

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

Ilvija Pūce  
Riga, Latvia  
February 2008  
Latvian Centre for Human Rights  
February 2010

# Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>A. IMPLEMENTATION OF EMPLOYMENT DIRECTIVE 2000/78/EC .....</b>	<b>8</b>
A.1. Legislative process of implementation of Employment Directive.....	8
A.2. Court procedure in employment cases .....	13
A.3. Out-of-court procedures in employment cases .....	16
<b>B. FREEDOM OF MOVEMENT .....</b>	<b>21</b>
<b>C. ASYLUM AND SUBSIDIARY PROTECTION.....</b>	<b>23</b>
<b>D. FAMILY REUNIFICATION.....</b>	<b>25</b>
<b>E. FREEDOM OF ASSEMBLY .....</b>	<b>27</b>
E.1. Gay Prides.....	28
E.1.1. Riga Pride 2005 .....	28
E.1.2. Riga Pride 2006 .....	29
E.1.3. Riga Pride 2007 .....	31
E.1.4. Riga Pride 2008 .....	32
E.1.5. Riga Pride 2009 .....	33
<b>F. CRIMINAL LAW .....</b>	<b>35</b>
F.1. Amending the Criminal Law with anti-discrimination provisions .....	35
F.2. Hate crimes with a homophobic motivation .....	37
F.3. Non-criminal remedies against homophobic hate speech ...	39
<b>G. TRANSGENDER ISSUES .....</b>	<b>40</b>
G.1. Change of gender/sex in the Birth Register.....	42

<b>H. MISCELLANEOUS.....</b>	<b>46</b>
<b>I. GOOD PRACTICES.....</b>	<b>48</b>
<b>ANNEX 1 – CASE LAW .....</b>	<b>49</b>
<b>ANNEX 2 – STATISTICS .....</b>	<b>58</b>

## 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 grounds of sexual orientation were adopted with notable reluctance.

The legislator has not gone beyond the minimum requirements of the Employment Directive 2000/78/EC, and discrimination on the ground of sexual orientation is explicitly forbidden only in employment, both in the private and in the public sectors, as well as in civil service.

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

To date, there is only one court case in Latvia on alleged discrimination on the ground of sexual orientation in a labour relationship, in the recruitment stage. Although the first instance court satisfied the plaintiff's claim, the appeal court and the court of cassation rejected it. This has now led to a communication being submitted to the UN Human Rights Committee.

The Ombudsman's Office has competence as the specialised body for implementing the principle of equal treatment overall. However, the statistics of the Ombudsman's Office on cases of alleged discrimination on the ground of sexual orientation do not clearly indicate in which spheres this form of discrimination is most widespread. In addition, the outcome of cases under review by the Ombudsman's Office is not fixed in its statistics.

In 2009, the effectiveness and even continued existence of the Ombudsman's institution came under threat due to internal conflict in the Office and cuts in the budget for 2010, which have significantly reduced the Office's capacity.

### Freedom of movement

As Latvia does not recognise same-sex marriage nor civil partnership registration, neither the partner him/herself nor other members of partner's

family can benefit from the EU legislation with regard to the freedom of movement.

## Asylum and subsidiary protection

The refugee definition of Asylum Law in force until the adoption of the new Asylum Law in 2009 included persecution on grounds of membership of a particular social group as leading to the recognition of refugee status. The new Asylum Law adopted on 15 June 2009 now clarifies explicitly that the social group definition includes sexual orientation. Until January 2010, no asylum seeker had applied for asylum in Latvia on this basis.

## Family reunification

As Latvia does not recognise same-sex marriage nor the civil partnership registration, neither the partner him/herself nor other members of partner's family can benefit from the EU legislation with regard to the family reunification.

## 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 are expressed publicly every year concerning this event not only by groups of general population, but also by politicians and representatives of administrative power. However, slow progress is observed in the tone and content of the overwhelmingly negative discourse and policing of Pride marches. Despite several courts rulings revoking the ban on Pride, the right to organise such events continues to be challenged by elected officials.

## Hate speech and criminal law

The Latvian Criminal Law does not contain provisions with regard to hate speech related to homophobia. Since amendments of 21.06.2007, the Criminal Law includes the prohibition of discrimination. 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 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.

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

Until recently the only Latvian legal provision indicating the possibility to change gender in a legal sense was Article 32 of the Civil Status Documents Law of 2005 on supplementing of the Birth Register. 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. Amendments to Sexual and Reproductive Health Law and Civil Status Documents Law were approved by the Cabinet of Ministers in August 2009 aimed at eliminating legal gaps concerning gender reassignment, but were dismissed by the parliament as overly liberal and returned for elaboration to working group which drafted the amendments.

## Miscellaneous

In 2007, Centre for Protection of Consumer Rights 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.

There is no definition of family in the 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'. However, the Civil Law allows adoption not only to married couples but also for a single person. The procedures do not foresee considering sexual orientation among the factors analysed when establishing the suitability of the potential parent for adopting a child.

## Good practices

There are no new legal provisions and legal interpretations in the 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.

## A. 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 *Latvijas Republikas Labklājības ministrija* (LM) [the Ministry of Welfare of Republic of Latvia]. Although with some delays and shortcomings, to date requirements of the Employment Directive have generally been transposed into Latvian law.

### A.1. Legislative process of implementation of Employment Directive

Most main requirements of Employment Directive 2000/78/EC were incorporated into the Latvian Labour Law of 2001<sup>1</sup> during the drafting process, and by amendments of 2004<sup>2</sup>. The Labour Law now 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 law<sup>3</sup> was elaborated by *Īpašu uzdevumu ministra sabiedrības integrācijas lietās sekretariāts* (IUMSILS) [Secretariat of Special Assignments Minister for Social Integration], taking into account all international standards relating to non-discrimination, which are binding upon Latvia. The law contained a wide range of grounds<sup>4</sup>, including the explicitly

---

<sup>1</sup> Latvia/Darba likums (20.06.2001), available at:

<http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>2</sup> Latvia/Likums Grozījumi Darba likumā [Law Amendments to the Labour Law] (22.04.2004), available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (24.02.2008).

<sup>3</sup> Latvia/ Likumprojekts Diskriminācijas novēršanas likums [Draft Law on Prevention of Discrimination], Reg.No. 741 (passed the first reading 07.04.2004), available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (24.02.2008).

<sup>4</sup> 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.



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 criticism by *Saeimas Cilvēktiesību un sabiedrisko lietu komisija* [Parliament's Human Rights and Public Affairs Committee] and *Saeimas Juridiskais birojs* [Parliament's Law Bureau] and attempts to reduce the protection level set by this law to the minimum 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, the Law on Social Security, the Law on the State Civil Service, the Law on Consumer Rights, the Law on Associations and Foundations, the Law on the National Human Rights Office, the Criminal Law, and the Administrative Violations Code.

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.<sup>5</sup> The amendments to the Criminal Law explicitly name as ground of discrimination only racial or ethnic identity, and contain general reference to 'other prohibition of discrimination determined by law'.<sