ground of sexual orientation is explicitly forbidden in employment (both in the private and in the public sectors), in civil service, and in self-employment. The Constitution of Latvia contains a general clause of equality¹ while sexual orientation can also be implicitly read under ‘other conditions’ in a few other laws.

Following the adoption of the amendments to the Labour Law (*Darba likums*)² explicitly naming sexual orientation as a prohibited ground, and in conjunction with the mostly negative discussion on the rights of homosexual persons, amendments to the Constitution of Latvia (*Latvijas Satversme*)³ were adopted, defining that marriage is a union between a man and a woman.

To date, there have been only two court cases in Latvia on the alleged discrimination on the ground of sexual orientation in the labour relations. In one case in 2005-2006, the first instance court satisfied the plaintiff’s claim, yet the appeal court and the court of cassation rejected it.⁴ In another case in 2009-2010, both the first instance and the appeal court rejected the claim of the plaintiff due to the lack of evidence of labour relations.⁵

The Ombudsperson’s Office (*Tiesībsarga birojs*) has competence as the specialised body for implementing the principle of equal treatment overall. Complaints data to the Office alleging discrimination on the grounds of sexual orientation remain rather low: the highest number of complaints was registered in 2008 (13), 2007 (12) and 2001 (11), the lowest – zero complaints in 2004, 2011 and 2013.⁶

However, the statistics of the Ombudsperson’s Office on the cases of alleged discrimination on the ground of sexual orientation do not clearly indicate in which spheres this form of

¹ Latvia, Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), 15 February 1922, Art. 91, available in Latvian at: www.saeima.lv/Likumdosana/likumdosana_satversme.html, published in Latvian Herald (*Latvijas Vēstnesis*) 43, 01.07.1993, available in Latvian at: www.vestnesis.lv/?menu=doc&id=57980.

² Latvia, The Labour Law (*Darba likums*), 20 June 2001, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV>, published in Latvian Herald (*Latvijas Vēstnesis* 105(2492), 06.07.2001, available in Latvian at: www.vestnesis.lv/?menu=doc&id=26019.

³ Latvia, Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), 15 February 1922, Art. 10, available in Latvian at: www.saeima.lv/Likumdosana/likumdosana_satversme.html, published in Latvian Herald (*Latvijas Vēstnesis*) 43, 01.07.1993, available in Latvian at: www.vestnesis.lv/?menu=doc&id=57980.

⁴ Māris Sants vs Riga School of Cultures, see Annex 1.

⁵ Žanete Reķe vs VAS “Paula Stradiņa klīniskās universitātes slimnīca”, see Annex 1.

⁶ Data of the Ombudsperson’s Office, see Annex 2.

discrimination is most widespread. In addition, the outcome of cases under review by the Ombudsperson's Office is not fixed in its statistics.

Freedom of movement

The new regulations adopted in 2011 on the EU citizens and their family members travelling to and staying in Latvia grants the status of extended family member also to a partner with whom the Union citizen has a relationship lasting for at least two years or a partner in a registered partnership, recognizing the same entry and residence rights.⁷ In 2013, one such request was granted.

Asylum and subsidiary protection

The refugee definition of Asylum Law (*Patvēruma likums*) in force until the adoption of the current Asylum Law (*Patvēruma likums*) in 2009 included persecution on the grounds of membership of a particular social group as leading to the recognition of refugee status.⁸ The current Asylum Law adopted on 15 June 2009 provides explicitly that the social group definition includes sexual orientation.⁹ Until January 2014, no asylum seeker had applied for asylum in Latvia on this ground.

Family reunification

Latvia neither recognises same-sex marriage nor the civil partnership registration, and there were no requests for family reunification with the same-sex spouse or unregistered partner from the third country nationals.

Freedom of assembly

The first time a gay Pride parade was held in Latvia was in 2005, causing heated public and political debate. Since then various attitudes have been expressed publicly every year concerning this event not only by groups of general population, but also by politicians and representatives of administrative power. While in the beginning, the tone and content of the discourse were overwhelmingly negative, slow progress is observed. Increasingly, Pride events are less of an issue of the freedom of assembly but more an issue of policing. Baltic Pride 2012 was held in Riga, and no restrictions were placed on the event. The majority of Pride participants have been foreigners, however, 2012 saw the participation of some state officials

⁷ Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675, „Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā”*), 30 August 2011, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499 .

⁸ Latvia, Asylum Law (*Patvēruma likums*), 7 March.2002, Art. 23, available in Latvian at: www.likumi.lv/doc.php?id=60721&mode=KDOC , published in Latvian Herald (*Latvijas Vēstnesis*) 48(2633), 27.03.2002, available in Latvian: www.vestnesis.lv/?menu=doc&id=60721 .

⁹ Latvia, Asylum Law (*Patvēruma likums*), 15 June 2009, Section 22 para (1), 4), b), published in Latvian Herald (*Latvijas Vēstnesis*) 100(4086), 30.06.2009, available in Latvian at: www.vestnesis.lv/index.php?menu=doc&id=194029 .

and various foreign embassy officials. Other recent Pride parades were hosted in Vilnius (2010 and 2013) and Tallinn (2011).

Hate speech and criminal law

The Latvian Criminal Law (*Krimināllikums*) does not criminalise hate crimes and hate speech on grounds of sexual orientation. Since amendments of 21.06.2007, the Criminal Law includes the prohibition of discrimination.¹⁰ However, only racial or ethnic identity are fixed as specified grounds, while a general reference to ‘other prohibition of discrimination set by law’ is included.

Since the Latvian Criminal Law (*Krimināllikums*) does not define homophobic motivation as an aggravating circumstance, courts do not take homophobic motivation into account when deciding on merits and sentencing. Racist motivation remains the only hate motive included among aggravating circumstances, since 12.10.2006, when the Parliament adopted respective amendments to the Criminal Law.¹¹

Officials are discussing possible amendments to the legal framework to criminalise hate crimes against various social groups, however, the current version of amendments which has not yet been made public does not explicitly mention sexual minorities.¹²

Amendments to the Electronic Mass Media Law (*Grozījumi Elektronisko plašsaziņas līdzekļu likumā*) prohibit incitement to hatred and discrimination of person or a group of persons in the audio and audiovisual commercials, on inter alia, grounds of sexual orientation.¹³

Transgender issues

There is no provision in Latvian legislation which could indicate whether discrimination of transgender people shall be dealt with as discrimination on the grounds of sexual orientation or as discrimination on the grounds of gender. However, following the judgement of Administrative court in all three instances in a case on the change of sex of a person in the birth

¹⁰ Latvia, Law Amendments to the Criminal Law (*Likums Grozījumi Krimināllikumā*) 21 June 2007, Art. 149¹ available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?>, published in Latvian Herald (*Latvijas Vēstnesis*) 107 (3683), 05.07.2007, available in Latvian: www.vestnesis.lv/?menu=doc&id=159966.

¹¹ Latvia, Law Amendments to the Criminal Law (*Likums Grozījumi Krimināllikumā*) 12 October 2006, available in Latvian at: <http://likumi.lv/doc.php?id=146891>, published in Latvian Herald (*Latvijas Vēstnesis*) 174 (3542), 01.11.2006, available in Latvian: www.vestnesis.lv/?menu=doc&id=146891.

¹² Latvia, Draft Informative Report on the Legal Framework for the Responsibility for Incitement of National or Ethnic Hatred, a Call to Liquidate the State Independence and the Blasphemy of the State Symbols (*Informatīvā ziņojuma par tiesisko regulējumu attiecībā uz atbildību par nacionālā vai etniskā naida izraisīšanu, aicinājumu likvidēt valstisko neatkarību vai graut teritoriālo vienotību un valsts simbolu zaimošanu projekts*), 27 January 2014, available in Latvian at: www.mk.gov.lv/lv/mk/tap/?pid=40312823.

¹³ Latvia, Law Amendments to the Electronic Mass Media Law (*Grozījumi Elektronisko plašsaziņas līdzekļu likumā*) 18 April 2013, published in Latvian Herald (*Latvijas Vēstnesis*) 87 (4893), 08.05.2013., available in Latvian: www.vestnesis.lv/?menu=doc&id=256583.

register, it can be deduced that such discrimination will be more likely understood as discrimination on the grounds of gender.

Article 32 of the Civil Status Documents Law (*Civilstāvokļa aktu likums*) of 2005 provides the possibility to change gender in a legal sense by supplementing the information of the Birth Register.¹⁴ On 8 April 2009 the Parliament (*Saeima*) adopted the Law on the Change of a Name, Surname and Ethnicity Entry (*Likums Par vārda, uzvārda un tautības ieraksta maiņu*), which explicitly provides that the change of name and surname is permitted following gender reassignment.¹⁵ Relevant legal acts adopted in 2012 and 2013 envision the possibility to change the gender entry in official registries.¹⁶

Intersex

Discrimination of the ground of intersex is not specified under Latvian non-discrimination legislation and policies. Gender neutral identification is allowed in Latvian birth certificates. General legal framework applies to the cases of surgery for intersex persons, such as: the requirement of informed consent, possibility to draw the informed consent in writing, the right of the patient to refuse medical treatment or any method used, legal representation for minors.¹⁷

Miscellaneous

In 2007, Centre for the Protection of Consumer Rights (*Patērētāju tiesību aizsardzības centrs*, PTAC) concluded in one of its decisions that an advertisement which differentiated individuals on the grounds of sexual orientation and ethnicity was discriminatory and should be banned.¹⁸

The Latvian Civil Law (*Civillikums*) provides that ‘(p)ersons who are not married to each other may not adopt one and the same child’.¹⁹ However, the Civil Law allows adoption not only to married couples but also for a single person.²⁰ The procedures do not foresee considering sexual

¹⁴ Latvia, Civil Status Documents Law (*Civilstāvokļa aktu likums*), 17 March 2005, Article. 32 Other Additions to the Birth Register, available at <http://likumi.lv/doc.php?id=104832>.

¹⁵ Latvia, Law on the Change of a Given Name, Surname and Ethnicity Record (*Likums Par vārda, uzvārda un tautības ieraksta maiņu*), Section 2 para 6, 15 June 1994, available in Latvian at: www.vestnesis.lv/index.php?menu=doc&id=191209.

¹⁶ Latvia, Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*), 29 November 2012, available in Latvian at: <http://likumi.lv/doc.php?id=253442>, published in Latvian Herald (*Latvijas Vēstnesis*) 197(4800), 14.12.2012, available in Latvian at: www.vestnesis.lv/?menu=doc&id=253442.

Latvia, Cabinet of Ministers Regulations No. 761 “Rules On civil status registries” (*Ministru kabineta noteikumi Nr.761 “Noteikumi par civilstāvokļa aktu reģistriem”*), 3 September 2013, available in Latvian at: <http://likumi.lv/doc.php?id=259879>, published in Latvian Herald (*Latvijas Vēstnesis*) 181(4987), 17.09.2013, available in Latvian at: www.vestnesis.lv/?menu=doc&id=259879.

¹⁷ Latvia, Law On the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009, available in Latvian at: <http://likumi.lv/doc.php?id=203008>, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: <http://likumi.lv/doc.php?id=203008>

¹⁸ Decision No.E04-DAU-154. of Centre for Protection of Consumer Rights (CPCR) (*Patērētāju tiesību aizsardzības centrs* (PTAC)) against “Dinaburg Media Group” Ltd, 14.08.2007, see Annex 1.

¹⁹ Latvia, Civil Law (*Civillikums*) 28 January 1937, Art. 166, available in Latvian at: <http://likumi.lv/doc.php?id=225418>.

²⁰ Latvia, Civil Law (*Civillikums*) 28 January 1937, Art. 166, available in Latvian at: <http://likumi.lv/doc.php?id=225418>.

orientation among the factors analysed when establishing the suitability of the potential parent for adopting a child.

Draft Partnership Law and related amendments to 23 other laws were debated but did not gain sufficient public support,²¹ as the Ombudsperson proposed to amend the legislation to approximate the protection of partners (including the same-sex partners) to the legal protection of married couples.²²

Similar to the legislation adopted in Lithuania and Russia, draft proposal to limit the information about homosexuality to minors was elaborated and put by an NGO for the collection of voters' signatures, for the adoption of legislative proposal through a possible national referendum procedure.²³

²¹ Information available in Latvian at:

www.tiesibsargs.lv/lat/tiesibsargs/jaunumi/?doc=321&underline=partnerattiec%C4%ABbu .

²² Ombudsperson's Office 2011 Annual Report (*Latvijas Republikas tiesībsarga 2011 gada ziņojums*), available in Latvian at: www.tiesibsargs.lv/files/content/Tiesibsarga%20gada%20zinojums_2011.pdf (accessed on 28 Aprils 2014).

²³ Latvia, Draft law on amendments to the Protection of the rights of the child law (*Likumprojekts 'Grozījumi Bērnu tiesību aizsardzības likumā'*), available in Latvian at: <http://cvk.lv/pub/public/30673.html> .

1 Implementation of Employment Directive 2000/78/EC

Latvia was obliged to transpose the Employment Directive 2000/78/EC into its national law by 01.05.2004 which was the day of Latvia's accession to the EU. The institution responsible for preparing legal amendments was the Ministry of Welfare of the Republic of Latvia (*Latvijas Republikas Labklājības ministrija*, LM). Although with some delays and shortcomings, to date the requirements of the Employment Directive have generally been transposed into the Latvian law.

1.1 Legislative process of implementation of Employment Directive

Most main requirements of Employment Directive 2000/78/EC were incorporated into the Latvian Labour Law (*Darba likums*) of 2001²⁴ during the drafting process, and by the amendments of 2004²⁵. The Labour Law contains definitions and prohibition of direct and indirect discrimination, harassment, instruction to discriminate, and victimisation, as well as a provision on shifting the burden of proof in discrimination cases, and an obligation for employers to provide reasonable accommodation and facilitate establishing of working relations for disabled persons in order to foster the principle of equal opportunities. Initially a non-exhaustive list of prohibited grounds of discrimination included gender, race, skin colour, age, disability, religious, political or other beliefs, national or social origin, property or family status, and other conditions. Sexual orientation was not explicitly mentioned.

In the course of transposing the Racial Equality Directive 2000/43/EC, a draft of Anti-discrimination law²⁶ was elaborated by the Secretariat of Special Assignments Minister for Social Integration (*Īpašu uzdevumu ministra sabiedrības integrācijas lietās sekretariāts*, IUMSILS), taking into account all international standards relating to non-discrimination, which are binding upon Latvia. The law contained a wide range of grounds²⁷, including the explicitly mentioned ground of sexual orientation. Discrimination on any of these grounds was supposed to be prohibited in all spheres covered by public law, as well as in certain spheres of the private law: employment, membership of trade unions and other professional organizations, education, social protection and healthcare, access to goods and services which are available to the public, including housing. The law passed a first reading in the Parliament on 07.04.2004. However, after the criticism by the Parliament's Human Rights and Public Affairs Committee (*Saeimas Cilvēktiesību un sabiedrisko lietu komisija*) and Parliament's Legal Bureau (*Saeimas Juridiskais birojs*) and attempts to reduce the protection level set by this law to the minimum

²⁴ Latvia, The Labour Law (*Darba likums*), 20 June 2001, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV>, published in Latvian Herald (*Latvijas Vēstnesis* 105(2492), 06.07.2001, available in Latvian at: www.vestnesis.lv/?menu=doc&id=26019 .

²⁵ Latvia, Amendments to the Labour Law (*Grozījumi Darba likumā*), 22 April 2004, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre, published in Latvian Herald (*Latvijas Vēstnesis*) 72(3020), 07.05.2004, available in Latvian at: www.vestnesis.lv/?menu=doc&id=88260 .

²⁶ Latvia, Draft Law on Prevention of Discrimination (*Likumprojekts "Diskriminācijas novēršanas likums"*), Reg.No. 741 (passed the first reading 07.04.2004), available in Latvian at: http://www.saeima.lv/saeima8/mek_reg_fre .

²⁷ Gender, age, race, skin colour, nationality or ethnic identity, religious belief, political or other opinions, social origin, education, social and economic status, occupation, health status, sexual orientation and other conditions.

requirements of Employment Directive and Racial Equality Directive, the Anti-discrimination law was not forwarded for a second reading. Instead, draft amendments to eight separate laws were submitted to the Parliament. Amendments included those to the Civil Law (*Civillikums*), the Law on Social Security (*Likums "Par sociālo drošību"*), the Law on the State Civil Service (*Valsts Civildienesta likums*), the Consumer Rights Protection Law (*Patērētāju tiesību aizsardzības likums*), the Law on Associations and Foundations (*Biedrību un nodibinājumu likums*), the Law on the National Human Rights Office (*Likums par Valsts cilvēktiesību biroju*), the Criminal Law (*Krimināllikums*), and the Administrative Violations Code (*Administratīvo pārkāpumu kodekss*).

Amendments to the Criminal Law and the Administrative Violations Code were adopted three years later. The amendments to the Administrative Violations Code do not name grounds of discrimination, having included general reference to other law instead.²⁸ The amendments to the Criminal Law explicitly name as ground of discrimination only racial, ethnic or national identity, and contain general reference to 'other prohibition of discrimination determined by law'.²⁹ Amendments to the Civil Law concerning access to goods and services that are available to the public, contained non-exhaustive list of grounds, but did not refer to sexual orientation explicitly. They passed the first reading on 07.09.2006 and as of February 2014, have not been forwarded for the second reading. Amendments prohibiting discrimination were adopted to the Law on Social Security in 2005,³⁰ explicitly naming the grounds of race, skin colour, gender, age, disability, health status, religious, political or other beliefs, national or social origin, property or family status or other conditions, but not sexual orientation, although the list is non-exhaustive and sexual orientation is argued to be included among the 'other conditions'.

In 2005-2006, amendments to the Labour Law (*Darba likums*), which were elaborated by the Ministry of Welfare (*Labklājības ministrija*) in order specifically to include sexual orientation as one of the prohibited grounds on the list, led to sharp debates in the Parliament (*Saeima*). One of the harshest opponents to the inclusion of sexual orientation as an explicitly mentioned ground of discrimination in the Labour Law was the chairman of the Parliament's Human Rights and Public Affairs Committee (*Saeimas Cilvēktiesību un sabiedrisko lietu komisija*) (member of Latvia's First Party (*Latvijas Pirmā partija*, LPP)), who initiated the taking out of this ground, resorted to religiously based homophobic rhetoric. An additional argument used by opponents to including this ground into the list explicitly was that the Labour Law contains a non-exhaustive list of discrimination grounds and sexual orientation can be read under 'other conditions' if necessary, as the court already did in a discrimination case on ground of sexual orientation which arose before it.

²⁸ Latvia, Amendments to the Administrative Violations Code (*Grozījumi Latvijas Administratīvo pārkāpumu kodeksā*), 17 May 2007, Section Art. 204¹⁷, available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/61FE6B48F447AF71C22572F1002B6688?OpenDocument>, published in Latvian Herald (*Latvijas Vēstnesis*) 91(3667), 07.06.2007, available in Latvian at: www.vestnesis.lv/?menu=doc&id=158399.

²⁹ Latvia, Amendments to the Criminal Law (*Grozījumi Krimināllikumā*), 21 June 2007, Art. 149.¹, available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?>

³⁰ Latvia, Amendments to the Law on Social Security (*Grozījumi likumā "Par sociālo drošību"*), 1 December 2005, Section 2.¹, available in Latvian at: www.ttc.lv/index.php?skip=240&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 205(3363), 22.12.2005, available in Latvian at: www.vestnesis.lv/?menu=doc&id=124266.

The amendments to the Labour Law were adopted by the Parliament in the third (final) reading on 15.06.2006, without however including sexual orientation among the prohibited grounds.³¹ After the reaction of the Ministry of Welfare, Ministry of Foreign Affairs (*Ārlietu ministrija*, ĀM), and two LGBT NGOs, on 21.06.2006 President of Republic of Latvia Vaira Vīķe-Freiberga, following the procedure set in the Constitution of Latvia, Art 71,³² sent an explanatory letter to the Speaker of the Parliament requesting to return the amendments for parliamentary review.³³ On 21.09.2006 the Parliament reviewed and adopted amendments to the Labour Law that explicitly ban discrimination on the ground of sexual orientation.³⁴ In line with the generally homophobic tone of the debate on these amendments, Latvia's First Party proposed amendments to the Latvian Constitution (*Satversme*) rephrasing Article 110 ('The State shall protect and support marriage, the family, the rights of parents and rights of the child') by adding a definition of marriage: 'The State protects marriage – the union between a man and a woman, the family, the rights of parents and rights of the child'. The amendment, which required a two third majority in order to pass, was adopted on 15.12.2005. This enshrined in the Constitution the exclusion of same-sex marriage, despite the fact that the Article 35(2) of the Civil Law³⁵ already explicitly bans marriage between persons of the same sex.³⁶

On 02.11.2006 amendments to the Civil Service Law were adopted, stipulating that 'the norms of regulatory enactments regulating legal employment relations that prescribe the principle of equal rights, the principle of prohibition of differential treatment, prohibition to cause adverse consequences, working hours and rest time, remuneration, the financial liability of employees and terms shall apply to the legal relations of the State civil service insofar as such are not prescribed by this Law'.³⁷

Thus, since the Labour Law explicitly includes sexual orientation amongst the grounds of discrimination, this applies also to Civil Service legal relationships.

As discussions concerning amendments to the Civil Law stalled, amendments to various other laws were adopted in 2008-2009 to fill legislative gaps concerning access to goods and services. Amendments to the Consumer Rights Protection Law adopted on 19 June 2008, prohibit

³¹ Available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre (24.02.2008).

³² Art. 71: 'Within ten days after the adoption of a law by the Saeima, the President of State shall be entitled to ask, by means of an explanatory letter addressed to the Chairperson of the Saeima, for the review of that law. If the Saeima does not amend the law, the President of State shall not have the right to raise any further objections.'

³³ Latvia, Herald of Latvia (*Latvijas Vēstnesis*), www.lv.lv/index.php?menu_body=DOC&id=138230&menu_left=LAIDIENS&PHPSESSID=67 .

³⁴ Latvia, Amendments to the Labour Law (*Grozījumi Darba likumā*), 21 September 2006, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre , published in Latvian Herald (*Latvijas Vēstnesis*) 162(3530), 11.10.2006, available in Latvian at: www.vestnesis.lv/?menu=doc&id=145408 .

³⁵ Latvia, The Civil Law (*Civillikums*), 28 January 1937, available in English at: www.ttc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV , published in Official Gazette (*Valdības Vēstnesis*) 41, 20.02.1937.

³⁶ Latvia, Amendment to the Constitution of the Republic of Latvia (*Grozījums Latvijas Republikas Satversmē*), 15 December 2005, available in Latvian at: www.vvc.gov.lv/advantagecms/LV/tulkojumi/meklet_dokumentus.html?query=Civillikums&Submit=Mekl%C4%93t&resultsPerPage=10 , published in Latvian Herald (*Latvijas Vēstnesis*) 1(3369), 03.01.2006.

³⁷ Latvia, Civil Service Law (*Valsts Civildienesta likums*) 7 September 2000, available in Latvian at: www.likumi.lv/doc.php?id=10944&mode=KDOC , published in Latvian Herald (*Latvijas Vēstnesis*) 331/333 (2242/2244), 22.09.2000, available in Latvian at: www.vestnesis.lv/?menu=doc&id=10944 .

differential treatment concerning access to goods and services on grounds of gender, race and ethnicity.³⁸ Disability was added with the amendments to the same law on 28 October 2010.³⁹

Draft law "Amendments to Consumer Rights Protection Law" („*Grozījumi Patērētāju tiesību aizsardzības likumā*”) was passed to the parliamentary committees on 5 July 2012.⁴⁰ The draft amendments envisioned adding age, religious belief and sexual orientation to the list of discrimination grounds covered by the Consumer Rights Protection Law.⁴¹ Annotation to the draft law mentioned that the amendments are necessary in order to provide equal legal regulation also to persons who are not considered as economic actors, namely, to any natural person, who is considered as a consumer by the Consumer Rights Protection Law (developed anew at that time during 2012). As of February 2014, the draft amendments had not been adopted by the parliament.⁴²

The Law on Prohibition of Discrimination of Physical Persons Conducting Commercial Activities (*Fizisko personu - saimnieciskās darbības veicēju - diskriminācijas aizlieguma likums*), adopted on 21 May 2009 prohibited differential treatment on grounds of gender, race or ethnic origin of persons conducting commercial activities in their access to goods or services.⁴³ The annotation to the draft law indicates that during the elaboration of the draft law, the possibility to include protection against discrimination on other grounds was considered, however, the author of the draft law Ministry of Welfare (*Labklājības ministrija*) did not expand the scope of discrimination grounds, as it was of the opinion that the discussion of EU Member States needs to be finalised on the final version of the draft Council Directive COM (2008) 426 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.⁴⁴

³⁸ Latvia, Amendments to the Consumer Rights Protection Law (*Grozījumi Patērētāju tiesību aizsardzības likumā*), 19 June 2008, para 31, published in Latvian Herald (*Latvijas Vēstnesis*) 104(3888), 09.07.2008, available in Latvian at: www.vestnesis.lv/?menu=doc&id=177913 .

³⁹ Latvia, Amendments to the Consumer Rights Protection Law (*Grozījumi Patērētāju tiesību aizsardzības likumā*), 28 October 2010, published in Latvian Herald (*Latvijas Vēstnesis*) 183 (4375), 17.11.2010, available in Latvian at: www.vestnesis.lv/?menu=doc&id=177913 .

⁴⁰ Information available in Latvian at:

[http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/webAll?SearchView&Query=%28\[Title\]=*Groz%C4%ABjumi+Pat%C4%93r%C4%93t%C4%81ju+ties%C4%ABbu+aizsardz%C4%ABbas+likum%C4%81%29&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/webAll?SearchView&Query=%28[Title]=*Groz%C4%ABjumi+Pat%C4%93r%C4%93t%C4%81ju+ties%C4%ABbu+aizsardz%C4%ABbas+likum%C4%81%29&SearchMax=0&SearchOrder=4) .

⁴¹ Latvia, Draft Law on Amendments to the Consumer Rights Protection Law (*Likumprojekts „Grozījumi Patērētāju tiesību aizsardzības likumā”*), 26 June 2012, available in Latvian at: <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/A86B192C45950201C2257A2A002FD870?OpenDocument> .

⁴² Latvia, Consumer Rights Protection Law (*Patērētāju tiesību aizsardzības likums*), 18 March 1999, available in Latvian at: <http://likumi.lv/doc.php?id=23309> , published in Latvian Herald (*Latvijas Vēstnesis*) 104/105 (1564/1565), 01.04.1999, available in Latvian at: www.vestnesis.lv/?menu=doc&id=23309 .

⁴³ Latvia, Law on Prohibition of Discrimination of Physical Persons Conducting Commercial Activities (*Fizisko personu-saimnieciskās darbības veicēju-diskriminācijas novēršanas likums*), 21 May 2009, Section 2, available in Latvian at: www.likumi.lv/doc.php?id=193005 , published in Latvian Herald (*Latvijas Vēstnesis*) 89(4075), 09.06.2009, available in Latvian at: www.vestnesis.lv/?menu=doc&id=193005 .

⁴⁴ Latvia, Annotation to the draft law “Law on the Prohibition of Discrimination of Physical Persons Conducting Commercial Activities (*Likumprojekta “Fizisku personu, kuras veic saimniecisku darbību, diskriminācijas aizlieguma likums” anotācija*)”, available in Latvian at www.saeima.lv/saeima9/lasa?dd=LP1088_0 .

On 29 November 2012, the Parliament adopted in the final reading a new Law on Prohibition of Discrimination of Natural Persons Engaged in Economic Activity (*Likumprojekts 'Fizisko personu - saimnieciskās darbības veicēju - diskriminācijas aizlieguma likums'*) replacing an earlier law adopted in 2009.⁴⁵ The law, inter alia, broadened the list of prohibited discrimination grounds: while the earlier law specifically mentioned gender, race, ethnic origin and disability, the law adopted in 2012 also included age, religion, sexual orientation and political belief.

On 17 December 2009, the Saeima adopted the Law on Patients' Rights (*Pacientu tiesību likums*), which came into force on 1 March 2010. The draft Law, when adopted in the first reading also included sexual orientation among prohibited discrimination grounds. The provision read as follows: "It shall be prohibited to restrict patient's rights on grounds of gender, age, race, colour, religious, political or other convictions, national or social origin, family status or sexual orientation."⁴⁶ During the second reading following the proposals of the parliamentary Social and Employment Affairs Commission (*Saeimas Sociālo un darba lietu komisija*), Human Rights and Public Affairs Commission, and parliament's Legal Bureau, the provision was amended and read as follows "in securing patients' rights, differential treatment on grounds of race or ethnic origin and other conditions."⁴⁷ In the 3rd and final reading the parliament again expanded the list of explicitly prohibited grounds, excluding sexual orientation, but leaving an open-ended list: 'in guaranteeing patients' rights, differential treatment shall be prohibited on grounds of person's race, ethnic origin, colour, gender, age, disability, state of health, religious, political or other conviction, national or social origin, property or family status or other conditions.'⁴⁸ Thus 'sexual orientation' can be implicitly read also under 'other conditions' in the Law on Patients' Rights.

On 26 November 2009, amendments were adopted by the Parliament in the first reading to the Law on Support to the Unemployed and Job Seekers (*Bezdarbnieku un darba meklētāju atbalsta likums*), which provide that in implementing active employment and preventive unemployment reduction measures, differential treatment shall be prohibited on grounds of person's gender, race and ethnicity.⁴⁹ On 12 November 2009, amendments to the Education Law (*Izglītības likums*) which prohibit differential treatment in providing education on grounds

⁴⁵ Latvia, Law on Prohibition of Discrimination of Natural Persons Engaged in Economic Activity (*Fizisko personu - saimnieciskās darbības veicēju - diskriminācijas aizlieguma likums*), 29 November 2012, available in Latvian at: <http://likumi.lv/doc.php?id=253547>, published in Latvian Herald (*Latvijas Vēstnesis*) 199(4802), 19.12.2012, available in Latvian at: www.vestnesis.lv/?menu=doc&id=253547.

⁴⁶ Latvia, Law on the Rights of Patients (*Pacientu tiesību likums*) (Reg.nr. 8th Saeima 1137, 1st reading adopted on 14 December 2006), Section 3, para 1, available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/96DC7AFDC685D344C225723E0047B5AC?OpenDocument>.

⁴⁷ Latvia, Law on the Rights of Patients (*Pacientu tiesību likums*) (Reg.nr. 126/Lp9, 2n reading, adopted on 20 December 2007), Section 3, para 1, available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/CB326871E55A53A7C22573B1002A235C?OpenDocument>.

⁴⁸ Latvia, Law on the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009, Section 2, para 2, available in Latvian at www.likumi.lv/doc.php?id=203008, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: www.vestnesis.lv/?menu=doc&id=203008.

⁴⁹ Latvia, Amendments to the Law on Support of Unemployed and Job Seekers (*Grozījumi Bezdarbnieku un darba meklētāju atbalsta likumā*) 2 November 2009 (Nr. 1577/LP9) Section 2.1para 1), available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/FF748D290799AC87C22576630047AA74?OpenDocument>.

of gender⁵⁰, later specifying that it is also applicable to property and social status, race, ethnic and national origin, religious and political conviction, state of health, occupation and place of residence were passed for review to the parliamentary Education, Culture and Science Commission (*Saeimas Izglītības, kultūras un zinātnes komisija*).⁵¹ On 26 January 2010 during the discussions of the above parliamentary commission, members of the commission decided not to include sexual orientation among prohibited discrimination grounds as, according to the commission, its inclusion could hinder the adoption of the law.⁵²

On 4 March 2010 the Saeima adopted the above amendments to the Education Law, which came into force on 26 March 2010. The amendments prohibit differential treatment of persons on the grounds of the person's property and social status, race, nationality, ethnic affiliation, gender, religious and political persuasion, health status, occupation and the place of residence.⁵³

The conclusion is that the legislator has gone beyond the minimum requirements of the Employment Directive 2000/78/EC, and discrimination on the ground of sexual orientation is explicitly forbidden in employment (both in the private and in the public sectors), in civil service, as well as in self-employment. However, sexual orientation can be implicitly read also under the 'other conditions' in the Law on Social Security after amendments of 2005⁵⁴, the Law on Patients' Rights adopted in 2009.⁵⁵ As the Constitution⁵⁶ of Latvia contains a general provision that '[a]ll human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind', there exists at least a possibility to use this clause to challenge the constitutionality of insufficient legal norms in cases of discrimination on ground of sexual orientation in other areas than employment.

⁵⁰ Latvia, Amendments to the Education Law (*Grozījumi Izglītības likumā*) 2 November 2009 (Nr.1576/LP9), Section 3. 1 para 1), available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/8A9166B9CFE512F4C2257663004533D5?OpenDocument>.

⁵¹ Latvia, Amendments to the Education Law (*Grozījumi Izglītības likumā*) (Nr.1576/LP9), Section 3. 1 para 5, available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/8A9166B9CFE512F4C2257663004533D5?OpenDocument>.

⁵² Delfi.lv (2010), Wearing of Muslim Burkas Will not be Prohibited by Law (*Skolās ar likumu neliegs musulmaņu burku valkāšanu*), 26 January 2010, available in Latvian at: www.delfi.lv/archive/print.php?id=29500055.

⁵³ Latvia, Amendments to the Education Law (*Grozījumi Izglītības likumā*), 4 March 2010, Section 4, available in Latvian at: <http://likumi.lv/doc.php?id=206963>, published in Latvian Herald (*Latvijas Vēstnesis*) 47(4239), 24.03.2010, available in Latvian: www.vestnesis.lv/?menu=doc&id=206963.

⁵⁴ Latvia, Amendments to the Law on Social Security (*Grozījumi likumā "Par sociālo drošību"*), 1 December 2005, Art. 2.1, available in Latvian at: www.ttc.lv/index.php?skip=240&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 205(3363), 22.12.2005, available in Latvian at: www.vestnesis.lv/?menu=doc&id=124266.

⁵⁵ Latvia, Law On the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009), Section 2, para 2, available in Latvian at: www.likumi.lv/doc.php?id=203008, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: www.vestnesis.lv/?menu=doc&id=203008.

⁵⁶ Latvia, Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), 15 February 1922, Art. 91, available in Latvian at: www.saeima.lv/Likumdosana/likumdosana_satversme.html, published in Latvian Herald (*Latvijas Vēstnesis*) 43, 01.07.1993, available in Latvian at: www.vestnesis.lv/?menu=doc&id=57980.

1.2 Court procedure in employment cases

The Labour Law (*Darba likums*) determines that individual disputes regarding rights between an employee and an employer, if they have not been settled within the undertaking, shall be settled in court.⁵⁷ The Law also stipulates that all claims arising from employment legal relationships are subject to a limitation period of two years unless a shorter limitation period is provided by law.⁵⁸ However, provisions of the Labour Law regarding violation of the prohibition of differential treatment in the recruitment process⁵⁹ when giving notice of termination of an employment contract during the probationary period,⁶⁰ regarding equal work remuneration,⁶¹ violations of the prohibition of differential treatment in determining working conditions, occupational training or raising of qualifications or promotions⁶² initially foresaw a time limit of only one month for bringing a claim to the court.

On 4 March 2010, the Parliament (*Saeima*) adopted amendments in the final reading to the Labour Law (*Darba likums*). These amendments foresee an extension from one to three months the statutory limitation when a complainant can bring a claim to court in cases concerning discrimination in employment relations (in establishing employment relations, concerning equal pay, in determining working conditions, professional training or promotion). In cases of dismissal (including trial period) the time limit for filing a claim in court remains the same – one month.⁶³

As there is no separate labour tribunal in Latvia, a person defends his/her rights in civil court. There is a three instance court system in Latvia (first instance, appeal instance, cassation instance).

⁵⁷ Latvia, Labour Law (*Darba likums*), 20 June 2001, Art. 30, available in Latvian at: www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 105(2492),06.07.2001, available in Latvia at: www.vestnesis.lv/?menu=doc&id=26019.

⁵⁸ Latvia, Labour Law (*Darba likums*), 20 June 2001, Art. 31, available in Latvian at: www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 105(2492),06.07.2001, available in Latvia at: www.vestnesis.lv/?menu=doc&id=26019.

⁵⁹ Latvia, Labour Law (*Darba likums*), 20 June 2001, Art. 34 Section 1, available in Latvian at: www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 105(2492),06.07.2001, available in Latvia at: www.vestnesis.lv/?menu=doc&id=26019.

⁶⁰ Latvia, Labour Law (*Darba likums*), 20 June 2001, Art. 48, available in Latvian at: www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 105(2492),06.07.2001, available in Latvia at: www.vestnesis.lv/?menu=doc&id=26019.

⁶¹ Latvia, Labour Law (*Darba likums*), 20 June 2001, Art. 60 Section 3, available in Latvian at: www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 105(2492),06.07.2001, available in Latvia at: www.vestnesis.lv/?menu=doc&id=26019.

⁶² Latvia, Labour Law (*Darba likums*), 20 June 2001, Art. 95 Section 2, available in Latvian at: www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 105(2492),06.07.2001, available in Latvia at: www.vestnesis.lv/?menu=doc&id=26019.

⁶³ Latvia, Amendments to Labour Law (*Grozījumi Darba likumā*), 4 March 2010, published in Latvian Herald (*Latvijas Vēstnesis*) 47 (4239), 24.03.2010, available in Latvia at: www.vestnesis.lv/?menu=doc&id=206961.

There is very little case law on discrimination in the field of employment on the ground of sexual orientation to identify any possible trends. To date, there have been two employment cases on the ground of sexual orientation tried in Latvia – one concerning non-hiring (case tried in 2005-2006),⁶⁴ and one concerning alleged dismissal from employment (case tried in 2009-2010)⁶⁵ (see Annex 1). Civil society organisations were involved in both cases.

Complaints data to Ombudsperson's Office alleging discrimination on grounds of sexual orientation remains rather low, with no clear tendency of increase or decrease; the highest number of complaints was registered in 2008 (13), 2007 (12) and 2001 (11), the lowest – no complaints in 2004, 2011 and 2013 (see Annex 2).

Natural persons may conduct matters in court personally or through their authorised representatives.⁶⁶ Any natural person may be an authorised representative in the civil procedure, taking into account restrictions, specified by the law.⁶⁷ Any individual litigant also has the right to hire a legal counsel to provide legal assistance in their matter.⁶⁸ In order to improve access to the court, on 01.06.2005, the Law on State-provided Legal Aid (*Valsts nodrošinātās juridiskās palīdzības likums*) came into force,⁶⁹ providing State support in granting legal aid in criminal, civil and administrative cases. The categories of those entitled to legal aid funded by the State are Latvian citizens, Latvian non-citizens, stateless persons, EU nationals legally residing in Latvia, 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. The condition for receiving legal aid, further regulated by Regulation of the Cabinet of Ministers, is that the person's particular situation, property status, and income level does not ensure partial or full protection of their rights. The State provides free legal aid to persons whose status is defined as low-income or poor.

The Constitutional Court (*Satversmes tiesa*) in Latvia 'reviews cases concerning the compliance of laws with the Constitution (*Satversme*), [...], compliance of other regulatory

⁶⁴ Latvia, Riga City Ziemeļi District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*), Riga / case No. C32242904047505, 29 April 2005, Riga Regional Court (*Rīgas apgabaltiesa*), Riga / case No. C32242904 CA-1096/2, 8 June 2006, Senate of the Supreme Court of the Republic of Latvia (*Latvijas Republikas Augstākās tiesas Senāts*), Riga / case No. SKC-796, 9 October 2006.

⁶⁵ Latvia, Riga City Zemgales District Court (*Rīgas pilsētas Zemgales priekšpilsētas tiesa*), Riga / case No. C31298809; 12 October 2009; Riga Regional Court (*Rīgas apgabaltiesa*), Riga / case No. CA- 2041-10/26, 24 March 2010.

⁶⁶ Latvia, Civil Procedure Law (*Civilprocesa likums*), 14 October 1998., Art. 82 Section 1, available in Latvian at: www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 326/330 (1387/1391), 03.11.1998, available in Latvian at: www.vestnesis.lv/?menu=doc&id=50500.

⁶⁷ Latvia, Civil Procedure Law (*Civilprocesa likums*), 14 October 1998, Art. 83, available in Latvian at: www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 326/330 (1387/1391), 03.11.1998, available in Latvian at: www.vestnesis.lv/?menu=doc&id=50500

⁶⁸ Latvia, Civil Procedure Law (*Civilprocesa likums*), 14 October 1998, Art. 82, available in Latvian at: www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 326/330 (1387/1391), 03.11.1998, available in Latvian at: www.vestnesis.lv/?menu=doc&id=50500.

⁶⁹ Latvia, Law on State-provided Legal Aid (*Valsts nodrošinātās juridiskās palīdzības likums*) 17 March 2005, available in Latvian at: www.likumi.lv/doc.php?id=104831&mode=DOC, published in Latvian Herald (*Latvijas Vēstnesis*) 52(3210), 01.04.2005, available in Latvian at: www.vestnesis.lv/?menu=doc&id=104831.

enactments or parts thereof with the norms (acts) of a higher legal force, [...], and compliance of Latvian national legal norms with those international agreements entered into by Latvia that is not in conflict with the Constitution'.⁷⁰ The Constitutional Court has the right to declare laws or other enactments or parts thereof null and void. Since 2001 individuals are allowed to lodge applications with the Constitutional Court about violations of their basic rights as protected under the Latvian Constitution.⁷¹ In several rulings the Constitutional Court has analysed whether the relevant legal norms regarding employment or civil service are not in violation of the provision of the Constitution of Latvia which stipulates that all human beings in Latvia shall be equal before the law and the courts, and human rights shall be realised without discrimination of any kind.⁷² However, as of February 2014, none of the decisions has yet concerned the ground of sexual orientation.

1.3 Out-of-court procedures in employment cases

On 15.12.2005, in the course of the transposition of the Racial Equality Directive, the amendments to the Law on the National Human Rights Office were adopted⁷³ providing the National Human Rights Office (NHRO) (*Valsts Cilvēktiesību birojs*, VCB) with competence as the specialised body for implementing the principle of non-discrimination not only on the grounds of race and ethnicity, but for the principle of equal treatment overall. They also foresaw a right (however, not a duty) of the NHRO, with consent of the victim of discrimination, to hand in a submission to the authority or an application to the court, if the nature of claim relates to the breach of prohibition of differential treatment.⁷⁴ The NHRO created a Discrimination Prevention Department⁷⁵ for, inter alia, investigating cases of discrimination, analysing legislation, and raising public awareness. In 2006, the NHRO for the first and the only time exercised its right to submit an application to the court and represented a person who had been discriminated in labour relationship in the hiring stage on the ground of national origin.

On 01.01.2007, the Ombudsperson's Office (*Tiesībsarga birojs*) was established on the basis of NHRO and took over the duty of the NHRO to work as a specialised body for the

⁷⁰ Latvia, Constitutional Court Law (*Satversmes tiesas likums*), 5 June 1996, Art. 16, available in Latvian at: www.ttc.lv/index.php?skip=225&itid=likumi&id=10&tid=59&l=LV, published in Latvian Herald (*Latvijas Vēstnesis*) 103(588), 14.06.1996, available in Latvian at: www.vestnesis.lv/?menu=doc&id=63354.

⁷¹ Latvia, Amendments to the Constitutional Court Law (*Grozījumi Satversmes tiesas likumā*), 30 November 2000), Art. 17 Section 1 (11), available in Latvian at: www.saeima.lv/saeima7/reg.likprj, published in Latvian Herald (*Latvijas Vēstnesis*) 460/464 (2371/2375), 20.12.2000, available in Latvian at: www.vestnesis.lv/?menu=doc&id=13736.

⁷² Latvia, Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), 15 February 1922, (Section on fundamental rights adopted on 15.10.1998), Art. 91, available in Latvian at: www.saeima.lv/Likumdosana/likumdosana_satversme.html, published in Latvian Herald (*Latvijas Vēstnesis*) 43, 01.07.1993, available in Latvian at: www.vestnesis.lv/?menu=doc&id=57980.

⁷³ Latvia, Law Amendments to the Law on the National Human Rights Office (*Grozījumi Likumā par Valsts Cilvēktiesību biroju*), 15 December 2005, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre, published in Latvian Herald (*Latvijas Vēstnesis*) 209(3367), 29.12.2005, available in Latvian at: www.vestnesis.lv/?menu=doc&id=124708.

⁷⁴ Latvia, Draft Law Amendments to the Law on the National Human Rights Office (*Likumprojekts Grozījumi Likumā par Valsts Cilvēktiesību biroju*), Reg.No. 1321 (passed the second reading in the Parliament on 07.04.2004), available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre.

⁷⁵ Operating since 16.11.2005. Information available on the website of the National Human Rights Office www.vcb.lv/default.php?open=jaunumi&this=161105.202.

implementation of the principle of equal treatment. Although the Ombudsperson's Office started to work on 01.01.2007, the first Ombudsperson (*Tiesībsargs*) was confirmed by parliament only on 01.03.2007.⁷⁶ The legal ground of the work of the Ombudsperson's Office is the Ombudsperson Law.⁷⁷ Like the Law on the NHRO, in addition to functions within the broad human rights and good governance mandate, the Ombudsperson Law sets as one of the functions of the Ombudsperson to promote the compliance with the principles of equal treatment and to prevent any kind of discrimination.⁷⁸ Among the duties of Ombudsperson is the examination of submissions, complaints and proposals of private individuals.⁷⁹ The examination procedure shall be completed by the conciliation of the persons involved in the procedure or an opinion of the Ombudsperson. The opinions of the Ombudsperson are not binding, they are recommendations.⁸⁰ The Ombudsperson 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.⁸¹ To date (February 2014), the Ombudsperson has exercised this right in one case which concerned discrimination on grounds of gender.⁸²

The effectiveness and even continued existence of the Ombudsperson's institution came under threat in 2009, starting when serious internal conflict came to light in the Office in summer 2009. On 5 July, 26 staff members of the Ombudsperson Office sent an open letter to the Prime Minister, State President, Speaker of the Parliament and Chairperson of the parliamentary Human Rights and Public Affairs Commission demanding the resignation of the Ombudsperson R. Apsītis. The employees questioned his independence, criticised him for squandering budgetary resources, repressive measures against staff, lack of competence in human rights issues and delays of Ombudsperson's opinion on essential matters.⁸³

The Ombudsperson denied the allegations.⁸⁴ Earlier, on 12 June, a trade union was established in the Office, including 32 out of 48 staff members. Several leading NGOs criticised the Ombudsperson for lack of effectiveness and called upon the parliamentary Human Rights and

⁷⁶ Latvian Parliament (*Saeima*), www.saeima.lv/steno/Saeima9/070301/st070301.htm .

⁷⁷ Latvia, Ombudsperson Law (*Tiesībsarga likums*) 6 April 2006, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre , published in Latvian Herald (*Latvijas Vēstnesis*) 65(3433), 25.04.2006, available in Latvian at: www.vestnesis.lv/?menu=doc&id=133535 .

⁷⁸ Latvia, Ombudsperson Law (*Tiesībsarga likums*), 6 April 2006, Art. 11 Section 2, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre , published in Latvian Herald (*Latvijas Vēstnesis*) 65(3433), 25.04.2006, available in Latvian at: www.vestnesis.lv/?menu=doc&id=133535 .

⁷⁹ Latvia, Ombudsperson Law (*Tiesībsarga likums*), 6 April 2006, Art. 12 Section 1, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre , published in Latvian Herald (*Latvijas Vēstnesis*) 65(3433), 25.04.2006, available in Latvian at: www.vestnesis.lv/?menu=doc&id=133535 .

⁸⁰ Latvia, Ombudsperson Law (*Tiesībsarga likums*), 6 April 2006, Art. 25 Section 4, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre , published in Latvian Herald (*Latvijas Vēstnesis*) 65(3433), 25.04.2006, available in Latvian at: www.vestnesis.lv/?menu=doc&id=133535 .

⁸¹ Latvia, Ombudsperson Law (*Tiesībsarga likums*), 6 April 2006, Art. 13 Section 10, available in Latvian at: www.saeima.lv/saeima8/mek_reg_fre , published in Latvian Herald (*Latvijas Vēstnesis*) 65(3433), 25.04.2006, available in Latvian at: www.vestnesis.lv/?menu=doc&id=133535 .

⁸² Ombudsperson's Annual Report 2008 (*Tiesībsarga gada ziņojums 2008*), available in Latvian at: www.tiesibsargs.lv/lat/publikacijas/gada_zinojumi/?doc=596 .

⁸³ Letter by Staff of Ombudsperson's Office to State Officials, *Diena*, 3 July 2009, available at: www.diena.lv/upload/manual/veestuleparprobleemaamtiesiisargabirojaa.doc .

⁸⁴ Dzērve, Laura. The Ombudsperson does not Plan to Leave Office, *Diena*, 13 July 2009, available at www.diena.lv/lat/politics/hot/tiesibsargs-amatu-pamest-negrasas .

Public Affairs Commission to hold a hearing in view of the seriousness of the threat to effectiveness of the internal conflict.⁸⁵ On 14 July, the Commission heard the conflicting sides, and stated that it would not propose the dismissal of the Ombudsperson and urged the parties to resolve the conflict internally.⁸⁶ As a result of the conflict the head of the four-person Discrimination Prevention Department left the Office.⁸⁷ Internal investigation was undertaken against two staff members for alleged breaches of internal regulations and unethical conduct for divulging information on staff salaries the parliamentary committee. Both staff members have sued the Ombudsperson in court. In mid-September during the drafting process of the 2010 budget, the government, despite having no such competence with regard to such statutory independent institutions, considered the closure of the Ombudsperson's Office,⁸⁸ but following the protests by the State President, MPs and civil society actors,⁸⁹ gave up the idea, but proposed further cuts in the Office's budget by 200,000 Lats (~285,700 euros).⁹⁰ Before the third reading on the Law on State Budget, according to information on the parliamentary website, the budget of the Ombudsperson's Office was fixed at 489,799 Lats (~ 700,000 euros), down from 900,000 Lats (~1,28 million euros) however one of the parties of the coalition government, the People's Party, unexpectedly introduced a proposal to cut the Office's budget by a further 300,000 Lats and allocate the sum to the State Culture Capital Fund (*Valsts Kultūrkapitāla fonds*). Following protests by the parliamentary Human Rights and Public Affairs Commission and intervention by the Prime Minister this proposal was rejected.

As a result of budgetary cuts, Ombudsperson's Office underwent significant reorganisation. The Discrimination Prevention Department was abolished, and two remaining anti-discrimination experts were reassigned to the newly formed Legal Department although they allegedly retained special responsibility for discrimination cases.⁹¹

According to the Clause 9.2 of the By-law of the Ombudsperson's Office (*Tiesībsarga biroja nolikums*),⁹² approved by the Ombudsperson J.Jansons on 27 March 2012 (entered into force on 2 April 2012), one of the structural units of the Ombudsperson's Office is the Legal Equality Section. The By-law defines the tasks of this Section, such as execution of the tasks of the Ombudsperson determined by the Ombudsperson Law, taking into consideration the goals and priorities determined by the strategy of the Ombudsperson, in the field of facilitating the principle of equal treatment, in case if a violation of the prohibition of discrimination is established, provision of independent legal help to the victim of discrimination, etc. ⁹³

⁸⁵ LETA news agency, Non-governmental Organisations Call Upon Saeima Commission to Evaluate the Work of the Ombudsperson, 7 July 2009.

⁸⁶ The Conflict in the Ombudsperson's Office Must Be Resolved within the Office, Lawyers' Word (*Jurista Vārdi*), 21 July 2009, available at www.juristavards.lv/index.php?menu=DOC&id=194920.

⁸⁷ Without Any Changes in Ombudsperson's Office, Head of Discrimination Department Leaves Office, LETA news agency, 12 August 2009.

⁸⁸ Delfi.lv, Government Discussed the Liquidation of the Ombudsperson's Office, 24 September 2009, available at: www.delfi.lv/news/budget10/news/valdiba-apspriesta-tiesibsarga-biroja-likvidesana.d?id=27024603.

⁸⁹ Supstika Laura, Zatlers Stands against the Closure of Ombudsperson's Office, *Diena*, 26 September 2009, available at www.diena.lv/lat/politics/hot/vike-freiberga-likvidet-tiesibsarga-biroju-nedrikst

⁹⁰ LETA news agency, Ombudsperson's Office Will not be Closed; Costs will be Decreased by 200,000 Lats, 3 October 2009.

⁹¹ Information provided to Latvian Centre for Human Rights by the Ombudsperson's Office on 8 February 2010.

⁹² Latvia, By-law of the Ombudsperson's Office (*Tiesībsarga biroja nolikums*), (27.03.2012.), available at: www.tiesibsargs.lv/par-mums/tiesibsarga-birojs/tiesibsarga-biroja-nolikums (19.02.2014).

⁹³ Latvia, By-law of the Ombudsperson's Office (*Tiesībsarga biroja nolikums*) (27.03.2012.), Art. 18, available at: www.tiesibsargs.lv/par-mums/tiesibsarga-birojs/tiesibsarga-biroja-nolikums (19.02.2014.)

According to publicly available information, at the moment, the Section employs the head of the Section, two legal consultants and an assistant lawyer.⁹⁴

The State Labour Inspectorate (SLI) (*Valsts Darba inspekcija*) is a state supervisory and control institution under the Ministry of Welfare. According to the State Labour Inspectorate Law⁹⁵, among its functions are monitoring and controlling the observance of the requirements of regulatory enactments regarding employment legal relationships, controlling how employers and employees mutually fulfill the obligations determined by employment contracts and collective agreements, promoting co-operation between employers and employees, as well as taking measures to facilitate the prevention of differences of opinion between employers and employees.⁹⁶ SLI is entitled to adopt rulings, issue orders and express warnings within of the scope of its competence, which are mandatory for all natural and legal persons under supervision and control of SLI (e.g., merchants, state and local government institutions, religious and public organisations; employers and their authorised persons, in conformity with the duties and authorisation entrusted to them).⁹⁷ SLI has a right under the Latvian Administrative Violation Code to review cases of discrimination in labour relationship prohibited by that law and impose penalties.⁹⁸

Article 14 of the Law on Trade Unions (*Likums Par arodbiedrībām*) permits trade unions to represent and defend their members before state institutions, including bringing a case to court if the case relates to the employment relationship, redress for health damages, housing or other social and economic rights, solving of individual or collective disputes.⁹⁹ Trade unions are entitled to examine individual and collective labour disputes together with representatives of employer. If agreement in an individual case is not reached, the dispute shall be brought to the court.¹⁰⁰ The Labour Dispute Law (*Darba strīdu likums*) in turn 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.¹⁰¹ However, in practice, available information suggests that as of 2014 there has not

⁹⁴ www.tiesibsargs.lv/par-mums/darbinieki (19.02.2014) .

⁹⁵ Latvia, Law on State Labour Inspectorate (*Valsts darba inspekcijas likums*), 13 December 2001, available in Latvian at: www.likumi.lv/doc.php?id=56939&mode=KDOC , published in Latvian Herald (*Latvijas Vēstnesis*) 188(2575), 28.12.2001, available in Latvian at: www.vestnesis.lv/?menu=doc&id=56939 .

⁹⁶ Latvia, Law on State Labour Inspectorate (*Valsts Darba inspekcijas likums*), 13 December 2001, Art. 3, available in Latvian at: www.likumi.lv/doc.php?id=56939&mode=KDOC , published in Latvian Herald (*Latvijas Vēstnesis*) 188(2575), 28.12.2001, available in Latvian at: www.vestnesis.lv/?menu=doc&id=56939 .

⁹⁷ Latvia, Law on State Labour Inspectorate (*Valsts Darba inspekcijas likums*), 13 December 2001, Art. 5 Section 2 (6), Art. 5 Section 3, available in Latvian at: www.likumi.lv/doc.php?id=56939&mode=KDOC , published in Latvian Herald (*Latvijas Vēstnesis*) 188(2575), 28.12.2001, available in Latvian at: www.vestnesis.lv/?menu=doc&id=56939 .

⁹⁸ Latvia, Latvian Administrative Violations Code (*Latvijas Administratīvo pārkāpumu kodekss*), 7 December 1984, Art. 2153, available in Latvian at: www.likumi.lv/doc.php?id=89648&mode=KDOC , published in Official Gazette (*Ziņotājs*) 51, 20.12.1984.

⁹⁹ Latvia, Law on Trade Unions (*Likums Par arodbiedrībām*), 13 December 1990, Art. 14, available in Latvian at: www.likumi.lv/doc.php?id=64867&mode=KDOC , published in Official Gazette (*Ziņotājs*) 3, 31.01.1991.

¹⁰⁰ Latvia, Law on Trade Unions (*Likums Par arodbiedrībām*), 13 December 1990, Art. 18, , available in Latvian at: www.likumi.lv/doc.php?id=64867&mode=KDOC , published in Official Gazette (*Ziņotājs*) 3, 31.01.1991.

¹⁰¹ Latvia, Labour Dispute Law (*Darba strīdu likums*), 26 September 2002, Art. 8, available in Latvian at: www.ttc.lv/index.php?skip=120&itid=likumi&id=10&tid=59&l=LV , published in Latvian Herald

been any application of these provisions concerning cases of discrimination. Also, as of February 2014, there are no data available on complaints on alleged discrimination received by trade unions. This most likely relates to the fact that Latvian trade unions have only relatively recently started to gain awareness and capacity on anti-discrimination work practice.

The Law on Associations and Foundations provides that associations and foundations may apply to State and local government authorities in matters related to the goals of the activities of the respective association or foundation, as well as to defend in court the rights of its members or interests protected by law.¹⁰² Since amendments were adopted on 02.11.2006 in order to implement the Employment Directive 2000/78/EC and the Racial Equality Directive 2000/43/EC, associations and foundations which have included in their statutes goals aimed at the protection of human rights or rights of the individual, have a 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.¹⁰³ However, as of February 2014, there remain few NGOs in Latvia that provide assistance in cases of discrimination. The reason for this is a lack of both financial and organisational capacity.

There are at least two cases before the abovementioned provision came into force where individuals authorised a representative of an NGO to represent him/her in a court using the provision of the Civil law that any natural person may be an authorised representative in the civil procedure.¹⁰⁴

According to the Amendments to the Civil Procedure Law (*Grozījumi Civilprocesa likumā*), adopted on 19 December 2013, since 4 January 2014,¹⁰⁵ the right to legal representation in cassation instance is reserved to the person participating in the case or to his/her advocate. This excludes the possibility of legal representation by other persons with a law degree (e.g. NGO employees, legal practitioners, Ombudsman's Office) who are not participants of the case and do not have the status of advocate (lawyer). However, the Civil Procedure Law was amended without taking into consideration the Constitutional Court ruling (see next paragraph), allegedly aimed at strengthening professionalism of legal representation.

(*Latvijas Vēstnesis*) 149(2724), 16.10.2002, available in Latvian at:

www.vestnesis.lv/?menu=doc&id=67361 .

¹⁰² Latvia, Associations and Foundations Law (*Biedrību un nodibinājumu likums*), 30 October 2003, Art. 10 Section 2, available in Latvian at: <http://likumi.lv/doc.php?id=81050> , published in Latvian Herald (*Latvijas Vēstnesis*) 161(2926), 14.11.2003, available in Latvian at:

www.vestnesis.lv/?menu=doc&id=81050 .

¹⁰³ Latvia, Associations and Foundations Law (*Biedrību un nodibinājumu likums*), 30 October 2003, Art. 10 Section 3, available in Latvian at:

www.ttc.lv/index.php?skip=165&itid=likumi&id=10&tid=59&l=LV , published in Latvian Herald (*Latvijas Vēstnesis*) 161(2926), 14.11.2003, available in Latvian at:

www.vestnesis.lv/?menu=doc&id=81050 .

¹⁰⁴ Latvia, Cēsu District Court (*Cēsu rajona tiesa*), Case No.C1101945, 5 July 2005; Latvia, Riga Northern district court (*Rīgas pilsētas Ziemeļu rajona tiesa*), Case No. C32242904047505, 29 April.2005 and Rīga Regional Court (*Rīgas apgabaltiesa*), Case No.C32242904 CA-1096-2.

¹⁰⁵ Latvia, Amendments to the Civil Procedure Law (*Grozījumi Civilprocesa likumā*), 19 December 2013, available in Latvian at: <http://likumi.lv/doc.php?id=263490>, published In Latvian Herald (*Latvijas Vēstnesis*) 2(5061), 03.01.2014, available in Latvian at:

www.vestnesis.lv/?menu=doc&id=263490 .

Previously, the Constitutional Court of the Republic of Latvia evaluated a similar norm in 2003.¹⁰⁶ The case was initiated regarding the compliance of the part five of the Section 82 and part two of the Section 453 of the Civil Procedure Law (*Civilprocesa likums*) with the Articles 91 (non-discrimination) and 92 (right to effective trial) of the Constitution. Part five of the Section 82 of the Civil Procedure Law stipulated that at the cassation instance, natural and legal persons participate in the cases through advocate representation. Part five of the Section 82 and part two of the Section 453 of the Civil Procedure Law stipulated that cassation appeal shall be signed by an advocate. Cassation appeal shall be supplemented with a document which certifies the authorization of the advocate. The applicant claimed that the contested norms violate the applicant's rights, because she, just as the majority of the people, cannot afford to pay for the services of an advocate. The Constitutional Court recognized that the contested norms do not comply with the principle of proportionality, are unlawful, as well as contradict the Article 92 of the Constitution and ruled the contested norm as null and void since 1 January 2003. The Constitutional Court agreed to the argument of the applicant that there are not only the advocates, but also other persons who have sufficient skills to provide qualified legal representation, such as judges and prosecutors (in the cases determined by law), holders of PhD in Law degree, special NGOs providing legal assistance, or state funded institutions which provide legal assistance free of charge, as well as persons with university education in law who passed the examinations for the relevant knowledge and skills, etc. Thus, the Court believed that there are other, more lenient means to achieve the legitimate aim, especially in provision of qualified legal representation in the cassation instance court. The Court believed that the norms envisioned by the Advocacy Law and the Regulations of the Cabinet of Ministers on recognition of the person as needy, are insufficient to provide free of charge legal assistance to those who need it.

¹⁰⁶ Latvia, Decision of Constitutional Court of the Republic of Latvia in the Case Nr. 2003-04-01 on 27.06.2003 (*Latvijas Republikas Satversmes tiesas 27.06.2003. spriedums lietā Nr. 2003-04-01*), available in Latvian at: <http://www.satv.tiesa.gov.lv/?lang=1&mid=19> .

2 Freedom of movement

In Latvia LGBT partnerships cannot be registered, as there is no regulation on civil partnership and the Civil Law explicitly prohibits same-sex marriage.¹⁰⁷

The Immigration Law (*Imigrācijas likums*)¹⁰⁸ provides that an alien [a person who is not a Latvian citizen or a non-citizen of Latvia] who is the spouse of an alien holding a permanent residence permit shall be entitled to request: 1) when submitting documents for the first time – a temporary residence permit for one year; 2) when submitting documents for the second time – a temporary residence permit for four years; 3) when submitting documents for the third time – a permanent residence permit. If the marriage has ended in divorce, before the spouse of the alien who has received a permanent residence permit receives a permanent residence permit, the temporary residence permit shall be cancelled.

The Immigration Law sets explicit marriage conditions to be complied with before the spouse of an alien may be granted a residence permit to: the marriage shall be monogamous, spouses shall live together and they shall have a common household.

The Cabinet of Ministers adopted on 30 August 2011 Regulations Nr.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675, „Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā”*) (entered into force on 8 September 2011, henceforth - Regulations Nr.675). According to the Regulations Nr.675, an extended family member of a Union citizen is a partner with whom the Union citizen has a relationship lasting for at least two years or a partner with whom the Union citizen has a registered partnership.¹⁰⁹ Thus, the extended family members of a Union citizen has the same entry and residence rights envisioned by these Regulations, as the rights of a Union family member, unless he or she is a citizen of the EU. According to the information provided by the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) (*Pilsonības un migrācijas lietu pārvaldes Migrācijas politikas nodaļa*), since the entry into force of the Regulations, there was one such request (in 2013), and this request was granted.¹¹⁰

The legal situation of third country national LGBT partners of EU citizens regarding the freedom of movement

¹⁰⁷ Latvia Civil Law (*Civillikums*), 28 January 1937, Art. 35(2), available in Latvian at: www.ttc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV, published in Official Gazette (*Valdības vēstnesis*) 41, 20.02.1937.

¹⁰⁸ Latvia, Immigration Law (*Imigrācijas likums*), 31 October 2002, Art. 26, available in Latvian at: www.likumi.lv/doc.php?id=68522, published in Latvian Herald (*Latvijas Vēstnesis*) 169(2744), 20.11.2002, available in Latvian at: www.vestnesis.lv/?menu=doc&id=68522.

¹⁰⁹ Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675, „Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā”*), 30 August 2011, Article 4.2, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

¹¹⁰ Information provided by e-mail by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

Immigration Law determines the procedures of entry and stay of the foreigners in the Republic of Latvia.¹¹¹ The Regulations No. 675 determine the procedures for the entry and residence in the Republic of Latvia of citizens of the Union and their family members.¹¹² Unlike the Immigration Law, the Regulations Nr.675 recognise as extended family member also a partner, with whom the Union citizen has a relationship lasting for at least two years or a partner with whom the Union citizen has a registered partnership.

The legal situation of third country national or EU citizen LGBT partners of citizens of Latvia regarding the freedom of movement

The foreign LGBT partner of a Latvian citizen has to comply with the same requirements as determined by the Immigration Law on the arrival and stay of the persons. The member or partner of extended family of the EU citizen (which has at least two years of lasting relationship or registered partnership) has the same rights as determined by the Regulations No. 675 as long as the Paragraph 11 of the said Regulations does not determine otherwise. The Paragraph 11 of the Regulations No. 675 envisions that the member of the extended family of the EU citizen, including the partner who is not an Union citizen, shall be issued with a residence permit according to the 13 June 2002 EU Regulation No. 1030/2002, which determines a uniform format for residence permits for the third country citizens. If a member of a family of a Union citizen (a foreigner, who has the citizenship of the EU, European Economic Area (EEA) or Swiss Confederation), who is not a Union citizen himself/herself, resides in the Republic of Latvia for a certain period of time, he or she shall be issued a residence permit of a family member of a Union citizen¹¹³, while if this member of a family of a Union citizen, who is not a Union citizen, resides in the Republic of Latvia permanently, he or she shall be issued a permanent residence permit of the family member of the Union citizen¹¹⁴. A Partner (a person with whom the Union citizen has a relationship lasting for at least two years or a person with whom the Union citizen has a registered partnership), as a member of the extended family of the Union citizen, who is not a citizen of the Union, shall be issued with residence permit

¹¹¹ Latvia, Immigration Law (*Imigrācijas likums*), 31 October 2002, available in Latvian at: www.likumi.lv/doc.php?id=68522, published in Latvian Herald (*Latvijas Vēstnesis*) 169(2744), 20.11.2002, available in Latvian at: www.vestnesis.lv/?menu=doc&id=68522.

¹¹² Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā*"), 30 August 2011, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

¹¹³ Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 9, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

¹¹⁴ Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 10, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

according to the 13 June 2002 Council Regulation No. 1030/2002, which determines a uniform format for residence permits for the third country nationals.¹¹⁵

The legal situation of EU citizen LGBT partners of EU citizens regarding the freedom of movement in Latvia (including children and family members)

If a Union citizen, or his or her family member who is also a Union citizen, is entitled to reside in the Republic of Latvia permanently, he or she shall be issued an identity card of the Union citizen.¹¹⁶ A Union citizen and his or her family member are entitled to enter and reside in the Republic of Latvia for up to three months, as of the first day of the entry, provided that he or she is in possession of a valid travel document and he or she does not pose a genuine, clear and serious threat to the state security, public order or health.¹¹⁷

The legal situation of third country national LGBT partners of EU citizens regarding the freedom of movement in Latvia (including children and family members)

The member or partner of extended family of the EU citizen (which has at least two years of lasting relationship or registered partnership) has the same rights as determined according to the Regulations No. 675 as long as the Paragraph 11 of the said Regulations does not determine otherwise. The Paragraph 11 of the Regulations No. 675 envisions that the member of the extended family of the EU citizen, including the partner who is not an Union citizen, shall be issued with a residence permit according to the 13 June 2002 EU Regulation No. 1030/2002, which determines a uniform format for residence permits for the third country citizens. If the member of a family of the Union citizen (foreigner, who has the citizenship of the EU, EEA, or the Swiss Confederation), who is not a Union citizen, resides in the Republic of Latvia for a certain period of time, he or she shall be issued a residence permit of a family member of a Union citizen¹¹⁸, while, if the said non-Union citizen member of family of a Union citizen, resides in the Republic of Latvia permanently, he or she shall be issued a permanent residence

¹¹⁵ Latvia, Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieeļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 11, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499 .

¹¹⁶ Latvia, Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieeļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 8, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499 .

¹¹⁷ Latvia, Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieeļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 16, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499 .

¹¹⁸ Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieeļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 9, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499 .

permit of the family member of the Union citizen¹¹⁹. A Partner (a person with whom the Union citizen has a relationship lasting for at least two years or a person with whom the Union citizen has a registered partnership), as a member of the extended family of the Union citizen, who is not a citizen of the Union, shall be issued with residence permit according to the 13 June 2002 Council Regulation No. 1030/2002, which determines a uniform format for residence permits for the third country nationals. A family member of a Union citizen is entitled to request for the permanent right of residence in the Republic of Latvia if he or she is a minor child of a Union citizen or of a family member of a Union citizen, where the respective Union citizen or his or her family member has been granted the right of permanent residence in the Republic of Latvia.¹²⁰

The legal situation of third country national or EU citizen LGBT partners of citizens of Latvia regarding the freedom of movement and residence of their partners in another Member State according to Directive 2004/38/EC (including children and family members)

The norms of the EU Directive 2004/38/EC have been implemented in the Regulations No. 675. The said regulations include norms which are applicable to an Union citizen and his or her family member who move to take up residence or reside in the Republic of Latvia, as well as to a family member of a citizen of Latvia, if the said citizen has used their right to the free movement of persons and stayed in the EU or EEA member states or Swiss Confederation, or if he or she is a provider of services who carries out commercial activities in the Republic of Latvia and provides services to persons carrying out commercial activities in another member state.¹²¹ According to the Regulations, an extended family member of a Union citizen is a partner with whom the Union citizen has a relationship lasting for at least two years or a partner with whom the Union citizen has a registered partnership.¹²² Thus, the extended family members of a Union citizen have the same entry and residence rights envisioned by these Regulations, as the rights of a Union family member, unless he is a citizen of the EU.

¹¹⁹ Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 10, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

¹²⁰ Latvia, Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 36.2, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

¹²¹ Latvia, Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 2, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

¹²² Latvia, Cabinet of Ministers Regulations No.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" (*Ministru kabineta noteikumi Nr.675., Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā*"), 30 August 2011, Article 4.2, available in Latvian at: <http://likumi.lv/doc.php?id=235499>, published in Latvian Herald (*Latvijas Vēstnesis*) 141(4539), 07.09.2011, available at: www.vestnesis.lv/?menu=doc&id=235499.

Case law trends

As of February 2014, the database of the case law of the Supreme Court did not have any rulings about the freedom of movement for LGBT persons.¹²³

¹²³ The database of the case law of the Supreme Court checked 2010., 2011., 2012., 2013., 2014., available at: <http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-administrativo-lietu-departaments/hronologiska-seciba/> .

3 Asylum and subsidiary protection

Until the adoption of the current Asylum Law (*Patvēruma likums*) on 15 June 2009, the refugee definition included persecution based on membership of a particular social group¹²⁴ as grounds for refugee status.¹²⁵ However, it was not clear if the interpretation of the provision would include persecution because of sexual orientation. The current Asylum Law, elaborated with the intention to implement the EU directives¹²⁶, clarifies that the social group definition also includes sexual orientation. Section 22 on Grounds of Persecution provides that “(1) When evaluating the grounds of persecution, an official authorised by the head of the Office shall take into account the asylum seekers: [...] 4) affiliation to a specific social group, which conforms to one of the following characteristics: [...] b) depending on the conditions in the country of origin, also such group, main common attribute of which is specific sexual orientation, may be regarded as a special social group therein.”¹²⁷

According to the information provided by the Office of Citizenship and Migration (OCMA) (*Pilsonības un migrācijas lietu pārvalde*, PMLP), no asylum seeker has applied for asylum in Latvia on grounds of sexual orientation.¹²⁸

Under the Asylum Law, reasons for granting the subsidiary status to persons to whom refugee status may not be granted under the Latvian law are threat of the death penalty, torture, inhuman or degrading treatment, or inhuman and degrading punishment in the country of his or her citizenship or, if the person is a stateless person, in the country of his or her former residence; or situation where due to external or internal armed conflict this person needs protection and

¹²⁴ Asylum may be claimed by persons who arrive or reside in the Republic of Latvia because of well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion in the country of their citizenship or, if the persons are stateless, in the country of their former residence, and who due to such fears are unable or unwilling to avail themselves of the protection of the relevant country.

¹²⁵ Latvia, Asylum Law (*Patvēruma likums*), 7 March 2002, Art. 23, available in Latvian at: www.likumi.lv/doc.php?id=60721&mode=KDOC, published in Latvian Herald (*Latvijas Vēstnesis*) 48(2633), 27.03.2002, available in Latvian: www.vestnesis.lv/?menu=doc&id=60721.

¹²⁶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

¹²⁷ Latvia, Asylum Law (*Patvēruma likums*), 15 June 2009, Section 22 para (1), 4), b), published in Latvian Herald (*Latvijas Vēstnesis*) 100(4086), 30.06.2009, available in Latvian at: www.vestnesis.lv/index.php?menu=doc&id=194029.

¹²⁸ The Office of Citizenship and Migration Affairs (OCMA) (*Pilsonības un migrācijas lietu pārvalde*, PMLP), 13 February 2008, Letter No. 24/7-473, The Office of Citizenship and Migration Affairs (OCMA) (*Pilsonības un migrācijas lietu pārvalde*, PMLP), 09 February 2010, Letter No. 24/1-29/356, Information provided by e-mail by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

he or she cannot return to the country of his or her citizenship or, if the person is a stateless person, to the country of his or her former residence.¹²⁹

The overall context of Latvian situation of asylum needs to be taken into account. Since 1998 when Latvia introduced the asylum procedure, 1,076 persons have applied for asylum in Latvia, according to information of the OCMA. The status of a refugee has been granted to 62 persons between 1998 and 2013. Subsidiary status (alternative status by Latvian law) has been granted to 105 persons in the period from 1998 to 2013.¹³⁰ On 26 January 2010, the Cabinet of Ministers adopted regulations “On the Procedure of Family Re-Unification of a Person who has Received Refugee, Alternative Status of Temporary Protection in the Republic of Latvia” (*Ministru kabineta noteikumi Nr. 74 “Kārtība, kādā Latvijas Republikā notiek bēgļa, alternatīvo statusu vai pagaidu aizsardzību ieguvušās personas ģimenes atkalapvienošana”*) which foresees the reunification of family if such family has existed in the country of origin of a person who has received refugee, alternative status or temporary protection.¹³¹

According to OCMA, there have been no applications from LGBT partners to join their spouses under asylum and/or subsidiary protection in Latvia.¹³² There is no other evidence on such cases either from non-governmental LGBT organisations. By February 2014 there have been data on cases of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner and no case law under Art 2/h of Council Directive 2004/83/EC of 29 April 2004.

¹²⁹ Latvia, Asylum Law (*Patvēruma likums*), 07 March 2002, Art. 35, available in Latvian at: www.likumi.lv/doc.php?id=60721&mode=KDOC , published in Latvian Herald (*Latvijas Vēstnesis*) 48(2633), 27.03.2002, available in Latvian: www.vestnesis.lv/?menu=doc&id=60721 .

¹³⁰ Information available in Latvian at: www.pmlp.gov.lv/lv/sakums/statistika/patveruma-mekletaji.html .

¹³¹ Latvia, Cabinet of Ministers Regulations No 74” Procedure of Family Re-Unification of a Person who has Received Refugee, Alternative Status of Temporary Protection in the Republic of Latvia” (*Ministru kabineta noteikumi Nr. 74 “Kārtība, kādā Latvijas Republikā notiek bēgļa, alternatīvo statusu vai pagaidu aizsardzību ieguvušās personas ģimenes atkalapvienošana”*), 26 January 2010, Section 2, available in Latvian at: www.likumi.lv/doc.php?id=204326 , published in Latvian Herald (*Latvijas Vēstnesis*) 16(4208), 29.01.2010, available in Latvian at: www.vestnesis.lv/?menu=doc&id=204326 .

¹³² Letter No. 24/7-473 of 13 February 2008 to the Latvian Centre for Human Rights; Letter No 24/1-29/356 of 09 February 2010 to the Latvian Centre for Human Rights. Information provided by e-mail by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

4 Family reunification

In Latvia LGBT partnerships cannot be registered, as there is no regulation on civil partnership and the Civil Law explicitly prohibits same-sex marriage.¹³³

The Immigration Law¹³⁴ provides that an alien [a person who is not a Latvian citizen or a non-citizen of Latvia] who is the spouse of an alien holding a permanent residence permit shall be entitled to request: 1) when submitting documents for the first time – a temporary residence permit for one year; 2) when submitting documents for the second time – a temporary residence permit for four years; 3) when submitting documents for the third time – a permanent residence permit. If the marriage has ended in divorce, before the spouse of the alien who has received a permanent residence permit receives a permanent residence permit, the temporary residence permit shall be cancelled.

The Immigration Law sets explicit marriage conditions to be complied with before the spouse of an alien may be granted a residence permit to: the marriage shall be monogamous, spouses shall live together and they shall have a common household.

As of February 2014, there were no requests of family reunification with LGBT partners and there is no case law or statistics on family reunification of LGBT partners.¹³⁵

¹³³ Latvia, Civil Law, (*Civillikums*), 24 February 2008, available at: <http://likumi.lv/doc.php?id=225418> .

¹³⁴ Latvia, Immigration Law (*Imigrācijas likums*), Article 26, 31 October 2002, available at: www.likumi.lv/doc.php?id=68522 .

¹³⁵ Information provided by e-mail by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014. Information provided by the representatives of the Alliance of LGBT and their friends “Mozaika” on the phone on 9 May 2014.

5 Freedom of assembly

The Latvian law stipulates that ‘The State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets’.¹³⁶ The Law on Meetings, Processions and Pickets (*Likums Par sapulcēm, gājieniem un piketiem*)¹³⁷ specifies the legitimate grounds for prohibiting an assembly. They are mainly related to national security, public safety, public order, prevention of crime, protection of the health and morals and for the protection of the rights and freedoms of others e.g., prohibitions on making calls against the independence of Latvia, issuing calls for the violent overthrow of state power, to propagate violence, national and racial hatred, open Nazi, Fascist and Communist ideology, war propaganda, glorifying violations of the law or calls to violate the law.

The Law on Meetings, Processions and Pickets does not specify any kind of parades or demonstrations that can or cannot be banned. In particular circumstances both gay prides and homophobic demonstrations can be banned on the grounds mentioned in the previous paragraph, however, it is a matter of judicial control. The ban can be challenged in Administrative court (*Administratīvā tiesa*), which reviews the case taking into account the principles set by the Administrative Procedure Law: the principle of observance of the rights of private persons, the principle of equality, the principle of the rule of law, the principle of reasonable application of the norms of law, the principle of not allowing arbitrariness, the principle of confidence in legality of actions, the principle of lawful basis, the principle of democratic structure, the principle of proportionality, the principle of priority of laws, the principle of procedural equity.

The Law on Meetings, Processions and Pickets (*Likums Par sapulcēm, gājieniem un piketiem*)¹³⁸ also sets a procedure for notification to organise an event: the application should be submitted to the municipality of the territory where the event will take place. Currently the law provides that application should be submitted at least 10 days before the event (in exceptional cases when the event could not be foreseen and planned earlier – no later than 24 hours before the event). However, the municipality has a right to refuse to allow organising the event if it endangers the rights of others, democratic state system, public security, welfare and morality. Refusal shall be issued at least five days before the event (in aforementioned exceptional cases – no later than six hours before the event). If the municipality has established that reason exists to consider that the event will endanger the rights of others, democratic state system, public security, welfare and morality later than five days before the event, it has the right to refuse organising the event after establishing this reason, thus without observing the five day term.¹³⁹

¹³⁶ Latvia, Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), 15 February 1922, Section on fundamental rights adopted on 15 October 1998, Article 103, available in Latvian at: www.saeima.lv/Likumdosana/likumdosana_satversme.html .

¹³⁷ Latvia, Law on Meetings, Processions and Pickets (*Likums Par sapulcēm, gājieniem un piketiem*), 16 January 1997, available in Latvian at: www.likumi.lv/doc.php?id=42090&mode=KDOC .

¹³⁸ Latvia, Law on Meetings, Processions and Pickets (*Likums Par sapulcēm, gājieniem un piketiem*), 16 January 1997, available in Latvian at: www.likumi.lv/doc.php?id=42090&mode=KDOC .

¹³⁹ Latvia, Law on Meetings, Processions and Pickets (*Likums Par sapulcēm, gājieniem un piketiem*), 16 January 1997, Article 16, available in Latvian at: www.likumi.lv/doc.php?id=42090&mode=KDOC .

Refusal to organise meeting, procession or picket is subject to judicial review and can be appealed to the Administrative District Court (*Administratīvā rajona tiesa*) which has to review a case within three days. The court decision is effective immediately upon adoption.¹⁴⁰

The Parliament amended the Law on Meetings, Processions and Pickets twice – in 2010 and 2013. Amendments adopted on 16 June 2010 introduced the earliest time limit (four months) for submitting an application about the event to the local government as well as obliged the organisers to either submit a signed list of persons intended to keep public order during the event or a copy of contract with security company for the same purpose.¹⁴¹ The amendments envision that if the organisers expect more 100 individuals to take part in the public event, the number of such persons intended to keep public order shall be no less than one per every 50 participants.¹⁴²

There is no information about attempts to challenge the requirement for the organisers to ensure public order at the event. The Senior Lawyer of the Legal Provision Section of the Riga City Council was not aware of any cases when organisers would ignore this requirement and, thus there have been no cases of notification for public event being rejected because of this requirement specifically, or organisers challenging this requirement.¹⁴³ In practice, every year there are few cases when the Riga City Council asks the organisers to increase the number of persons intended to keep public order (if the numerical criteria of one per 50 is not met), or by replacing someone from the submitted list (if he or she has an administrative violation record).¹⁴⁴ Also, in the databases of Latvian court decisions there are no cases of this requirement being challenged, and no cases of organisers appealing the decisions of local governments to refuse notification because it did not comply with this requirement.¹⁴⁵

Amendments to the Law on Meetings, Processions and Pickets adopted on 14 November 2013 introduced three main changes: regarding the role of the local government in considering applications, competences of the police during the public events and the usage of audio equipment.¹⁴⁶ November 2013 amendments foresee that if the application for public event does

¹⁴⁰ Latvia, Law on Meetings, Processions and Pickets (*Likums Par sapulcēm, gājieniem un piketiem*), 16 January 1997, Article 17, available in Latvian at: www.likumi.lv/doc.php?id=42090&mode=KDOC .

¹⁴¹ Latvia, Amendments to the Law on Meetings, Processions and Pickets (*Grozījumi likumā "Par sapulcēm, gājieniem un piketiem"*), 16 June 2010, available in Latvian at: <http://likumi.lv/doc.php?id=212496> , published in Latvian Herald (*Latvijas Vēstnesis*) 102 (4294), 30.06.2010, available in Latvian at: www.vestnesis.lv/?menu=doc&id=212496 .

¹⁴² Latvia, Amendments to the Law on Meetings, Processions and Pickets (*Grozījumi likumā "Par sapulcēm, gājieniem un piketiem"*), 16 June 2010, available in Latvian at: <http://likumi.lv/doc.php?id=212496> , published in Latvian Herald (*Latvijas Vēstnesis*) 102 (4294), 30.06.2010, available in Latvian at: www.vestnesis.lv/?menu=doc&id=212496 .

¹⁴³ Information provided on 11 June 2014 on the phone by the Senior Lawyer of the Administration Legal Provision Section of the Riga City Council Aigars Locmelis.

¹⁴⁴ Information provided on 11 June 2014 on the phone by the Senior Lawyer of the Administration Legal Provision Section of the Riga City Council Aigars Locmelis.

¹⁴⁵ The database of the case law of the Supreme Court available at: <http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-administrativo-lietu-departaments/hronologiska-seciba> ;

The online database of Latvian court decisions: www.tiesas.lv/nolemumi ;

¹⁴⁶ Latvia, Amendments to the Law on Meetings, Processions and Pickets (*Grozījumi likumā "Par sapulcēm, gājieniem un piketiem"*), 14 November 2013, available in Latvian at: <http://likumi.lv/doc.php?id=262274> , published in Latvian Herald (*Latvijas Vēstnesis*) 232 (5038), 27.11.2013, available in Latvian at: www.vestnesis.lv/?menu=doc&id=262274 .

not fall within the scope of the present Law, the local government shall consider the application according to the norms of applicable law (such as Public Entertainment and Festive Events Security Law. November 2013 amendments also granted the Police on site of the event the right to place restrictions in order to ensure public order and security if the police officers conclude during the event that the event threatens the rights of other people, state democratic order, public security, welfare or morality and these threats are impossible to avert. Finally, the amendments determine that the usage of audio equipment during the event is allowed if the usage of such equipment was included in the notification for the event.¹⁴⁷

Case law and its impact on the right to the freedom of assembly of the LGBT persons

During 2005-2012, there were six gay pride events held in Latvia. Three parades (in 2005, 2006 and 2009) were initially banned by the Riga City Council – pride organisers successfully appealed the bans before the courts in 2005 and 2009. There were no legal obstacles to the gay pride events held in Riga in 2008 and 2012.

Latvian case law includes two cases on freedom of assembly regarding the rights of the LGBT persons (see Annex 1 for details).

In a one-instance case regarding the Pride in 2005, the Riga City Council argued their decision on 20 July 2005 to withdraw the permission to hold the march was motivated by the change of circumstances – protests against allegedly immoral event (including by the Catholic Church) and the statement by the Prime Minister. The organisers appealed the withdrawal, arguing the state has an obligation to ensure the possibility to hold the event and that the withdrawal decision was discriminatory against sexual minorities. On 22 June 2005 the Administrative District Court (*Administratīvā rajona tiesa*) overturned the decision to withdraw the permission, arguing that Latvian law does not consider homosexuality as “immoral” and there are no justified reasons to limit the freedom of assembly determined by the Constitution, as well as arguing that the Riga City Council violated the principle of proportionality, by placing the opinion of those protesting against the event above the fundamental right to assembly of the applicants.

In 2006, the Riga City Council and the organisers of the Pride march could not agree about the route of the event and the Riga City Council on 19 July 2006 announced it will not authorise the march, citing information about several threats of violence against the march participants and the inability of the police to guarantee the security of the participants. Organisers appealed the refusal and the first instance court upheld the refusal on the grounds of national security and public order. The appeals instance court ruled on 12 April 2007 that the refusal was unlawful. The cassation instance court (Department of Administrative Cases of the Senate of the Supreme Court) on 15 November 2007 upheld the decision of the appeal instance court, arguing that any limitations of the fundamental right to assembly could only be applied under particularly strong scrutiny of necessity, the state shall ensure effective exercise of the freedom of assembly and if the Council feels the Pride will endanger public safety and morality, the Council shall consider other possible routes of the march; the court also argued that the threat of violence by counter-demonstrations or possible extremists is insufficient justification for banning the march.¹⁴⁸

¹⁴⁷ Latvia, Amendments to the Law on Meetings, Processions and Pickets (*Grozījumi likumā "Par sapulcēm, gājieniem un piketiem"*), 14 November 2013, available in Latvian at: <http://likumi.lv/doc.php?id=262274> , published in Latvian Herald (*Latvijas Vēstnesis*) 232 (5038), 27.11.2013, available in Latvian at: www.vestnesis.lv/?menu=doc&id=262274 .

¹⁴⁸ Latvia, Department of Administrative Cases of the Senate of the Supreme Court (*Augstākās tiesas Senāta Administratīvo lietu departaments*), Riga / Nr. A42443906 SKA - 442/2007, 15 November 2007, available in Latvian at: www.tiesas.lv/nolemumi/pdf/7793.pdf .

Gay Prides

The first time a gay pride parade in Latvia was in 2005, causing heated public and political debate. Since then various attitudes are expressed publicly every year concerning this event not only by groups of general population, but also by politicians and representatives of administrative power.

5.1 Riga Pride 2005

At the beginning of July 2005, Latvian Gay and Lesbian Youth Support Group (*Latvijas geju un lesbiešu jaunatnes atbalsta grupa*) obtained permission from Riga City Executive Director (*Rīgas pilsētas izpilddirektors*) to organise a LGBT Pride March through Old Riga on 23.07.2005. Two days before the event, on 20.07.2005, the Riga City Executive Director annulled the permit for the LGBT Pride March, explaining that his decision was not discriminatory and was purely motivated by security reasons.¹⁴⁹ This followed after strong political pressure, mainly from the Latvian First Party (*Latvijas Pirmā Partija*), and after a threat to organise public disorder issued by the radical nationalist organisations Club 415 (*Klubs 415*) and Union of National Force (*Nacionālā Spēka savienība*), as well as statements by the Latvian Prime Minister that he could not accept a parade of sexual minorities in the middle of the capital next to the main Cathedral, as Latvia is a state based on Christian values. On the same day, the Gay and Lesbian Youth Support Group submitted a complaint to the Administrative District Court against the Riga City Executive Director's annulment of the previous permission for the Pride March, and a day before the planned event the Administrative District Court overturned the decision of the Riga City Executive Director to annul the permit, finding it unjustified and discriminatory.¹⁵⁰

However, the Riga Pride took place in a highly homophobic atmosphere, with real threats of violence reported and order maintained only by the strong presence of the police. No more than 100 people participated in the Pride, however, several thousand observed the parade, the majority protesting against the Pride.

During Riga Pride 2005 the police detained eight people on disobedience of police demands and initiated a case on minor hooliganism.

5.2 Riga Pride 2006

In 2006, one of the ruling coalition parties the Latvian First Party, called on the Riga City Executive Director to deny permission to organise the gay Pride in the Riga centre, pointing out that it can cause divisions in the society. A Christian youth organisation collected over 13,000 signatures against the Pride March, which were sent to various Latvian officials, including the President of Latvia. Some radical organisations issued statements condemning the Pride and calling for public action of protests and disturbance during the march.

¹⁴⁹ However, in explanation on cancellation the LGBT Pride March submitted by the Riga City Council to Court the arguments were explicitly the overwhelmingly negative reaction by callers and letter writers, by the Prime Minister as well as the main Church denominations, and security issue added on, based on security police evaluation of possible provocations by some groupings.

¹⁵⁰ Latvia, Administrative District Court, (*Administratīvā rajona tiesa*) case Nr. A42349805 A3498-05/19, 22 July 2005, available in Latvian at: www.politika.lv/index.php?id=5309.

On 02.06.2006, NGOs 'Riga Pride', 'ILGA Latvija' and 'Alliance of LGBT and their friends "Mozaika"' submitted an application requesting permission to organise the Pride. On 06.07.2006, Riga City Council (*Rīgas dome*) suggested that the march be staged only outside the city centre. On 11.07.2006, organisers of 2006 Pride March met with the Riga City Council and representatives of the police. The possible routes for the march were discussed. On 12.06.2006, the Minister of Interior (*Iekšlietu ministrs*) made a statement that the police would not be able to guarantee security during the Pride and on 18 July asked the City Council not to allow the march.¹⁵¹

On 19.07.2006, Riga City Council announced it would not permit the 'Riga Pride 2006' march to take place. Riga City Council stated that its decision was based on information it had allegedly received concerning several threats of violence against march participants if the march was allowed to go ahead, and that the police could not guarantee security and order during the march. On the same day, organisers of the Pride submitted a complaint to the Administrative District Court pointing out, inter alia, that claims of Riga City Council that security could not be guaranteed to the participants of the march lacked credibility, considering that the Latvian law enforcement agencies had the capacity to effectively ensure security during previous events of a similar or larger scale, such as the 2006 World Ice-Hockey Championships, and were expected to do so during the November 2006 NATO summit in Riga.¹⁵²

As the case was declared as containing classified information and concerned state security, the Court decided to review it in closed session, and as a result the full reasoning was withheld for the next five years. Interestingly, unofficial information indicates that the judge who reviewed the case did not have access to state secrets himself, and thus was not able to get acquainted with all arguments provided by the Security Police (*Drošības Policija*). However, on 21.06.2006, the Administrative District Court upheld the decision of the City authorities to ban the gay Pride on the grounds of 'national security' and concerns over public order.¹⁵³

Organisers of the gay Pride decided not to organise the unauthorised march, and held only a church service, a meeting with the representatives of the NGOs in 'Reval Latvia' hotel, as well as a press conference. Anti-gay protesters gathered near the buildings where the events took place, verbally and physically assaulting anyone carrying a rainbow flag or having any other LGBT attribution, or persons recognised as gays and lesbians. This included throwing bags of excrement and eggs at side event participants.¹⁵⁴

The performance of the police was widely discussed later, and participants of the events and other observers evaluated it as not satisfactory, as the harassment of participants had taken place without police intervention. In addition, participants of the events drew attention to the fact that while the Pride itself was banned, the obviously well-organised public anti-LGBT protest actions for which no permit had been requested or issued, had been tolerated. The police did,

¹⁵¹ Information available in Latvian at:

www.lv.lv/index.php?menu_body=DOC&id=139772&menu_left=LAIDIENS&PHPSESSID=8ae6202bfb119fe1e59f3e15eddb0c80.

¹⁵² Information in Latvian available at :

www.lv.lv/index.php?menu_left=LAIDIENS&mode=DOC&id=139809&PHPSESSID=67 , 26

February 2008.

¹⁵³ Latvia, Administrative District Court (*Administratīvā rajona tiesa*), 21 July 2006; as of April 2014, the decision was not publically available at the online database of Latvian court decisions:

www.tiesas.lv/nolemumi (accessed on 28 April 2014).

¹⁵⁴ Information available at:

www.ilgaeurope.org/europe/guide/country_by_country/latvia/riga_pride_2006, 25 February 2008

however, draw up 15 administrative protocols on minor hooliganism and initiated some criminal proceedings regarding violations by the protesters (see also Chapter F.2.).

The organisers of the Pride appealed the decision of the Administrative District Court. On 12.04.2007, the Administrative Regional Court (*Administratīvā apgabaltiesa*) declared refusal to organise the gay Pride 2006 as unlawful.¹⁵⁵

Riga City Council submitted cassation appeal to the Supreme Court Administrative Department (*Augstākās tiesas Senāta Administratīvo lietu departaments*), which upheld the decision of the Administrative Regional Court on 15.11.2007.¹⁵⁶ (See Annex 1.)

In 2006, 20 opposition parliamentarians unrelated to the Pride march successfully challenged in the Constitutional Court several restrictive amendments to the 2005 Law on Meetings, Processions and Pickets. On 23.11.2006, the court ruled several provisions of the law to be unconstitutional, including the requirement to apply for a permit, supporting instead a system of notification.¹⁵⁷

5.3 Riga Pride 2007

In the beginning of 2007, the Minister of Interior explicitly stated that police will maintain public order as required by law, in case the Pride will take place.

Although the largest Christian denominations and the Latvian First Party continued to call for banning of the gay Pride, the Latvian Prime Minister and State Police promised to maintain order and to intensify police presence during the Pride.

On June 3, the gay Pride took place in Vermana Park in the centre of Riga, amidst heavy police security.¹⁵⁸ Around 400 people participated in the march guarded by 1,500 police officers. More than hundred people observed the event standing outside the park. About twenty of them shouted verbal abuse at participants of the event.

At the end of the event, two petards exploded, causing no damage. Police detained a man and his minor son for this offence. Both of them were charged with hooliganism under Article 231 (2) of the Criminal law.¹⁵⁹ On 16 October 2008, Riga City Centre District Court found the two defendants guilty of hooliganism. The father was sentenced to one year suspended imprisonment with a two year probation period, while the son was sentenced to six months suspended imprisonment with a six month probation period. Both were also imposed a duty to

¹⁵⁵ Latvia, Administrative Regional Court (*Administratīvā apgabaltiesa*), Decision Nr. AA43-0838-07/7, 12 April 2007. As of 2014, the decision was not publicly available, while the final (cassation instance) court decision in this case is publicly available at the online database of Latvian court decisions (see below).

¹⁵⁶ Latvia, the Supreme Court Administrative Department (*Augstākās tiesas Senāta Administratīvo lietu departaments*) A42443906 SKA – 442/2007 (15.11.2007), available in Latvian at: www2.mozaika.lv/?lang=1&mid=79, 25 February 2008, available at the online database of Latvian court decisions: www.tiesas.lv/nolemumi/pdf/7793.pdf (accessed on 28 April 2014) .

¹⁵⁷ Latvia, Constitutional Court (*Satversmes tiesa*) decision nr. 2006-03-0106, 23 November .2006

¹⁵⁸ Information available at: <http://news.bbc.co.uk/2/hi/europe/6716287.stm> 25 February 2008, <http://uk.reuters.com/article/worldNews/idUKL0311434220070603>, 25 February 2008.

¹⁵⁹ Information provided by Alliance of LGBT and their friends Mozaika on 18 February 2008.

register with the probation service. The father had also been charged with malicious abuse of the rights of a guardian.¹⁶⁰ The decision has been appealed, and on 21 May 2010 the Riga Regional Court (*Rīgas apgabaltiesa*) re-qualified the charges and reduced the sentences by half.¹⁶¹ Prosecutor appealed this decision by filing a cassation complaint and the Criminal Cases Department of the Senate of the Supreme Court (*Augstākās tiesas Senāta krimināllieta departaments*) found that the appeals instance court violated the Criminal Procedure Law and made unlawful decision a therefore the Criminal Cases Department of the Senate of the Supreme Court sent back the case to the Riga Regional Court for review.¹⁶² As of 2014, there was no other publicly available information regarding the case. Representatives of the Alliance of LGBT and their friends “Mozaika” were not able to provide further details regarding the case.¹⁶³

The anti-LGBT ‘No-Pride’ group staged a counter-event on the river embankment in the centre of Riga – a rock concert and rally with the title ‘World against Homosexuality’. While attendance had been predicted at 10,000, it was estimated that around 1,500 had attended.

Later the police stressed that only drastic security measures and the safety fence had made it possible to prevent clashes between participants of the Pride and protesters.

5.4 Riga Pride 2008

In 2008, Riga Pride March took place on 31 May on the embankment of the river Daugava with large area, including sections of Old Riga, closed off, and was attended by 300 - 350 participants, of whom the majority were foreign guests. In a show of solidarity, the march was attended by Amnesty International members from more than 20 countries, activists from the Scandinavian and Baltic LGBT organisations, MPs from Sweden, Denmark, several MEPs, as well as the Dutch and Danish ambassadors to Latvia. March participants, were outnumbered by anti-gay protesters, which included right-wing nationalists, members of radical religious groups, and many of whom were dressed in white anti-radiation suits with respirator masks or wore T-shirts with No Pride logo, who according to some estimates reached 500-700.

Five persons were arrested in relation to the march. In one case criminal proceedings were opened against a participant of the march who tore a poster with No Pride logo and in four cases protesters against the march received administrative citations.¹⁶⁴ During the Friendship Days restricted area of the homepage of “Mozaika” was hacked and lists of “Mozaika” members with personal information published on several homepages in Latvia and abroad. Criminal proceedings were opened as a result. According to the representative of the Alliance of LGBT

¹⁶⁰ Latvia, Riga City Centre District Court (*Rīgas pilsētas Centra rajona tiesa*) Case nr. Nr.11087100907/, 16 October 2008.

¹⁶¹ LETA news agency, Appeals instance court will have to review the criminal case on blowing up petards at the event of sexual minorities (*Apelācijas instances tiesai no jauna būs jāskata krimināllieta par petaržu spridzināšanu seksuālo minoritāšu pasākumā*), 7 July 2009.

¹⁶² LETA news agency, Appeals instance court will have to review the criminal case on blowing up petards at the event of sexual minorities (*Apelācijas instances tiesai no jauna būs jāskata krimināllieta par petaržu spridzināšanu seksuālo minoritāšu pasākumā*), 7 July 2009.

¹⁶³ Information provided by the representatives of the Alliance of LGBT and their friends “Mozaika” on the phone on 9 May 2014.

¹⁶⁴ Appolo.lv (2008), “Pride Account – Five Detained” (*“Praida bilance – pieci aizturētie”*), 31 May 2008, available in Latvian at www.apollo.lv/portal/news/articles/128909.

and their friends “Mozaika”, the case was closed due to "the lack of criminal offence" (lack of *corpus delicti*) and attempts to appeal were unsuccessful.¹⁶⁵

5.5 Riga Pride 2009

As in previous years, developments concerning Friendship Days (popularly known as Riga Pride) in 2009 turned controversial, having been largely impacted by the pre-election campaign for the municipal elections held on 6 June.

On 8 May the Riga City Council Commission for the Review of Notices concerning Meetings, Marches and Pickets (hereinafter – the Commission) reviewed the application by the LGBT and their Friends Alliance “Mozaika” to hold a Baltic Friendship March on 16 May. Of the seven commission members present, five, including the Riga City Council Executive Director and the representatives of State Police, Riga Regional Department of State Police, Security Police and the Riga Municipal Police voted in favour of permitting the march, emphasising that public order would be ensured, while two local council deputies from Latvia’s First Party and the nationalist Fatherland and Freedom/LNNK were against the march.¹⁶⁶

On 13 May, the Riga City Council Executive Director received a letter signed by 34 of 60 city council deputies calling to convene a repeat meeting of the commission and revoke the reached agreement on the march. The letter had been initiated by the Vice Mayor of Riga from Latvia’s First Party and two of the deputies who had participated in the commission’s first meeting. The letter was signed by nearly all parties represented in the City Council, including left- wing parties.¹⁶⁷ The Riga Vice-Mayor called the Friendship Days an “intentional provocation threatening the standards of security and morals in the city.”¹⁶⁸ On the same day, the Riga City Council Executive Director publicly stated that there were no lawful grounds for banning the march.

On 14 May a closed meeting of the commission, represented by the Riga City Council, three other council officials, two city council deputies from LPP and TB/LNNK, and four representatives of various police forces took place. Although the Security Police had no new information about potential security threats, nine members of the commission voted against earlier decision to permit the march. One member of the commission, the City Council’s lawyer, voted in favour of the march.¹⁶⁹

The LGBT Alliance “Mozaika” appealed the ban in the administrative district court and the court hearing took place on 15 May. The court hearing was attended by both Mozaika supporters from domestic and international organisations, and anti-LGBT protestors, which included Cardinal J.Pujāts, head of the Roman Catholic Church of Latvia, J.Šmits, a priest and

¹⁶⁵ Information provided by the representative of the Alliance of LGBT and their friends “Mozaika” on the phone on 9 May 2014.

¹⁶⁶ Copy of the Minutes of the Meeting of the Commission for the Review of Notices concerning Meetings, Marches and Pickets nr. 5 of 8 May 2009.

¹⁶⁷ Copy of the Letter to the Executive Director of the Riga City and Riga City Council Commission for the Review of Notices concerning Meetings, Marches and Pickets Nr.RDD-09-139-dv of 13 May 2009.

¹⁶⁸ Copy of the Letter Nr. RDD-09-139-dv of 13 May 2009 to the Riga Executive Director A.Grinbergs against the Decision of the Meeting of the Commission to Permit the Pride Picket.

¹⁶⁹ Copy of the Letter by the Riga City Executive Director to Association of LGBT and their Friends “Mozaika” Nr 421.1/RD-09-1326-sd of 14 May 2009.

chair of NGO “No Pride”, former MP from Latvia’s First Party and former Chairman of the parliamentary Human Rights and Public Affairs Commission, activists from the belligerent New Generation Church, and members of the NGO “No Pride.” The Court turned down the Cardinal’s and former MPs request to participate as third party in the case. During the break when the judges had left for deliberation the Cardinal called upon those in the court room to join in reciting Pater Noster.¹⁷⁰ During the court hearing the Court expelled two anti-LGBT protestors from the court-room for disturbances, and the majority of protestors then left the room. The court lifted the ban on Baltic Pride March.¹⁷¹

The Baltic Pride March on 16 May was attended by around 400 participants. As in previous years, the majority of those attending the march were foreigners, including several MEPs, MPs and ministers from EU Members States, as well as representatives of Amnesty International and various other international organisations. Various sources reported that between 200 to 1000 anti-LGBT activists protested against the march, holding homophobic posters and shouting obscenities. The police detained two persons – one for alcohol abuse and another for attempting to bring a smoke candle in the park where the march culminated.

On 9 August, the State Police filed an administrative protocol against the New Generation congregation for “violation of the procedures for the organisation and conducting of meetings, processions and pickets, as well as public entertainment and holiday events” (Section 174.³). On 3 September, Riga City Centre District Court terminated the administrative case against the New Generation as it had not been established that the New Generation had been the organiser of protest actions.

On 3 June Cardinal J.Pujāts and former MP J.Šmits filed an ancillary petition concerning the decision of the administrative district court of 15 May not to grant them the status of a third party in the case. On 12 November the Supreme Court Administrative Case Department dismissed the complaint.¹⁷²

Baltic Pride 2010 was held in Vilnius, Lithuania.¹⁷³ Baltic Pride 2011 was held in Tallinn, Estonia.¹⁷⁴

¹⁷⁰ Apollo.lv (2010), article “Pride Permitted - Disagreement in Court Room” (*Praidu atļauj – tiesas zālē arī nesaskaņas*), 5 February 2010, available in Latvian at www.apollo.lv/portal/news/articles/167054.

¹⁷¹ Diena (2009), article “Court Terminates Case against the ‘New Generation’ for Protest Actions” (*Tiesa izbeidz lietu pret «Jauno paaudzi» par protesta akcijām*), 3 September 2009, available in Latvian at www.diena.lv/lat/politics/riga/tiesa-izbeidz-administrativo-lietu-pret-jauno-paaudzi-par-protesta-akcijam-draudzibas-dienu-gajienu.

¹⁷² Senate Turns Down Pujats and Smits request of Participation as Third Persons in the Case (*Senāts noraida Pujata un Šmita lūgumu par pieaicināšanu trešās personas statusā*), available at www.at.gov.lv/information/about-trials/2009/200911/20091112, 5 February 2010.

¹⁷³ ILGA-Europe, Baltic Pride 2010, available in English at: www.ilga-europe.org/home/guide_europe/country_by_country/lithuania/baltic_pride_2010 (accessed on 28 April 2014).

¹⁷⁴ Baltic Pride Held in Estonia from 2 – 8 June, available in English at: www.omafestival.ee/?lang=EN, accessed on 28 April 2014.

5.6 Riga Pride 2012

On 26 April 2012 the Security, Order and Corruption Prevention Committee (*Drošības, kārtības un korupcijas novēršanas jautājumu komiteja*) of the Riga City Council supported the proposal developed by the Council deputy Janis Smits to amend Riga Public Order Regulations in order to ban the propaganda of homosexuality in Riga. Mr. Janis Smits is also a chairman of the Collegium of Christian Parishes and the head of the “No Pride” NGO. The aim of the amendments was not to allow the Baltic Pride event scheduled for June 2012 in Riga. The Legal Board of the Riga City Council acknowledged that such prohibition should be evaluated as human rights violation and the inclusion of such a norm into the binding regulations of the municipality would represent a violation of the Article 10 of the European Convention on Human Rights and the Article 100 of the Constitution of Latvia, which determines that everyone has the right to express one’s opinion freely.¹⁷⁵ Thus the Mayor of Riga did not include the proposed amendments to the agenda of the sitting of the City Council. The deputies of the Riga City Council also asked the Ministry of Environmental Protection and Regional Development (*Vides aizsardzības un reģionālās attīstības ministrija*) to evaluate the proposed amendments. The Ministry did not support the amendments and pointed out that the issue of prohibition of propaganda of same sex relationships is the issue of constitutional rights, therefore such ban is a matter for national law, not municipal regulations.¹⁷⁶ The European Parliament resolution on the fight against homophobia in Europe also condemned the proposed amendments.¹⁷⁷

On 2 June 2012, the Baltic Pride was organised by the Latvian association of the LGBT persons and their friends *Mozaika (Lesbiešu, geju, biseksuāļu, transpersonu un viņu draugu apvienības ‘Mozaika’)*.¹⁷⁸ Since 2009 the Baltic Pride is organised alternatively in one of the capitals of the Baltic States. Contrary to the decisions in earlier years, the Riga City Council allowed for the Baltic Pride to take place.¹⁷⁹ Around 600 persons took part in the march, including the Minister of Foreign Affairs, and various foreign embassy officials.

The Baltic Pride was strongly supported by the US Embassy in Latvia, including the participation of the Deputy Assistant Secretary Thomas O. Melia from the Democracy and Human Rights Bureau, US Ambassador to Latvia Judith Garber in the march.¹⁸⁰ The Embassy cited that the participation was in line with the policies of the US President Barack Obama and

¹⁷⁵ Latvia, Diena.lv (2012) Smits' amendments would be contrary to the Constitution (*‘Šmita grozījumi būtu pretrunā ar Satversmi’*), 26 April 2012, available in Latvian at: www.diena.lv/sodien-laikraksta/smita-grozijumi-butu-pretruna-ar-satversmi-13944132.

¹⁷⁶ LETA (2012) The Ministry of Environmental Protection and Regional Development does not support the plans of Riga City Council to limit the propaganda of same sex relations (*‘VARAM neatbalsta Rīgas domes iecerēto ierobežot viendzimuma attiecību propagandu’*), 27 June 2012.

¹⁷⁷ European Parliament resolution on the fight against homophobia in Europe (2012/2657 (RSP)), available in English at: www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P7-RC-2012-0234&language=EN.

¹⁷⁸ Baltic Pride homepage: www.pride.lv/en/about-us.

¹⁷⁹ Latvia, Delfi (2012), ‘Mozaika varēs rīkot Rīgas praidi’ 22 May 2012, available in Latvian at: www.delfi.lv/news/national/riga/mozaika-vares-rikot-rigas-praidi.d?id=42373688.

¹⁸⁰ Embassy of the United States to Latvia (2012), ‘Deputy Assistant Secretary Thomas O. Melia, U.S. Ambassador to Estonia, Michael Polt and Ambassador Garber’s remarks at the March for Equality “Make Some Noise for Human Rights”’, Press Release, June 2, 2012, available in English at: http://riga.usembassy.gov/pr_20120602_en.html.

US foreign policy insofar as “the gay rights are human rights – there is no difference.”¹⁸¹ The message in support of sexual minorities was voiced by the US Secretary of State Hillary Clinton, during her visit to Latvia.

The Ombudsperson announced that he and his staff would not be participating in the activities of the Baltic Pride 2012. Although he had received the invitation by the *Mozaika*, he announced he was supporting the right of all groups in society to freely express their views and organise peaceful assemblies, but opined that the protection of the rights of homosexual people is possible through other means, not only the march. He reminded that he had several times drawn the attention of the Parliament to the need for legal regulation of partnerships that would refer to both heterosexual and homosexual couples.¹⁸²

Earlier, on 1 June 2012 the Ministry of Foreign Affairs (MoFA) (*Ārlietu ministrija*, ĀM) hosted an international seminar ‘Equality, non-discrimination, inclusive politics – European and international practice’ organised jointly with *Mozaika*.¹⁸³ Participants discussed equal treatment and discrimination prevention in various fields and in the society in general. The seminar presented legal framework and case law of the ECtHR, as well as application of national law in Latvia and other countries.

Baltic Pride 2013 was held in Vilnius, Lithuania.¹⁸⁴

¹⁸¹ Embassy of the United States to Latvia (2012), ‘Deputy Assistant Secretary Thomas O. Melia, U.S. Ambassador to Estonia, Michael Polt and Ambassador Garber’s remarks at the March for Equality “Make Some Noise for Human Rights”’, Press Release, June 2, 2012, available in English at: http://riga.usembassy.gov/pr_20120602_en.html.

¹⁸² Latvia, Ombudsperson’s Office (*Tiesībsarga birojs*) (2012), ‘Ombudsperson will not participate in the activities of the 2012 Baltic Pride’ (*Tiesībsargs nepiedalīsies Baltijas praida 2012 pasākumos*), 11 July 2012, available at: www.tiesibsargs.lv/lv/tiesibsargs-nepiedalīsies-baltijas-praida-2012-pasakumos.

¹⁸³ Latvia, Ministry of Foreign Affairs (*Ārlietu ministrija*) (2012), ‘Ārlietu ministrijā diskutē par vienlīdzīgas attieksmes nodrošināšanu un diskriminācijas novēršanu’, 1 June 2012, available at: www.mfa.gov.lv/lv/Jaunumi/zinas/2012/junijs/01-5/.

¹⁸⁴ Lithuanian Gay League (LGL), News / Baltic Pride 2013, available in English at: www.lgl.lt/en/news/baltic-pride-2013 (accessed 28 April 2014).

6 Criminal law

The Latvian Criminal Law¹⁸⁵ does not contain provisions with regard to hate speech related to homophobia. There are only implicit non-criminal remedies available against homophobic hate speech by the Latvian law (see F.3.). Since amendments of 21.06.2007, the Criminal Law includes the prohibition of discrimination. While the only grounds explicitly referred to are racial or ethnic identity, the relevant provision does include a general reference to ‘other prohibition of discrimination set by law’.¹⁸⁶

6.1 Amending the Criminal Law with anti- discrimination provisions

The amendments to the Criminal Law were initially drafted by the Secretariat of Special Assignments Minister for Social Integration (*Īpašu uzdevumu ministra sabiedrības integrācijas lietās sekretariāts*, IUMSILS) in 2004 as a part of the package of legislative proposals for the transposition of the Race Equality Directive 2000/43/EC. Amendments to Article 78¹⁸⁷ were envisaged, separating the incitement to racial and ethnic hatred provision from the anti-discrimination provision, and to Article 150,¹⁸⁸ where violation of prohibition of discrimination on basis of attitude towards religion would be broadened by including prohibition of discrimination on grounds of ‘sex, age, race, colour, ethnicity or ethnic origin, religion, political or any other opinion, social origin, education, social and property status, occupation, status of health or sexual orientation’. The amendments passed the first reading only on 23.11.2006 when the new Parliament started its work after elections.¹⁸⁹

¹⁸⁵ Latvia, Criminal Law (*Krimināllikums*), 17 June 1998, available in Latvian at: <http://likumi.lv/doc.php?id=88966>.

¹⁸⁶ Latvia, Law Amendments to the Criminal Law (*Grozījumi Krimināllikumā*), 21.June 2007, Article. 149.1, available in Latvian at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?>

¹⁸⁷ Latvia, Criminal Law (*Krimināllikums*), 17 June 1998, wording as of 01 January 2007. Article 78, Violation of National or Racial Equality and restriction of Human Rights. (1) For a person who commits acts knowingly directed towards instigating national or racial hatred or enmity, or knowingly commits the restricting, directly or indirectly, of economic, political, or social rights of individuals or the creating, directly or indirectly, of privileges for individuals based on their racial or national origin, the applicable sentence is deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage. (2) For a person who commits the same acts, if they are associated with violence, fraud or threats, or where they are committed by a group of persons, a State official, or a responsible employee of an undertaking (company) or organisation, the applicable sentence is deprivation of liberty for a term not exceeding ten years.

¹⁸⁸ Latvia, Criminal Law (*Krimināllikums*), 17 June 1998, wording as of 01 January 2007. Article 150. Violation of Equality Rights of Persons on the Basis of their Attitudes Towards Religion. For a person who commits direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion, excepting activities in the institutions of a religious denomination, or commits violation of religious sensibilities of persons or incitement of hatred in connection with the attitudes of such persons towards religion or atheism, the applicable sentence is deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage.

¹⁸⁹ Latvia, Law Amendments to the Criminal Law (*Grozījumi Krimināllikumā*), 23 November 2006, available in Latvian at:

On 11.01.2007 the Parliament adopted a different version of Article 78 in the second reading and changed the amendments to the Article 150 by deleting the listed prohibited grounds and introducing a general provision on ‘breach of prohibition of discrimination as provided for in legislative acts if committed repeatedly within a year’.¹⁹⁰ The deletion of listed prohibited grounds followed heated public and political debate and pressure by several groups, including the largest religious denominations, which objected to the inclusion of sexual orientation among prohibited grounds.

In December 2006, in response to a request by President of Ministers (Prime Minister) following the Pride 2006 debacle, the Ministry of Justice (*Tieslietu ministrija*), which is responsible for changes to criminal legislation, drafted parallel legislative amendments to Article 78 and 150, which were not coordinated with the Parliament. The amendments foresaw criminalising discrimination and acts aimed at inciting to hatred on eleven grounds, leaving the list open-ended. In February 2007 the Ministry of Justice retracted the amendments noting that they did not significantly differ from legislative proposals of the Parliament.

However, on 17.05.2007 a version of the amendments was adopted in the third reading, where Article 78 prohibited incitement to racial and ethnic hatred if it is committed together with a breach of the principle of equal treatment. Article 150 on violation of equality rights of persons on the basis of their attitudes towards religion was amended only by changing the sanction and adding a part, qualifying the offence if it is committed in aggravating circumstances, while other possible grounds of discrimination were left out.

On 24.05.2007 President of Latvia Vaira Vīķe-Freiberga refused to proclaim the amendments and returned them for review to the Parliament under the procedure, set by the Constitution.¹⁹¹ In her letter to the Speaker of the Parliament, the President stressed that the requirements of the Racial Equality Directive 2000/43/EC were not adequately implemented in the adopted amendments, which foresee liability only for instigating national or racial hatred, and not for discrimination itself, and pointed out that at the moment religious beliefs are the only ground of discrimination included in Criminal Law, while other grounds are covered only by the Administrative Violations Code, thus creating an unbalanced situation.¹⁹²

On 21.06.2007, the Parliament adopted amendments to the Criminal Law.¹⁹³ Article 78 (Violation of National or Racial Equality and Restriction of Human Rights) was renamed (Incitement to National, Ethnic and Racial Hatred). Article 150 (Violation of Equality Rights

[http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=\(Title\)*kriminālikumā*\)&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=(Title)*kriminālikumā*)&SearchMax=0&SearchOrder=4) .

¹⁹⁰ Latvia, Law Amendments to the Criminal Law (*Grozījumi Kriminālikumā*), 11 January 2007, available in Latvian at

[http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=\(Title\)*kriminālikumā*\)&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=(Title)*kriminālikumā*)&SearchMax=0&SearchOrder=4) .

¹⁹¹ Latvia, Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), 15 February 1922, Article 71: ‘Within ten days after the adoption of a law by the Saeima, the President of State shall be entitled to ask, by means of an explanatory letter addressed to the Chairperson of the Saeima, for the review of that law. If the Saeima does not amend the law, the President of State shall not have the right to raise any further objections.’ Available in Latvian at:

www.saeima.lv/Likumdosana/likumdosana_satversme.html .

¹⁹² Letter of President of Latvia Vaira Vīķe Freiberga to Speaker of Parliament Indulis Emsis, 24 May 2007, available in Latvian at: www.saeima.lv/saeima9/lasa?dd=LP0015_v .

¹⁹³ Latvia, Law Amendments to the Criminal Law (*Likums Grozījumi Kriminālikumā*) 21 June 2007, available at:

<http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?> .

of Persons on the Basis of Their Attitudes towards Religion) was also renamed (Raising Religious Hatred). The Criminal Law was supplemented with a new Article 149¹ (Violation of Prohibition of Discrimination) which criminalizes discrimination on the grounds of race or ethnic affiliation, or other prohibited forms of discrimination listed in legislative acts if discrimination is repeatedly committed within a year.¹⁹⁴

On 5 September 2013 the parliament adopted in the second reading draft amendments to Section 78 of the Criminal Law (*Krimināllikums*)¹⁹⁵, which will exclude the word "knowingly". Thus, if the draft amendments are adopted in the final reading, the prosecutor will not have to prove the direct intent of the perpetrator. The current wording of Section 78 envisages responsibility "for a person who commits acts knowingly aimed at incitement of national, ethnic or racial hatred or enmity [...]". Another proposal submitted during the consideration of the draft amendments was to add another aggravating circumstance under Section 48 – "criminal act committed due to the hatred against certain group of persons". The Criminal Law (*Krimināllikums*) currently in force provides for racist motivation as an aggravating circumstance. The proposal did not gain support in the parliament's Legal Affairs Committee (*Saeimas Juridiskā komisija*).

6.2 Hate crimes with a homophobic motivation

Legislation on hate crimes with homophobic motivation

The Latvian Criminal Law does not distinguish between common crimes committed with homophobic motivation and the same crimes committed with other motivation, except racist motivation. Police does not have a duty to fix homophobic motivation into protocols, even when it is obvious. Courts do not take homophobic motivation into account when deciding on merits and sentencing. Racist motivation is the only hate motive included among aggravating circumstances, since 12.10.2006, when the Parliament adopted respective amendments to the Criminal Law, adding this to the list of thirteen aggravating factors.¹⁹⁶

In the case of homophobic crimes, provisions of general crimes are applicable.

¹⁹⁴ Latvia, Law Amendments to the Criminal Law (*Likums Grozījumi Krimināllikumā*) 21 June 2007, available in Latvian at:

<http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?>, Art.

149¹. Violation of prohibition of discrimination. (1) For discrimination on grounds of race or ethnicity, or violation of prohibition of discrimination as determined by other legislative acts, if committed repeatedly within a year, - shall be punished with a fine not exceeding thirty minimum monthly wages. (2) For same acts resulting in significant damage or if connected with violence, fraud or threats, or where they are committed by a group of persons or public official, or a responsible employee of an enterprise (company) or organisation, or if committed through the usage of automated data processing system, - shall be punished with imprisonment not exceeding two years or community service, or a fine not exceeding fifty minimum monthly wages.

¹⁹⁵ Latvia, Draft Law on Amendments to the Criminal Law (*Likumprojekts 'Grozījumi Krimināllikumā'*), available in Latvian at:

[http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/c3c342c9445b35cbc2257ba4003d2791/\\$FILE/Lp615%3D2.pdf](http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/c3c342c9445b35cbc2257ba4003d2791/$FILE/Lp615%3D2.pdf).

¹⁹⁶ Latvia, Law Amendments to the Criminal Law (*Likums Grozījumi Krimināllikumā*) 12 October 2006, available in Latvian at: www.saeima.lv/bi8/lasa?dd=LP1652_3.

At the end of 2012 the Prosecutor General Ē.Kalnmeijers publicly voiced the need to determining criminal liability for hateful comments towards social groups such as homosexuals, persons with disability and pensioners.¹⁹⁷

On the basis of the initiative of the parliamentary Defence, Internal Affairs and Corruption Prevention Committee, the Office of the Prosecutor General (*Ģenerālprokuratūra*) called upon the Ministry of Justice (MoJ) to assess at the Criminal Law permanent work group the question of the necessity to improve the norms of the Criminal Law regarding hate crimes.

The members of the MoJ work group agreed on the need to amend the Criminal Law, envisioning a new criminal offence "incitement to social hatred and discontent" which would envision criminal liability for hate crimes and discontent motivated by the person's gender, age, public of other beliefs, social origin, education, social or property status, type of occupation, or any other feature, if a significant damage was done as a result.¹⁹⁸ However, sexual minorities have not been mentioned explicitly as a protected group.

On 18 April 2013 the parliament amended the Electronic Mass Media Law (*Elektronisko plašsaziņas līdzekļu likums*), adding "sexual orientation" to the list of grounds prohibited for incitement of hatred or discrimination in audio and audiovisual commercial messages in Section 35.¹⁹⁹

Case law on hate crimes with homophobic motivation

On 15.01.2008 Riga City Vidzeme district court (*Rīgas pilsētas Vidzemes priekšpilsētas tiesa*) sentenced J. Dz. to 100 hours of community service for offence punishable under Article 231 (1) of Latvian Criminal Law – hooliganism.²⁰⁰

On 22.06.2006 J.Dz., knowing that a meeting and press conference of sexual minority people will take place in a particular place in Riga, appeared there with the intention to protest against what he called 'gay propaganda'. The police officer A.G. saw J.Dz. throwing a plastic bag containing badly smelling substance (excrement) at the car of one of participants of the event

¹⁹⁷ BNS, Kalnmeijers: one should think about criminalizing hate speech against homosexuals and pensioners (*Kalnmeijers: jādomā par homoseksuālistiem un pensionāriem vēltītas naida runas kriminalizēšanu*), 29.10.2012., pieejams www.delfi.lv/news/national/politics/kalnmeijers-jadoma-par-homoseksualistiem-un-pensionariem-veltitas-naida-runas-kriminalizesanu.d?id=42783644 .

¹⁹⁸ Latvia, Draft Informative Report on the Legal Framework for the Responsibility for Incitement of National or Ethnic Hatred, a Call to Liquidate the State Independence and the Blasphemy of the State Symbols (*Informatīvā ziņojuma par tiesisko regulējumu attiecībā uz atbildību par nacionālā vai etniskā naida izraisīšanu, aicinājumu likvidēt valstisko neatkarību vai graut teritoriālo vienotību un valsts simbolu zaimošanu projekts*), 27 January 2014, available in Latvian at: www.mk.gov.lv/lv/mk/tap/?pid=40312823 .

¹⁹⁹ Latvia, Amendments to Electronic mass media law (Grozījumi Elektronisko plašsaziņas līdzekļu likumā), 18 April 2013, available in Latvian at: <http://likumi.lv/doc.php?id=214039> , published in Latvian Herald (Latvijas Vēstnesis) 87(4893), 08.05.2013, available in Latvian at: www.vestnesis.lv/?menu=doc&id=256583 .

²⁰⁰ Latvia, Criminal Law (*Krimināllikums*) 17 June 1998, available in Latvian at: <http://likumi.lv/doc.php?id=88966> , Article 231.1. Hooliganism. For a person who commits a gross disturbance of the public peace, which is manifested in obvious disrespect for the public or in insolence, ignoring generally accepted standards of behaviour and disturbing the peace of persons or the work of institutions, undertakings (companies) or organisations (hooliganism), the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.

and arrested J.Dz. At the moment of arrest J.Dz. held another plastic bag containing a similar substance in his hands. Firstly, J.Dz. was punished administratively. A fine of Ls 50 (approx. 70 EUR) was imposed by a judge of Riga City Vidzeme District Court under Article 167 of the Latvian Administrative Violations Code – Minor Hooliganism.²⁰¹

However, the Prosecutor of the Prosecutor General Office's Department of Protection of Persons and State interests (*Ģenerālprokuratūras Personu un valsts tiesību aizsardzības departamenta prokurors*) submitted a protest, asking to revoke that decision, as actions of J.Dz. should be considered as manifest and obvious disregard of public, and should not have been qualified as minor hooliganism, but hooliganism which is punishable under the Criminal Law. Administrative Regional Court satisfied the protest on 01.03.2007. On 15.01.2008 Riga City Vidzeme District Court decided that actions of J.Dz. have grossly disturbed public peace during an event with many participants, and J.Dz. actions could only have been intentional. The Court rejected the defence argument of J.Dz. that 'propaganda of sexual minorities' should not be allowed, but pointed out that 'in the case the sexual orientation of the group of persons against whom J.Dz. acted does not matter, since the public order and peace of any person have to be protected'.²⁰²

Although the case obviously was an action with homophobic motivation, the court thus clearly stated that any person without regard of sexual orientation would be equally protected, and the intention to harass persons with other sexual orientation should not be a factor taken into account. The Court also stressed in its decision that there are no aggravating circumstances in the case.

The defendant appealed the 1st instance court judgment. On 10.06.2008, the Riga Regional Court upheld the ruling of the 1st instance court,²⁰³ and on 03.10.08 the Supreme Court Senate dismissed the cassation complaint.

According to the data of the Association of LGBT and their friends Mozaika (*LGBT un viņu draugu apvienība Mozaika*), during 2013 the Association recorded 8 cases of hate incidents with possible homophobic motives: one case of extreme physical violence (attackers used abusive anti-LGBT language, the victim sought medical assistance, not reported to the police), three cases of assault (attackers used abusive language, no injuries reported), one case of damage against the property (stones and sharp objects thrown at LGBT club) and three cases of mobbing (threats and psychological violence). In two cases the police was contacted: one about an assault, one about property damage; in both cases no official report to police was filed.²⁰⁴

²⁰¹ Latvia, Latvian Administrative Violations Code (*Latvijas Administratīvo pārkāpumu kodekss*), 07 December 1984, available at: www.likumi.lv/doc.php?id=89648&mode=KDOC Article 167. Minor Hooliganism. For a person who commits minor hooliganism what means using abusive language in public places, harassment, and other similar actions which disturb public peace and order, the applicable sentence is fine of Ls 25-50 (approx. 35-70 EUR) or administrative arrest up to 15 days.

²⁰² Latvia, Riga City Vidzeme District Court (*Rīgas pilsētas Vidzemes priekšpilsētas tiesa*), case Nr. K30-176/5-2007.g. Nr. 11087092307, 15 January 2008.

²⁰³ Latvia, Riga Regional Court (*Rīgas apgabaltiesas Krimināllietu tiesas kolēģija*), case nr. KA04-0253-08/26, Nr. 11087092307, 10 June 2008.

²⁰⁴ Association of LGBT and their friends MOZAIKA (2014) REPORT ON HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES AND INCIDENTS IN LATVIA 2013, Riga

6.3 Non-criminal remedies against homophobic hate speech

The Civil Law (*Civillikums*) provides in Article 2352.1 that ‘each person has the right to bring court action for the retraction of information that injures his or her reputation and dignity, if the disseminator of the information does not prove that such information is true. If information, which injures a person's reputation and dignity, is published in the press, then where such information is not true, it shall also be retracted in the press. If information, which injures a person's reputation and dignity, is included in a document, such document shall be replaced. In other cases, a court shall determine the procedures for retraction. If someone unlawfully injures a person's reputation and dignity orally, in writing or by acts, he or she shall provide compensation (financial compensation). A court shall determine the amount of the compensation’.²⁰⁵

As of February 2014, the only case to date where person tried to make use of this provision regarding homophobic statements was I.K. against member of the Parliament L.O. On 25.04.2006. Jurmala City court (*Jūrmalas pilsētas tiesa*) rejected claim of I.K.²⁰⁶ (See Annex 1).

²⁰⁵ Latvia, Civil Law (*Civillikums*), 28 January 1937, available in Latvian at: <http://likumi.lv/doc.php?id=225418>.

²⁰⁶ Latvia, Jurmala City Court (*Jūrmalas pilsētas tiesa*), case nr. C 17043006, record-keeping No.C-0430-06/3, 25 April 2006.

7 Transgender issues

There is no provision in Latvian legislation which could indicate whether discrimination of transgender people shall be dealt with as discrimination on the grounds of sexual orientation or as discrimination on the grounds of sex. However, following a recent judgement of Administrative court in a case on change of sex of a person in the birth register, it can be deduced that such discrimination will be more likely understood as discrimination on the grounds of gender.²⁰⁷ One of the issues discussed in the case was about the person's possible discrimination in a situation where his/her appearance would not correspond to records in his/her identity documents. Although no legal provisions with regard to one or the other ground were involved in the discussion, the whole context related to possible discrimination on the ground of gender in different relationships with State authorities, as well as with society in general.

There is no explicit legal provision or court case with regard to transgender issues concerning anti-discrimination legislation under the Employment Directive 2000/78/EC, freedom of movement, asylum/subsidiary protection, family reunification, freedom of assembly, criminal law and hate speech, and, following information provided by relevant State authorities, they have not encountered such cases in their practice.²⁰⁸ For these reasons it is not possible to conclusively explain how all legislation discussed in the remainder of the study could be applied in the context of transgender people at this stage.²⁰⁹

The law does not regulate medical requirements for carrying out a gender reassignment operation. However, in practice medical practitioners require an opinion issued by a psychiatrist that the person who plans to undergo the operation does not suffer from mental disorder. In some cases medical practitioners require a complex opinion of practitioners of different medical specializations in addition to the opinion of the psychiatrist.²¹⁰

On 18 August 2009, the Cabinet of Ministers approved amendments to the laws on Sexual and Reproductive Health (*Seksuālās un reproduktīvās veselības likums*) and Civil Status Documents aimed at eliminating legal gaps concerning gender reassignment. The amendments were drafted following the Supreme Court Senate Administrative Case Department judgment of 14 January 2008 concerning the refusal of the civil registry office to change entry to the person's birth register after the change of gender. The judgment highlighted the absence of legislative provisions that would determine criteria to be followed to establish whether gender reassignment has taken place in a legal sense.

The Sexual and Reproductive Health Law has been supplemented by a separate chapter VII "On Gender Reassignment". It provides for the authority to approve gender reassignment and scope of information to be included in its opinion.

²⁰⁷ Latvia, Supreme Court Senate Administrative Case Department (*Augstākās tiesas Senāta Administratīvo lietu departaments*) case nr. A42229505 SKA – 5/2008, 14 January 2008.

²⁰⁸ Letter No. 24/7-473 as of 13 February 2008 from the Head of OCMA to the Latvian Centre for Human Rights – with respect to freedom of movement, asylum/subsidiary protection and family reunification.

²⁰⁹ Information provided by e-mail by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

²¹⁰ Information provided by Alliance of LGBT and their friends Mozaika on 18.02.2008.

Section 28 “On Doctors’ Commission for Gender Reassignment” provides that for the establishment of the fact of gender reassignment a medical institution shall create a doctors’ commission composed of two psychiatrists, a urologist, a gynaecologist, a childbirth specialist and, upon need, following the proposal of above doctors, - doctors of other specialities.²¹¹ The amendments envisage that the doctors’ commission will issue an opinion, indicating: 1) established diagnosis, 2) the date of the establishment of primary diagnosis, 3) information about the permanence of person’s opinion to change gender, 4) information about the functional status of reproductive organs inherent to a person’s biological sex.”²¹² Section 29 “On Person’s Responsibility” provides for individual’s responsibility for submitting medical documentation related to gender reassignment to the above commission.²¹³

Transgender people can exercise their right to marry according to the gender indicated in their passport. Although there is no explicit requirement for a person changing gender to divorce before or after gender reassignment, according to Latvian law same-sex marriage is not permitted²¹⁴ and there is no legal regulation of civil partnership. There is no publically available information about cases in Latvia when a person who registered his/her change of gender would have been married.²¹⁵

Change of gender/sex in the Birth Register

Article 32 of the Civil Status Documents Law (*Civilstāvokļa aktu likums*) of 2005 provides the possibility to change gender in a legal sense: ‘(1) An entry of the Birth Register shall be supplemented if the surname of a child is changed, if one of the parents changes his or her surname, given name, entry of ethnicity or citizenship (nationality), personal identity number, as well as if the sex of the child is changed, if the child is adopted, if the entry regarding the mother or the father of the child is annulled by a court judgment, if a court has revoked an adoption, if the parents of a foundling have become known. (2) An entry of the Birth Register shall be supplemented on the basis of the relevant submission, court judgment or administrative act’.²¹⁶

²¹¹ Latvia, Draft Law ‘Amendments to the Sexual and Reproductive Health Law (*Likumprojekts ‘Grozījumi Seksuālās un reprodūktīvās veselības likumā*)’, Section 28 paragraph 1, available in Latvian at www.mk.gov.lv/doc/2005/TMLik_160709_dzim.2765.doc .

²¹² Latvia, Draft Law ‘Amendments to the Sexual and Reproductive Health Law (*Likumprojekts ‘Grozījumi Seksuālās un reprodūktīvās veselības likumā*)’, Section 28 paragraph 2, available in Latvian at www.mk.gov.lv/doc/2005/TMLik_160709_dzim.2765.doc .

²¹³ Latvia, Draft Law ‘Amendments to the Sexual and Reproductive Health Law (*Likumprojekts ‘Grozījumi Seksuālās un reprodūktīvās veselības likumā*)’, Section 29, available in Latvian at www.mk.gov.lv/doc/2005/TMLik_160709_dzim.2765.doc .

²¹⁴ Latvia, Civil Law (*Civillikums*), 28 Junaury 1937, Article 35(2), available in Latvian at: www.mk.gov.lv/doc/2005/TMLik_160709_dzim.2765.doc .

²¹⁵ Information provided by the Deputy Head of the Register Office’s Unit of the Department of Civil Registers of the Ministry of Justice Ms A. Akmentina on 22 February 2008. Information provided on the phone by the Head of the Department of Civil Registers of the Ministry of Justice Ms I. Upite on 6 June 2014.

²¹⁶ Latvia, Civil Status Documents Law (*Civilstāvokļa aktu likums*), 17 March 2005, Article. 32 Other Additions to the Birth Register, available at <http://likumi.lv/doc.php?id=104832> .

Previously the same issue was similarly regulated by Article 33 of the Law on Civil Status Documents (*Likums Par civilstāvokļa aktiem*)²¹⁷ and Instruction approved by Minister of Justice “On Civil Registration Records in Republic of Latvia” which provided that an entry of the Civil Register record shall be supplemented by amending or correcting on the basis of a decision of the Registry Office, relevant submission, court judgment or administrative act, and specified that administrative act shall be the basis of amending the Birth Register if it is necessary to amend it with a new form of name and surname, corresponding to the gender due to the change of gender.²¹⁸

However, there is no clear and explicit legal regulation on the order for supplementing the Birth Register in case of change of gender. There is a lack of criteria for establishing that change of gender has taken place in a legal sense, and it is not defined which authority and on which grounds shall take decision to change a person’s gender in the Birth register. Also, the procedure for applying to change the gender is not set, and it is not clear what kind of documentation shall be presented as proof for change of person’s gender.

Lack of legal certainty leads to the situation where the Registry Office has developed practice not to take decision on change of entry on gender in the Birth Register itself, but to ask the Ministry of Health (*Veselības ministrija*) to issue its conclusion with regard to any particular case.

Such an approach has resulted in different outcomes in similar cases depending on change of opinion within Ministry of Health (*Veselības ministrija*), thus leading to violation of the principle of confidence in legality of actions²¹⁹, and possible violation of persons private life and obligation to protect sensitive data, as officials at the Ministry of Health are acquainted with sensitive information regarding a person without legal ground or consent of the person concerned.

In 2006-2009 the Administrative Court reviewed in all of its three instances a case where a person who applied to the Registry Office for change of entry on gender and was denied this on the ground that the gender reassignment had not been completed, asked for change of entry in the Birth Register and for moral compensation for humiliation and violation of private life by sending information to the Ministry of Health and requesting a certificate issued by medical practitioner or hospital on change of persons gender, as well as confirmation of the new gender.²²⁰ (See Annex 1.) The Registry Office was ordered to change the entry on claimant’s gender in the Birth Register, and issue a written apology to the claimant.

Following the judgment of the Supreme Court Senate Administrative Case Department, on 18 August 2009, the Cabinet of Ministers approved amendments to the laws on Sexual and Reproductive Health and Civil Status Document Law on the procedure of adding changes to the birth register in connection with gender reassignment.

²¹⁷ Latvia, Law on Civil Status Documents (*Likums Par civilstāvokļa aktiem*), 21 October 1993, not effective from 01 April 2005.

²¹⁸ Latvia, Instruction as of 02.09.1998 on registration of civil status documents in the Republic of Latvia (*1998. gada 2. septembra instrukcija Par civilstāvokļa aktu reģistrāciju Latvijas Republikā*), unofficial translation of Sections 130, 131. Not effective from 01.07.2005.

²¹⁹ Latvia, Administrative Procedure Law (*Administratīvā procesa likums*), 25 October 2001, Art.10, available in Latvian at: www.likumi.lv/doc.php?id=55567&menu_body=KDOC.

²²⁰ Latvia, Supreme Court Senate Administrative Case Department (*Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments*), case Nr. A42229505 SKA-5/2008.

Amendments to the Civil Status Document Law provide that “the entry to the Birth Register shall be supplemented if an adult changes his/her sex. The Birth Register entry shall be supplemented, on the basis of an application by an unmarried adult, and the opinion of physicians’ commission established in the medical institution according to the procedure prescribed by legislative acts on sexual and reproductive health, if it includes the following information: 1) diagnosis “transsexualism”; 2) the date of the establishment of primary diagnosis, from which at least one year has elapsed; 3) information about the permanence of person’s opinion to change gender, 4) statement of loss of functionality of reproductive organs inherent to person’s biological sex.”²²¹

Information about change of gender shall have to be included in the supplementary section of entries of relevant register and will have to be signed by the person who has requested to supplement the entry, and the head of the registry department.²²²

The annotation to the draft amendments to both laws further specifies that amendments to the Regulations Nr 904 of 29 November 2005 ‘Regulations on order of civil records registration, samples of civil records registries, order and terms of storage of the registries, as well as samples of the documents, which are issued on the basis of registries’ records’ will be submitted for announcement at the Meeting of State Secretaries for review following the adoption of amendments to the laws on Civil Status Documents and Sexual and Reproductive Health in the 2nd reading in the Saeima.

The amendments were reviewed by the Saeima in the first reading on 12.11.2009 creating heated, at times prejudiced debates about transsexualism. Members of Parliament from Latvia’s First Party, known for their staunch support of traditional family values and also not infrequent homophobic attitudes, heavily criticised the amendments for failing to introduce stricter criteria such as the requirement authorising courts or other state administrative bodies to establish the fact of gender reassignment, citing examples of various European countries, and thus questioning the competence of physicians’ commission. The draft amendments were decried as ‘overly liberal.’²²³

With 38 votes ‘for’, 30 – ‘against’ and 14 ‘abstentions’ the draft amendments did not receive the required majority to be adopted in the first reading and were sent back to the working group, which drafted the amendments, for elaboration. The responsible Saeima’s Committee did not support the draft amendments, and the document was not submitted to the Saeima for consideration.²²⁴

Change of name is regulated by the Regulation of the Cabinet of Ministers “Regulations on order of civil records registration, samples of civil records registries, order and terms of storage of the registries, as well as samples of the documents, which are issued on the basis of registries’

²²¹ Latvia, Draft Law ‘Amendments to the Civil Status Document Law (*Likumprojekts ‘Grozījumi Civilstāvokļa aktu likumā*’), Section 32 para 2, available in Latvian at www.mk.gov.lv/doc/2005/TMLik_120809_CAL.2764.doc .

²²² Latvia, Draft Law ‘Amendments to the Civil Status Document Law’ (*Likumprojekts ‘Grozījumi Civilstāvokļa aktu likumā*’), Section 41 para 5, available in Latvian at www.mk.gov.lv/doc/2005/TMLik_120809_CAL.2764.doc .

²²³ Transcript of parliamentary session of 9 November 2009, available in Latvian at www.saeima.lv/steno/Saeima9/091112/st091112.htm .

²²⁴ Information provided by the Director of the Birth Registry Department of the Ministry of Justice S.Saukuma-Laimere on the phone on 25 April 2014.

records”.²²⁵ Section 120.4.4 of the Regulations states that ‘form of name and surname corresponding to person’s gender shall be entered into record in case of change of gender on basis of an administrative act [about change of person’s gender in the Birth Register]’.²²⁶ The current Regulations do not set specifically whether the person has a right to indicate a name he/she would like to have after change of gender or whether the Registry Office authority simply modifies endings of the name the person had before the change of gender, as according to Latvian grammar endings of names differs depending on gender.²²⁷ In the past in practice, according to information provided by the Register Office’s Unit of the Department of Civil Registers of the Ministry of Justice (*Tieslietu ministrijas Dzimtsarakstu departamenta Dzimtsarakstu nodaļa*) the Registry Office simply changed the ending and thereby gender of the name which the person had before the change of gender. In many cases the name created in such way sounded unusual for the acquired gender. The person can later apply for change of name according to the Law on the Change of a Given Name, Surname and Ethnicity Record (*Likums Par vārda, uzvārda un tautības ieraksta maiņu*).²²⁸

On 8 April 2009 the Saeima (parliament) adopted the Law on the Change of a Name, Surname and Ethnicity Entry (*Likums Par vārda, uzvārda un tautības ieraksta maiņu*). The Law now explicitly provides that the change of name and surname is permitted following gender reassignment. Section 2 on Reasons of Change of Name and Surname provide that “a citizen of Latvia, a non-citizen or a person who has been granted the status of a stateless person may change the name and the surname (name and surname) if she/he has reached the age of 15 and, if one of the following reasons exists: [...] 6) a person has changed gender.”²²⁹ The previous law in force did not explicitly include gender reassignment among reasons for the change of name and surname, but was covered under “other reasons if deemed relevant by the Director of Department of Registry Office.”

On 29 November 2012 the Parliament adopted the Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*) (in force since 1 January 2013). According to Section 23 of the Law, the entries of marriage registry shall be supplemented with the information about the divorce of the marriage, recognition of marriage annulment, change of the spouse's: name, surname, ethnicity, personal code, nationality or gender.²³⁰ The Births' Registry shall be supplemented if the person herself/himself changes name, surname, personal

²²⁵ Latvia, Rules of the Cabinet of Ministers Nr 904 “Regulations on order of civil records registration, samples of civil records registries, order and terms of storage of the registries, as well as samples of the documents, which are issued on the basis of registries’ records” (*MK noteikumi Nr. 904 "Noteikumi par civilstāvokļa aktu reģistrācijas kārtību, civilstāvokļa aktu reģistru paraugiem, reģistru glabāšanas kārtību un termiņiem, kā arī to dokumentu paraugiem, kurus izsniedz, pamatojoties uz reģistru ierakstiem”*) 29 November 2005, available in Latvian at:

www.likumi.lv/doc.php?id=122684&mode=DOC .

²²⁶ Unofficial translation of Section 120.4.4.

²²⁷ E.g., -a, -e for female names, -s, -is for male names.

²²⁸ Latvia, Law on the Change of a Given Name, Surname and Ethnicity Record (*Likums Par vārda, uzvārda un tautības ieraksta maiņu*), 15 June 1994, available in Latvian at:

www.likumi.lv/doc.php?id=57418&mode=KDOC .

²²⁹ Latvia, Law on the Change of a Given Name, Surname and Ethnicity Record (*Likums Par vārda, uzvārda un tautības ieraksta maiņu*), Section 2 para 6, 15 June 1994, available in Latvian at:

www.vestnesis.lv/index.php?menu=doc&id=191209 .

²³⁰ Latvia, Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*), 29 November 2012, Section 23 Para 1, available in Latvian at: <http://likumi.lv/doc.php?id=253442>, published in Latvian Herald (Latvijas Vēstnesis) 197(4800), 14.12.2012, available in Latvian at: www.vestnesis.lv/?menu=doc&id=253442 .

code, nationality, ethnicity or gender,²³¹ as well as if any of the person's parents changes their name, surname, personal code, state citizenship, ethnicity or gender.²³² The Births' Registry shall be supplemented on the basis of court decision, orphans' court decision, administrative act, medical certificate or other document, which certifies the change of gender, or the person's application.²³³

On 3 September 2013 the government approved new Regulations on Civil Status Registries (*Noteikumi par civilstāvokļa akta reģistriem*).²³⁴ According to the regulations, on the basis of person's application and the opinion of the Civil Status Registry Office (*Civilstāvokļu aktu reģistrs*), the registry record shall be supplemented if: "134.11. the person has undergone partial or complete gender reassignment and the persons' gender record shall be changed according to the certificate issued by the healthcare institution or healthcare practitioner, which confirms the change of the gender. Name and surname shall be reproduced according to the gender".²³⁵

Since the case of V.L. vs Riga City Council's Riga city Registry Office (2006-2009, see details in Annex 1), there have been no cases related to transgender issues in Latvia.²³⁶

²³¹ Latvia, Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*), 29 November 2012, Section 37 Para 1(1), available in Latvian at: <http://likumi.lv/doc.php?id=253442>, published in Latvian Herald (*Latvijas Vēstnesis*) 197(4800), 14.12.2012, available in Latvian at: www.vestnesis.lv/?menu=doc&id=253442.

²³² Latvia, Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*), 29 November 2012, Section 37 Para 1(2), available in Latvian at: <http://likumi.lv/doc.php?id=253442>, published in Latvian Herald (*Latvijas Vēstnesis*) 197(4800), 14.12.2012, available in Latvian at: www.vestnesis.lv/?menu=doc&id=253442.

²³³ Latvia, Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*), 29 November 2012, Section 37 Para 2, available in Latvian at: <http://likumi.lv/doc.php?id=253442>, published in Latvian Herald (*Latvijas Vēstnesis*) 197(4800), 14.12.2012, available in Latvian at: www.vestnesis.lv/?menu=doc&id=253442.

²³⁴ Latvia, Cabinet of Ministers Regulations No. 761 "Rules On civil status registries" (*Ministru kabineta noteikumi Nr.761 "Noteikumi par civilstāvokļa aktu reģistriem"*), 3 September 2013, available in Latvian at: <http://likumi.lv/doc.php?id=259879>, published in Latvian Herald (*Latvijas Vēstnesis*) 181(4987), 17.09.2013, available in Latvian at: www.vestnesis.lv/?menu=doc&id=259879.

²³⁵ Latvia, Cabinet of Ministers Regulations No.761 "Rules On civil status registries" (*Ministru kabineta noteikumi Nr. 761 "Noteikumi par civilstāvokļa aktu reģistriem"*), 3 September 2013, available in Latvian at: <http://likumi.lv/doc.php?id=259879>, published in Latvian Herald (*Latvijas Vēstnesis*) 181(4987), 17.09.2013, available in Latvian at: www.vestnesis.lv/?menu=doc&id=259879.

²³⁶ The database of the case law of the Supreme Court checked 2010., 2011., 2012., 2013., 2014., available at: <http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-administrativo-lietu-departaments/hronologiska-seciba> ;

The online database of Latvian court decisions: www.tiesas.lv/nolemumi (accessed on 28 April 2014); Information provided on the phone by the Head of the Department of Civil Registers of the Ministry of Justice Ms I. Upite on 6 June 2014.

8 Miscellaneous

In 04.2007, a legal services firm published an advertisement in Daugavpils (regional city in Latvia) local newspaper offering a 50 per cent discount to Russian speakers and refusing legal services to sexual minorities. The Centre for Protection of Consumer Rights (CPCR) (*Patērētāju tiesību aizsardzības centrs*, PTAC) concluded that the advertisement is discriminatory and fined the publisher in the amount of Ls 1,500 (~EUR 2,134) under the Latvian Administrative Violation Code.²³⁷ The Ombudsperson's Office (*Tiesībsarga birojs*) had also concluded that the advertisement differentiated individuals on the grounds of race, ethnicity and sexual orientation; therefore the advertisement is discriminatory and should not be published. The Ombudsperson's Office also referred to the Race Equality Directive.²³⁸ The publisher appealed the decision in the Administrative District Court (*Administratīvā rajona tiesa*). The case was reviewed on 5 June 2009.²³⁹ The defendant did not contest that the advertisement was discriminatory, but denied the fact that the company had disseminated the advertisement and questioned whether the sanction had been imposed in compliance with the requirements of Latvian Administrative Violations Code. The Administrative District Court concluded there was sufficient evidence that the defendant had disseminated the ad and the fine had been imposed in compliance with the relevant code. The decision was appealed in the Administrative District Court (*Administratīvā rajona tiesa*), which on 2 July 2010 upheld the decision of the Centre for Protection of Consumer Rights and rejected the complaint of the publishing company.²⁴⁰

After the adoption of the decision of the European Court of Human Rights in the case of *E.B. v France*, discussion arose in Latvia about the adoption of a child by homosexual couples or individuals. Although the Constitution of Latvia defines marriage as the union between a man and a woman and also obliges the state to protect the family, there is no definition of family in Latvian law. The Latvian Civil Law provides that '(p)ersons who are not married to each other may not adopt one and the same child'.²⁴¹ However, the Civil Law allows adoption not only to married couples but also for a single person.²⁴² According to the civil servant responsible for adoption issues at the Ministry of Family and Children's Affairs, in 2007 approximately 20% of adoptions were by single parents (in fact, single mothers), and since the procedures do not foresee considering sexual orientation among the factors analysed when establishing the suitability of the potential parent for adopting a child, there is no way of telling whether in practice in Latvia adoption by a homosexual single parent has ever taken place.

There are no laws in force, which would be similar or comparable to the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information. In 2012, the proposal to amend the Riga Public Order Regulations in order to ban the propaganda of homosexuality in Riga was declined by the Mayor of Riga Nils Usakovs (see section "E.1.6.

²³⁷ The Decision of the Centre for the Protection of Consumer Rights No E04-DAU-154, Daugavpils, 14.08.2007.

²³⁸ Information provided by the Ombudsperson's Office on 30.01.2008.

²³⁹ Information provided by the Administrative District Court on 31.01.2008.

²⁴⁰ Latvia, Administrative District Court (*Administratīvā rajona tiesa*), A42608907 143/AA43-0746-10/17 (02.07.2010), available in Latvian at: www.tiesas.lv/nolemumi/pdf/18821.pdf (accessed on 28 April 2014).

²⁴¹ Latvia, Civil Law (*Civillikums*) 28 January 1937, Art. 166, available in Latvian at: <http://likumi.lv/doc.php?id=225418>.

²⁴² Latvia, Civil Law (*Civillikums*) 28 January 1937, Art. 166, available in Latvian at: <http://likumi.lv/doc.php?id=225418>.

Riga Pride 2013"). Since November 2013 NGO 'Let Us Protect Our Children!' (*Biedrība 'Sargāsim mūsu bērņus!'*) is promoting its draft amendments to the Protection of the Rights of the Child Law (*Bērnu tiesību aizsardzības likums*) (see further below).

As, according to the authorities there has been no asylum seeker on the grounds of sexual orientation during the period under review, there is no information about asylum procedure such as 'phallometry'.²⁴³

In March 2011, the LGBT and their friends alliance Mozaika (*LGBT un viņu draugu apvienība Mozaika*) began talks with several political parties on the draft Law on Registered Partnerships and accompanying draft amendments in 23 laws. The draft law provides for the procedure of registration and separation of same-sex partnerships and legal consequences of registered same-sex partnerships.²⁴⁴ The announcement about the talks on the draft law was to coincide with the forthcoming presidential elections in June, and lead to controversies and denouncement of the draft law by several politicians, including the State President who initially supported the need for discussions, but then back-tracked, seeing it as an attempt to legalise same sex marriage.

On 15 September 2011 an Advisory Council on the Legal Regulation of Partnerships was established by the Ombudsperson aimed at drawing expert opinion and assessing proposals for the draft law on Registered Partnerships and accompanying draft amendments in 23 laws as well as at assessing the need for legislative proposals criminalising hate crimes against the sexual minorities.²⁴⁵ The Advisory Council included representatives of various NGOs working on gender equality, LGBT rights, general human rights issues, as well as legal professionals, experts and researchers.²⁴⁶ Following examination of the draft proposals submitted by the LGBT and their friends alliance Mozaika, and discussion of the proposals within the Council, the Ombudsperson called the participants of the Council to take a broader approach and to apply it also to the unregistered co-habiting heterosexual partners, thus taking into consideration the interests of the society at large.²⁴⁷

As an outcome of the work of the Advisory Council, on 26 January 2012, the Ombudsperson's Office sent a letter to the parliamentary Human Rights and Public Affairs Commission (*Cilvēktiesību un sabiedrisko lietu komisija*) and Legal Commission (*Juridiskā komisija*) evaluating the draft Partnerships Law (*Partnerattiecību likums*) proposed by Mozaika. In his letter, the Ombudsperson concluded that „the majority of the Latvian society is currently not ready to approximate same sex partnership registration to marriage and accept homosexual relations as a lifestyle regulated by law, and further advancing of the proposal cannot be

²⁴³ Information provided by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

²⁴⁴ Information available in Latvian at:

www.tiesibsargs.lv/lat/tiesibsargs/jaunumi/?doc=321&underline=partnerattiec%C4%ABbu .

²⁴⁵ Ombudsperson's Office (Tiesībsarga birojs) (2011), available in Latvian:

www.tiesibsargs.lv/petijumi-un-publikacijas/relizes/tiesibsarga-konsultativas-padomes-par-partnerattiecibu-tiesisko-regulejumu-pirma-sede (accessed on 28 April 2014).

²⁴⁶ Ombudsperson's Office (Tiesībsarga birojs) (2011), available in Latvian:

www.tiesibsargs.lv/petijumi-un-publikacijas/relizes/tiesibsarga-konsultativas-padomes-par-partnerattiecibu-tiesisko-regulejumu-pirma-sede (accessed on 28 April 2014).

²⁴⁷ Ombudsperson's Office (Tiesībsarga birojs) (2013), available in Latvian:

www.tiesibsargs.lv/par-mums/konsultativas-padomes-par-partnerattiecibu-tiesisko-regulejumu (accessed on 28 April 2014).

supported.”²⁴⁸ He proposed amendments to several laws that would approximate the protection of co-habiting persons, including same sex couples, to the legal protection of married couples. He also proposed the amendment of laws related to patients’ rights protection, prevention of conflict of interest, procedural rights, person’s social rights and the right to information. A consultative body, that included NGOs and Christian organisations, was created towards the end of 2011 to evaluate the project.²⁴⁹ It was convened twice, but was disrupted due to the attendance of the meeting by radical organisations.

On 27 November 2013 the Central Election Commission (CEC) (*Centrālā vēlēšanu komisija*, CVK) registered the draft law ‘Amendments to the Protection of the Rights of the Child Law’ (*Likumprojekts ‘Grozījumi Bērnu tiesību aizsardzības likumā’*) prepared and submitted by the NGO ‘Let Us Protect Our Children!’ (*Biedrība ‘Sargāsim mūsu bērnus!’*).²⁵⁰ The draft envisages amending two sections of the Law: first, Section 47, determining that “gender education in child educational and child care institutions should be based on Section 110 of the Constitution (*Satversme*)” which provides that “the State shall protect and support marriage – a union between a man and a woman [...]” and that “in child educational and child care institutions the popularisation and advertisement of sexual and marriage relations between persons of the same sex shall be prohibited”. Second, Section 50.1 determining that “the involvement of children as participants or spectators of events aimed at the popularisation and advertisement of sexual and marriage relations between persons of the same sex shall be prohibited”.²⁵¹ According to the provisions of the Law on National Referenda, Legislative Initiatives and European Citizens’ Initiative (*Likums ‘Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu’*), the NGO ‘Let us Protect Our Children!’ can now begin collecting the voters’ signatures in support of the draft law; if 30,000 signatures are collected during the next 12 months, the CEC will announce the second stage of signature collection and, if no fewer than 10% of the voters of the last parliamentary elections (154,379) support the legislative initiative, the draft law will be submitted to the parliament. The parliament can either approve the draft law, which would enter into force, or reject it, which would send the draft law to the national referendum. According to the NGO the amendments will help prohibit the Euro Pride 2015 to be held in Riga.²⁵² The NGO was established by Vladimir Linderman,²⁵³ a radical Russian/Jewish leftist activist, former member of an extremist party banned in Russia, member of an NGO ‘Native language’ (*Rodnoi Yazik*) that was behind the referendum on Russian as a second state language in 2012 and Kaspars Dimiteris,²⁵⁴ a Latvian musician and an ardent anti-LGBT protestor.

²⁴⁸ Ombudsperson’s Office (Tiesībsarga birojs), 26 January 2012 Letter No. 1-8/3, , available in Latvian at: www.tiesibsargs.lv/lv/viendzimuma-partnerattiecibas-nav-pielidzinamas-laulibai .

²⁴⁹ Ombudsperson’s Office 2011 Annual Report (*Latvijas Republikas tiesībsarga 2011 gada ziņojums*), available in Latvian at: www.tiesibsargs.lv/files/content/Tiesibsarga%20gada%20zinojums_2011.pdf (accessed on 28 April 2014).

²⁵⁰ Central Election Commission (*Centrālā vēlēšanu komisija*), ‘Centrālā vēlēšanu komisija reģistrē parakstu vākšanai grozījumus Bērnu tiesību aizsardzības likumā’, Press release, 27 November 2013.

²⁵¹ Latvia, Draft law on amendments to the Protection of the rights of the child law (*Likumprojekts ‘Grozījumi Bērnu tiesību aizsardzības likumā’*), available in Latvian at: <http://cvk.lv/pub/public/30673.html> .

²⁵² LETA (2013), ‘Rosina rīkot referendumu, lai aizliegtu viendzimuma attiecību popularizēšanu’, 8 October 2013.

²⁵³ LETA (2013), ‘Rosina rīkot referendumu, lai aizliegtu viendzimuma attiecību popularizēšanu’, 8 October 2013.

²⁵⁴ LETA (2013), ‘Rosina rīkot referendumu, lai aizliegtu viendzimuma attiecību popularizēšanu’, 8 October 2013.

In order to evaluate the preparedness of the draft law and its compliance with the Constitution (*Satversme*), the CVK requested the opinions of the Ministry of Justice (*Tieslietu ministrija*), the Ministry of Welfare (*Labklājības ministrija*), the Ombudsperson's Office (*Tiesībsarga birojs*) and the State Inspectorate for Protection of Children's Rights (*Valsts bērnu tiesību aizsardzības inspekcija*). The Ministry of Justice (*Tieslietu ministrija*) highlighted that sexual orientation is one of the prohibited discrimination grounds therefore "the distribution of information about the existence of non-traditional sexual orientation in order to educate and facilitate understanding about the diversity of the society should not be prohibited, because such education is aimed at facilitating tolerance and lenience."²⁵⁵ The need for amendments was also rejected by the State Inspectorate for Protection of Children's Rights (*Valsts bērnu tiesību aizsardzības inspekcija*) which pointed out that thus far, there were no registered cases of "matrimonial and sexual relations between same sex persons being advertised in educational establishments and childcare establishments".²⁵⁶ Both the Ministry of Welfare (*Labklājības ministrija*)²⁵⁷ and the Ombudsperson's Office (*Tiesībsarga birojs*)²⁵⁸ highlighted that the draft contradicts Latvia's international obligations and sex education is only one of education questions, therefore there is no need for separate regulation. The Ombudsperson's Office (*Tiesībsarga birojs*) also mentioned that the terms included in the draft – "popularisation" and "advertising" – lack clarity.

²⁵⁵ Latvia, Ministry of Justice (*Tieslietu ministrija*) (2013), 'Par likumprojektu „Grozījumi likumā „Bērnu tiesību aizsardzības likums”', 25 October 2013, available in Latvian at: http://cvk.lv/pub/upload_file/Atzinumi%202013/Atzinums_Tieslietu%20ministrija_102013.pdf .

²⁵⁶ Latvia, State Inspectorate for Protection of Children's Rights (*Valsts bērnu tiesību aizsardzības inspekcija*) (2013), 'Par atzinuma sniegšanu', 21 October 2013, available in Latvian at: http://cvk.lv/pub/upload_file/Atzinumi%202013/Atzinums_Valsts%20Bernu%20tiesibu%20aizsardzibas%20inspekcija.pdf .

²⁵⁷ Latvia, Ministry of Welfare (*Labklājības ministrija*) (2013), 'About the draft law prepared by NGO "We Protect Our Children!"' (*Par biedrības „Sargāsim mūsu bērnus!” sagatavoto likumprojektu*), available in Latvian at: http://cvk.lv/pub/upload_file/Atzinumi%202013/Atzinums_Labklajibas%20ministrija.pdf .

²⁵⁸ Latvia, Ombudsperson's Office (*Tiesībsarga birojs*), 'About the Draft law "Amendments to the protection of the rights of the child law" (*Par likumprojektu „Grozījumi likumā „Bērnu tiesību aizsardzības likums”*)', 25 November 2013, available in Latvian at: http://cvk.lv/pub/upload_file/Atzinumi%202013/Atzinums_Tiesibsargs_102013.pdf .

9 Good practices

There are no new legal provisions and legal interpretations in Latvian legal system, which could be presented as good practice to tackle homophobia and/or discrimination on the ground of sexual orientation and/or of trans-gender people, which are innovative and could serve as models for other Member states and the European Union institutions in this context.

10 Intersex

1) Intersex people are not specified (ground of “intersex” is not included) under national non-discrimination legislation, in legal cases/jurisprudence and in non-discrimination policies.

A) (d) No

B) Intersex discrimination is not covered under national non-discrimination policies.

C) According to first point of the first paragraph of the Section 35 of the Law on the Registration of the Civil Status Acts, the Births' Register shall include information about the child's name, surname, personal code (if such was given), gender, ethnicity, state citizenship (if such determined) and the place of residence.²⁵⁹

When informing about the birth of the child at the registry office or at Latvia's representation (abroad), the applicant shall submit the medical certificate issued by the healthcare institution or healthcare personnel, which would certify the fact of the birth of the child, the gender of the child, the place and time of the birth, the name and surname of mother, or other document issued by the healthcare institution or healthcare personnel, which would certify the fact that the woman has given birth, and which would indicate the information about the gender and possible time of the birth of the child.²⁶⁰

The healthcare personnel shall indicate in the medical certificate about the birth the following information about the gender: "boy", "girl" or "unclear gender".²⁶¹ "Unclear gender" is not reflected in the birth certificate, as the "gender" category is not included in the birth certificate.²⁶²

2) National legal acts do not regulate surgery for intersexual persons. If an intersexual person undergoes the surgery, the legal framework is the same as regarding any other type of surgery. According to Section 6 of the Law on the Rights of Patients, Medical treatment is permissible if a patient has given the informed consent thereto. The informed consent shall be drawn up in

²⁵⁹ Latvia, Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*), 29 November 2012, available in Latvian at: <http://likumi.lv/doc.php?id=253442>, published in Latvian Herald (*Latvijas Vēstnesis*) 197(4800), 14.12.2012, available in Latvian at: www.vestnesis.lv/?menu=doc&id=253442.

²⁶⁰ Latvia, Cabinet of Ministers Regulations No.761 “On civil status registries” (*Ministru kabineta noteikumi Nr. 761 “Noteikumi par civilstāvokļa aktu reģistriem”*), 3 September 2013, Article 70, available in Latvian at: <http://likumi.lv/doc.php?id=259879>, published in Latvian Herald (*Latvijas Vēstnesis*) 181(4987), 17.09.2013, available in Latvian at: www.vestnesis.lv/?menu=doc&id=259879.

²⁶¹ Latvia, Cabinet of Ministers Regulations No. 265 “On the record-keeping procedures for document medical (*Ministru kabineta noteikumi Nr. 265 „Medicīnisko dokumentu lietvedības kārtība”*)”, 4 April 2006, 39. pielikums, available in Latvian at: <http://likumi.lv/doc.php?id=132359>, published in Latvian Herald (*Latvijas Vēstnesis*) 57(3425), 07.04.2006, available in Latvian at: www.vestnesis.lv/?menu=doc&id=132359.

²⁶² Latvia, Law on the Registration of the Civil Status Acts (*Civilstāvokļa aktu reģistrācijas likums*), 29 November 2012, available in Latvian at: <http://likumi.lv/doc.php?id=253442>, published in Latvian Herald (*Latvijas Vēstnesis*) 197(4800), 14.12.2012, available in Latvian at: <http://likumi.lv/doc.php?id=253442>.

writing if it is requested by the patient or attending physician.²⁶³ A patient has the right to refuse medical treatment prior to the commencement thereof, from any method used in the medical treatment, without declining from the medical treatment at large, or to refuse medical treatment during it.²⁶⁴ Medical treatment of a minor patient (up to the age of 14 years) shall be permissible if his or her lawful representative is informed thereof and has given his or her consent. The minor patient has the right to be heard and according to his or her age and maturity to participate in the taking of the decision related to the medical treatment.²⁶⁵ Medical treatment of a minor patient older than 14 years shall be permissible if his or her consent has been received, except cases where a delay may endanger the life of the patient and it is not possible to receive the consent of the patient himself or herself or the person representing the patient, the medical practitioner shall perform emergency measures within the scope of his or her competence – examination, medical treatment, including surgical or other type of invasive intervention.²⁶⁶ If a minor patient older than 14 years refuses to give his or her consent for medical treatment, but to the physician's mind the medical treatment is in the interests of this patient, the consent for the medical treatment shall be given by the lawful representative of the minor patient.²⁶⁷

²⁶³ Latvia, Law On the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009, Section 6 Para 2, available in Latvian at: <http://likumi.lv/doc.php?id=203008>, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: <http://likumi.lv/doc.php?id=203008>.

²⁶⁴ Latvia, Law On the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009, Section 6 Para 4, available in Latvian at: <http://likumi.lv/doc.php?id=203008>, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: <http://likumi.lv/doc.php?id=203008>.

²⁶⁵ Latvia, Law On the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009, Section 13 Para 1, available in Latvian at: <http://likumi.lv/doc.php?id=203008>, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: <http://likumi.lv/doc.php?id=203008>.

²⁶⁶ Latvia, Law On the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009, Section 13 Para 2, available in Latvian at: <http://likumi.lv/doc.php?id=203008>, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: <http://likumi.lv/doc.php?id=203008>.

²⁶⁷ Latvia, Law On the Rights of Patients (*Pacientu tiesību likums*), 17 December 2009, Section 13 Para 3, available in Latvian at: <http://likumi.lv/doc.php?id=203008>, published in Latvian Herald (*Latvijas Vēstnesis*) 205(4191), 30.12.2009, available in Latvian at: <http://likumi.lv/doc.php?id=203008>.

Annex 1 – Case law

Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	Māris Sants vs Riga School of Cultures
Decision date	29.04.2005, 08.06.2006, 09.10.2006.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Rīgas pilsētas Ziemeļu rajona tiesa [Riga City Ziemeļi District Court], case No. C32242904047505 C-475/3; Rīgas apgabaltiesa [Riga Regional Court], case No. C32242904 CA-1096/2, Latvijas Republikas Augstākās tiesas Senāts [Senate of the Supreme Court of the Republic of Latvia], case No. SKC-796 2006. gads.
Key facts of the case (max. 500 chars)	A teacher with a degree in theology submitted a claim to the Riga City Ziemeļi District Court against the Riga School of Cultures (a public secondary school) alleging discrimination on the grounds of sexual orientation after the school decided not to hire him for a position of teacher of history of religion, which had been advertised in the press. The plaintiff contended that the applicant who was hired did not possess better professional qualifications and that his homosexuality was the main reason why his application was turned down.
Main reasoning/argumentation (max. 500 chars)	The first instance court reasoned that the school had to evaluate qualifications and work experience of the applicant to the job by inviting him to the job interview, as the competition to the vacancy was announced. The fact that the school refused to do so but hired less qualified person after some time can be considered as proof of discrimination. The second instance court reasoned that the labour contract with another applicant could be concluded orally before the plaintiff applied for the vacancy. However, the second instance court did not take into account the obligation to apply the shift of burden of proof.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The first instance court interpreted the Labour Law in the light of the Employment Directive 2000/78/EC and took into account that the shift of burden of proof has to be applied in discrimination cases. The first instance court found discrimination on the ground of sexual orientation, although this ground was not explicitly listed in the Labour Law at that time. The court considered that it is determined under 'other grounds', as the list of prohibited grounds of discrimination laid down by the Labour Law was not exhaustive. The court found that the employer had directly discriminated against the plaintiff by not inviting him to interview on knowing his sexual orientation.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The first instance court awarded the plaintiff moral compensation of 2000 Lats (approx. 2850 Euro) as a ‘just, proportionate, and effective remedy for non-pecuniary damage in cases of discrimination, in order to foster and create a just working environment’. The plaintiff’s claim for lost income of 960 Lats (approx. 1330 Euro) was not satisfied.</p> <p>However, the appeal instance court ruled that there were objective reasons for non-hiring of plaintiff and refused his claim. The cassation instance court realized that the cassation claim does not contain grounds for reviewing it. At the moment, a communication relating to that case is submitted to the UN Human Rights Committee. The UNHRC dismissed the case on procedural grounds.</p> <p>Since it was the first court case on ground of sexual orientation, it had a notable impact to interpretation of legislation, as well as to sense of society about the issue. It is believable that failure to prove the discrimination led to the situation that it is still the only case where person discriminated on ground of sexual orientation has turned to</p>
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Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

Case title	Decision of <i>Patērētāju tiesību aizsardzības centrs</i> (PTAC) [Centre for Protection of Consumer Rights (CPCR)] against “Dinaburg Media Group” Ltd.
Decision date	14.08.2007., 02.07.2010,
Reference details (type and title of court/body; in original language and English [official translation, if available])	Decision of <i>Patērētāju tiesību aizsardzības centrs</i> (PTAC) [Centre for Protection of Consumer Rights (CPCR)] No. E04-DAU-154. Decision of <i>Administratīvā rajona tiesa</i> [Administrative District Court]) A42608907 143/AA43-0746-10/17

Key facts of the case (max. 500 chars)	<p>A legal services firm “Andrejev I tovarishchi” published an advertisement in Daugavpils (regional city in Latvia) local newspaper offering a 50 per cent discount to Russian speakers and refusing legal services to sexual minorities. The <i>Patērētāju tiesību aizsardzības centrs</i> (PTAC) [Centre for Protection of Consumer Rights (CPCR)] concluded that the advertisement is discriminatory and fined the publisher “Dinaburg Media Group” Ltd. the amount of Ls 1,500 (~EUR 2,134) under the Latvian Administrative Violation Code, Art. 166¹³ which sets sanctions for breach of regulations on advertising and commercial practice. In the decision the CPCR referred to the letter of the <i>Tiesībsarga birojs</i> [Ombudsperson’s Office] where the advertisement was evaluated as discriminatory.</p>
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Main reasoning/argumentation (max. 500 chars)	<p>At first, the CPRC concluded that the information published in the newspaper is an advertisement in the sense of the Advertising Law, being an announcement associated with economic or professional activity, intended to promote the popularity of or demand for goods or services. The Advertising Law, Art. 4 (2) prohibits to express in advertising discrimination against a person due to his/her race, skin colour, gender, age, religious, political or other convictions, national or social origin, financial status or other circumstances.</p> <p>With regard to the refusal to provide legal services to sexual minorities, the CPRC concluded that, as the Constitution of Latvia stipulates that '[a]ll human beings in Latvia shall be equal the law and the courts. Human rights shall be realised without discrimination of any kind' and the Advertising law prohibits discriminatory advertising also on other grounds than those explicitly mentioned in the law], the advertisement shall be considered as discriminatory towards sexual minorities.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The CPRC in its decision cited the letter of the Ombudsperson's Office which referred to the Race directive with regard to discrimination on ground of ethnic origin and to the decisions of the European Court of Human Rights (Lustig-Prean & Beckett and Smith & Grady) with regard to discrimination on ground of sexual orientation, and evaluated the advertisement as discriminatory. The CPRC also pointed out that the publisher's breach of the law was significant, as it has infringed fundamental values important in a democratic society. By publishing the discriminatory advertisement a negative opinion and negative attitude towards sexual minorities is propagated in society.</p>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The CPRC fined the publisher "Dinaburg Media Group" Ltd. the amount of Ls 1,500 (~EUR 2,134) pointing out that the sanction has the aim to deter persons involved in distribution of advertisement from this administrative offence and from repeating of such an offence. The publisher appealed the decision in the <i>Administratīvā rajona tiesa</i> [Administrative District Court] which on 2 July 2010 upheld the decision of the Centre for Protection of Consumer Rights and to reject the complaint of the publishing company.</p>

Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3

Case title	Žanete Reķe vs VAS "Paula Stradiņa klīniskās universitātes slimnīca"
Decision date	12.10.2009, 24.03.2010.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Rīgas pilsētas Zemgales priekšpilsētas tiesa [Riga City Zemgales District Court], case No. C31298809; Rīgas apgabaltiesa [Riga Regional Court], case No. C31298809, CA- 2041-10/26

Key facts of the case (max. 500 chars)	The plaintiff submitted a claim to the Riga City Zemgale District Court against the State LTD "Pauls Stradins Clinical University Hospital" (VAS "Paula Stradiņa klīniskās universitātes slimnīca"), demanding recognition of the fact of existence of labour relations, termination of labour contract in writing, reinstatement to work, recovery of arrear wages and compensation of non-pecuniary damage. The plaintiff was hired by the hospital catering company as kitchen employee. There was no labour contract. After a month, the head of the company announced to Ž.Reķe, that there is no work for her. The plaintiff believes the reason why she was dismissed was the fact that on 16 May 2009 she participated in the Pride organized by "Mozaika" and gave an interview to TV3 channel. Following TV broadcast of the interview, the attitude of the head of the catering company towards Ž.Reķe changed for worse and the head expressed the following phrase in the presence of all other kitchen employees: "I do not recognize woman sleeping with woman". Ž.Reķe appealed the decision of the first instance court.
Main reasoning/argumentation (max. 500 chars)	The court reasoned that the evidences provided by the plaintiff are insufficient and do not implicitly convince the court that the facts mentioned by the plaintiff indeed taken place, because it is impossible to determine, whether the plaintiff was working at the catering company during the mentioned time period. The Court reasoned that there is no proof of defendant ever calculating or paying the wage to the plaintiff or in any other way certified the fact of labour relations with the plaintiff. The court critically evaluated the claim of the plaintiff that the head of the catering company treated her in derogatory way, verbally insulted in the presence of others, named her a beast and ugly, because the plaintiff did not provide evidence to back these claims. Appeals instance court ruled that the first instance court evaluated correctly the circumstances and the evidence in the case and made justified decision rejecting the claim of the plaintiff.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The first instance court referred to the part one of the Section 104 of the Civil Procedure Law, in reasoning that the explanations provided by the plaintiff and her representatives, including information about the facts, which serve as the basis of the plaintiff's claim, could not be recognized as a proof, because other evidences, checked and evaluated by the court, do not proof these claims. The court referred to the part one of the Section 93 of the Criminal Procedure Law, which determines that both sides shall prove the facts which they bring to justify their claims or objections. The appeals court highlighted that, taking into consideration that the court could not establish the fact of labour relations, there is no ground for the compensation of non-pecuniary damage according to the Section 29 of the Labour Law, which regulates the prohibited differential treatment in establishment, existence and termination of labour relations.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The first instance court and the appeals instance court completely rejected the claim of Ž.Reķi.

Chapter E, Freedom of assembly, case 1

Case title	On the Gay and Lesbian Pride 2005.
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Decision date	22.07.2005.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Administratīvā rajona tiesa [Administrative District Court], case No. A42349805 A3498-05/19
Key facts of the case (max. 500 chars)	The applicants submitted application to the Riga City Council asking to permit the march for promoting the tolerance on 23.07.2005. On 08.07.2005., the authority of the Council issued the permit. However, on 20.07.2005, the permission was withdrawn.
Main reasoning/argumentation (max. 500 chars)	The Riga City Council argued that the reason to withdraw the permission was change of circumstances, as many protests, including from the Christian Church, against immoral event are received and the Prime Minister has publicly stated that such march has not to be allowed in the city centre. The applicants argued that the state has the obligation to ensure possibility to hold the event instead of banning, and in particular situation the permission is withdrawn on discriminatory grounds, as the participants of the march are supporting sexual minorities.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court argued that under the Latvian law homosexuality shall not be considered as ‘immoral’ against heterosexuality, and there is no reason in particular case to limit the freedom of assembly set by the Latvian Constitution Article 103. The court stated that the principle of proportionality was violated, placing the opinion of persons protesting to the March over the fundamental right to assembly of applicants.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Administrative District Court overturned the decision of the Riga City Executive Director to annul the permit, finding it unjustified and discriminatory. The decision become effective immediately upon adoption, thus allowing to hold the Pride on planned date.

Chapter E, Freedom of assembly, case 2

Case title	On the Gay and Lesbian Pride 2006.
Decision date	21.06.2006, 12.04.2007, 15.11.2007.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Administratīvā rajona tiesa [Administrative District Court], Administratīvā apgabaltiesa [Administrative Regional Court], case No. AA43-0838-07/7, Augstākās tiesas Senāta Administratīvo lietu departaments [Department of Administrative Cases of the Senate of the Supreme Court], case No. A42443906 SKA-442/2007

Key facts of the case (max. 500 chars)	On 02.06.2006, NGOs 'Riga Pride', 'ILGA Latvija' and 'Alliance of LGBT and their friends "Mozaika"' submitted an application requesting permission to organise a Pride march. On 06.07.2006, Rīgas dome [Riga City Council] suggested that the march be staged only outside the city centre. On 11.07.2006, organisers of 2006 Pride March met with the Riga City Council and representatives of the police. The possible routes for the march were discussed. On 12.06.2006, the Minister of Interior made a statement that the police would not be able to guarantee security during the Pride and on 18 July asked the City Council not to allow the march. On 19.07.2006, Riga City Council announced it would not permit the 'Riga Pride 2006' march to take place. Riga City Council stated that its decision was based on information it had allegedly received concerning several threats of violence against march participants if the march was allowed to go ahead, and that the police could not guarantee security and order during the march. On the same day, organisers of the Pride submitted a complaint to the Administrative District Court.
Main reasoning/argumentation (max. 500 chars)	As the case was declared as containing classified information and concerned state security, the 1 st instance court and the second instance court decided to review it in closed session, and as a result the full reasoning will not be known for the next five years. The first instance court upheld the decision of the City authorities to ban the gay Pride on the grounds of 'national security' and concerns over public order. The 2 nd instance court declared refusal to organise the gay Pride 2006 as unlawful. The cassation instance court upheld the decision of the 2 nd instance court, referring to the argumentation of that court. The cassation court accented that the City Council had an obligation to inform the organiser if the Council held the view that the Pride will endanger public safety, welfare and morality, rights and freedoms of other persons, as well cause disorders or offences, and together with the organiser revise the place, time or route of the march. Thus,, the refusal to allow the Pride could be issued only in

	case it would be impossible to find agreement on the above mentioned issues. The Council should consider all arguments of the organiser and review not only the initial suggested route of the march, but also other proposed routes. The Council should actively participate in the process of reaching agreement on a safe route.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Although the decision of the 2 nd instance court is not publicly available, the cassation court has referred to important issues considered in the decision, and has pointed out that any limitations on fundamental rights shall be put under particularly strong scrutiny of necessity. If the limitation is found as necessary, exercising of the fundamental freedom shall not be prohibited absolutely, thus losing the sense of the freedom. The threat of violent counter-demonstrations or possible interference of extremists outside the control of the police cannot be considered as sufficient reason to prohibit the march. The cassation court referred also to the decision of the Constitutional court where it stated that the State institutions shall tolerate any traffic disturbance, which is not avoidable, for realising the freedom of assembly, and that the State shall not only ensure the possibility to exercise the freedom of assembly but also the effectiveness of it, that is, the possibility to reach the aim of the assembly.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Department of Administrative Cases of the Senate of the Supreme Court upheld the decision of the Administrative Regional Court which overturned the decision of the Deputy of Riga City Executive Director to prohibit the Pride, finding it unlawful.

Chapter F, Hate speech, case 1

Case title	Imants Kozlovskis vs Leopolds Ozoliņš
Decision date	25.04.2006.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Jūrmalas pilsētas tiesa [Jurmala City Court], case No. C 17043006 C-0430-06/3
Key facts of the case (max. 500 chars)	On 19.07.2005 MP Leopolds Ozoliņš, being infuriated about gay Pride in Riga in 2005, published announcement to the press in internet portal Apollo using extremely abusive expressions. Imants

	Kozlovskis, a young gay activist who had been interviewed in press during the gay Pride and was one of the most visible persons during the event, brought a case to the court under the Civil Law Article 2352, considering that the announcement has injured his reputation and dignity, although his name was not explicitly mentioned, and claimed for moral compensation.
Main reasoning/argumentation (max. 500 chars)	The Court stated that the Latvian Constitution protects the freedom of expression. Although the Civil Law restricts this freedom by setting liability in cases where person's honour and dignity are violated by dissemination of false, abusive information, Ozoliņš announcement shall be considered as his personal view, not information. Besides, Ozoliņš in his statement have not named the applicant but have spoken about homosexual persons in general, thus the applicant has not ground to ask for compensation for violation of his personal honour and dignity.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	-
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Although the claim was rejected by the court, the fact of raising the issue itself and showing a possibility for person to defend his/her rights through the civil legislation, as the criminal legislation does not contain relevant provisions, was important for society.

Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1

Case title	V.L. vs Riga City Council's Riga city Registry Office
Decision date	6.02.2006, 11.04.2007, 14.01.2008., 25.09.2008, 21.05.2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	Administratīvā rajona tiesa [Administrative District Court], Administratīvā apgabaltiesa [Administrative Regional Court], case No. A42229505 No. AA43-0446-07/14, Augstākās tiesas Senāta Administratīvo lietu departaments [Department of Administrative Cases of the Senate of the Supreme Court], case No. A42229505 SKA-5/2008, Administratīvā apgabaltiesa [Administrative Regional Court], case Nr. A42229505, Augstākās tiesas Senāta Administratīvo lietu departaments [Department of Administrative Cases of the Senate of the Supreme Court] SKA-138/2009
Key facts of the case (max. 500 chars)	V.L. applied to the Riga City Registry Office for change of entry on gender in the Birth Register and was denied this on the ground that the gender reassignment had not been completed fully. V.L. appealed the decision to the Administrative court, asking for change of entry in the Birth Register and for moral compensation for humiliation and violation of private life by the Registry Office by sending information to the Ministry of Health and requesting a certificate issued by medical practitioner or hospital on change of persons gender, as well as confirmation of the new gender. V.L. based the application on an explanation that two surgeries for the change of gender had been carried out and relevant extracts from the medical records had been submitted to the Registry Office. V.L. also pointed out that in other case the Registry Office has changed the entry in the Birth Register on basis of similar documents as V.L. submitted to the Registry Office. V.L. also claimed that she cannot be identified as the Registry Office has refused to approve her new gender, and it creates situations where she cannot exercise her rights, for example, of free movement, voting rights, etc. V.L. asked the moral compensation of Ls 7000 (~9960 EUR) for visits to psychotherapist in order to regain psychological equilibrium. The 1 st instance court refused the application, the 2 nd instance court ordered the Registry Office to change the entry on V.L. gender in the Birth Register within a month after decision, but refused the claim for moral compensation. The cassation instance court revoked the decision in the part of refusal to provide moral compensation to V.L. and sent it back to the 2 nd instance court for review. The 2 nd instance court ordered the Registry Office to issue a written apology to the claimant within 15 days after the entry into force of the judgment for not entering changes into the Birth Register and forwarding sensitive data to MoH, It refused the claim in part concerning financial compensation of moral damages. The cassation court
	upheld the ruling of the 2 nd instance court as the claimant had not submitted evidence that would support claimant's statements that claimant's rights (right to work, freedom of movement) had been restricted as the result of delay in receiving new identity documents

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The court reasoned that the gender is part of a person’s private life, and a person has the right to ask the competent body to amend the Birth Register accordingly to the gender of the person. As a definite and unambiguous legal order for amending the Birth Register in case of change of gender has not been set and there is no competent body, which has a legal right to issue an administrative act on change of gender, the Registry Office should not request such an administrative act, but should make the decision on amending itself, as the lack of a mechanism for the implementation of the right of person cannot be considered as valid ground for refusal. The court also found the breach of the principle of equality, as in a similar situation with regard to another person the Birth Register had been changed.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court referred to the Recommendation 1117 of 29th September 1989 on the condition of transsexuals by the Parliamentary Assembly of the Council of Europe which explains transsexualism as a syndrome characterised by a dual personality, one physical, the other psychological, together with such a profound conviction of belonging to the other sex that the transsexual person is prompted to ask for the corresponding bodily “correction” to be made., and to the decision of the European Court of Human Rights in case of Goodwin where the Court has explained that the pressure on the transsexual by being in the position where his/her gender perceived after surgeries for change of gender differs from the legal gender can create a serious breach of the right to private life.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Registry Office was ordered to change the entry on V.L. gender in the Birth Register, and issue a written apology to the claimant.</p> <p>Following Supreme Court judgement, on 18 August 2009, the Cabinet of Ministers approved amendments to the Sexual and Reproductive Health Law and Civil Status Documents Law aimed at addressing legal gaps concerning gender reassignment. The amendments are yet to be adopted by the parliament. On 8 April 2009 the Saeima (parliament) adopted the Law on the Change of a Name, Surname and Ethnicity Entry, which now explicitly provides that the change of name and surname is permitted following gender reassignment.</p>

Annex 2 – Statistics

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
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Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	1) No information ²⁶⁸	1) 11 written complaints	1) 2 written complaints	1) 1 written and 4 oral complaints	1) no complaints	1) 6 written and 2 oral complaints	1) 5 written and 6 oral complaints 2) 1 court case	1) 2 written (1 of them in employment) and 9 oral complaints ²⁶⁹ 3) 1 case before the Centre for Consumer's Rights Protection	1) 2 written complaints, 11 oral consultations	1) 3 written complaints ²⁷⁰	8 (six oral complaints and 2 written complaints) ²⁷¹	0 (in the first nine months) ²⁷²	2 ²⁷³	0 ²⁷⁴
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²⁶⁸ 1) Complaints received by the Ombudsperson's Office (to 2007 – the National Human Rights Office).

²⁶⁹ The Head of the Ombudsperson's Discrimination Prevention Department Līga Biksiniece-Martinova explained that the Ombudsperson's Office (ex NHRO) in 2006 issued three recommendations in cases of discrimination on the ground of sexual orientation, and one recommendation in 2007.

However, she could not indicate the areas of discrimination. The way how the Ombudsperson's Office collects their statistics still remains unclear, as, by the words of Biksiniece-Martinova, complaint, e.g., based on person's disappointment about permitting of gay Pride has been counted as complaint on discrimination on the ground of sexual orientation.

²⁷⁰ 1 complaint involved allegations of dismissal from hospital after the person had been shown on TV in Gay Pride however, there was no labour contract to confirm the fact that the person had been employed in the hospital.

²⁷¹ Information provided by the Ombudsperson's Office on 20 September 2011.

²⁷² Information provided by the Ombudsperson's Office on 20 September 2011.

²⁷³ Information provided by the Ombudsperson's Office on 7 January 2013, information provided by the Ombudsperson's Office on 24 February 2014.

²⁷⁴ Information provided by the Ombudsperson's Office on 24 February 2014.

Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)							2) the court find that discrimination did not take place (the labour relations, hiring stage)	3) the Centre for Consumer's Rights Protection found discrimination in advertisement for			0 ²⁷⁵	0	0	0
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								3) 1 sanction						

²⁷⁵ Information provided by the Ombudsperson's Office on 20 September 2011.

National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)											3) the Centre for Consumer's Rights Protection issued the administrative sanction – fine of Ls1500 (2,140 EUR)					
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Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of EU citizens residing in your country falling under	-	-	-	-	-	-	-	-	-	-	-	-	-	1 ²⁷⁶

²⁷⁶ Information provided by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) by e-mail on 25.02.2014.

Number of LGBT partners who claimed their right to residence but were denied this right	-	-	-	-	-	-	-	-	-	-	-	-	-	-
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Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation²⁷⁷

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT individuals	-	-	-	-	-	-	-	-	-	-				
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	-	-	-	-	-	-	-	-	-	-				

²⁷⁷ The Office of Citizenship and Migration Affairs (OCMA) (*Pilsonības un migrācijas lietu pārvalde*, PMLP), 13 February 2008, Letter No. 24/7-473, The Office of Citizenship and Migration Affairs (OCMA) (*Pilsonības un migrācijas lietu pārvalde*, PMLP), 09 February 2010, Letter No. 24/1-29/356,

Information provided by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

Chapter C, Asylum and subsidiary protection, protection of LGBT partners²⁷⁸

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners of persons enjoying refugee/subsidiary protection status	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Chapter D, LGBT partners benefiting family reunification²⁷⁹

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Chapter E, LGBT people enjoyment of freedom of assembly

	2000	2001				2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of demonstrations in favour of tolerance of LGBT people, gay	-	-				-	-	-	1	-	1	1	1	-	-		

²⁷⁸ The Office of Citizenship and Migration Affairs (OCMA) (*Pilsonības un migrācijas lietu pārvalde*, PMLP), 13 February 2008, Letter No. 24/7-473, The Office of Citizenship and Migration Affairs (OCMA) (*Pilsonības un migrācijas lietu pārvalde*, PMLP), 09 February 2010, Letter No. 24/1-29/356,

Information provided by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

²⁷⁹ Information provided by the Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA) I. Briede on 25 February 2014.

Information provided by the representatives of the Alliance of LGBT and their friends “Mozaika” on the phone on 9 May 2014.

Number of demonstrations against tolerance of	-	-				-	-	-	1	2	2	1	1	-	-
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Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court cases regarding homophobic hate speech	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of convictions regarding homophobic hate speech (please	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Range of sanctions issued for homophobic hate speech	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of non-criminal court cases initiated for homophobic	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff,	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Chapter F, Homophobic motivation of crimes as aggravating factor

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Chapter G, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008 ²⁸⁰	2009	2010	2011	2012	2013

²⁸⁰ Information provided by Register Office's Unit of the Department of Civil Registers of the Ministry of Justice on 10 February 2009.

Number of name changes effected due to change of gender	5 ²⁸¹							3	2	1				
Number of persons who changed their gender/sex in your country under the applicable legislation								3 ²⁸²	2	1				

²⁸¹ The Deputy Head of the Register Office's Unit of the Department of Civil Registers of the Ministry of Justice Ms A. Akmentina provided information that there have been 8 cases since 2000 of change of the Birth Register entry on person's gender. Three cases are registered in 2007, however, it is not indicated precisely in which year other cases were registered.

²⁸² In Latvia, person's names and surnames has different endings corresponding to the gender of the person. Thus change of the person's name in case of change of his/her gender is unavoidable.

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership

IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV							✓	✓ Change of name is possible after gender reassignment		Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	X (, divorce only possible upon request of either spouse following four years of de facto separation)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓	✓		Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board

SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓				✓		✓	Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ²⁸³	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	

²⁸³ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ²⁸³	All areas of RED*		
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT			✓	✓	The National Commission for the Promotion of Equality had its remit extended to cover discrimination on grounds of sexual orientation in 2012.
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ²⁸³	All areas of RED*		
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution.

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
				Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	Following the settlement between Government and Joanne Cassar who instituted proceedings in front of the European Court of Human Rights, following a national judgement which denied the right to marry, in April 2013 Government signed a settlement with Ms. Cassar acknowledging her right to marry. ²⁸⁴ Ms. Cassar had undergone gender reassignment surgery. As a result of this, Act VII of 2013 was adopted by Parliament and amended the Civil Code. ²⁸⁵
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.

²⁸⁴ Borg, A. (2013) Settlement between Joanne Cassar and government signed, in The Malta Independent, 16 April 2013, available at: <http://www.independent.com.mt/articles/2013-04-16/news/settlement-between-joanne-cassar-and-government-signed-1402109962/>

²⁸⁵ Malta, House of Representatives (2013), Act VII of 2013, the Civil Code (Amendment) Act, 2013, available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25080&l=1>

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision” and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category 'comparable group'. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category 'groups of society'. Penal Code was amended to include hate motivated crimes against 'certain groups of society'. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT	✓	✓	Article 82A of the Criminal Code was amended in 2012 to include incitement to hatred based on gender identity and sexual orientation.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ²⁸⁶		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU <i>acquis</i> , confirms the notion that a family member includes the <i>de facto</i> partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities’ discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.

²⁸⁶ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement ²⁸⁶		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV	✓	✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile. The Cabinet of Ministers Regulations Nr.675 "Procedures for EU citizens and their family members travelling to and staying in the Republic of Latvia" determine that an extended family member of a Union citizen is a partner with whom the Union citizen has a relationship lasting for at least two years or a partner with whom the Union citizen has a registered partnership.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	8	15	8	13	8	12	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.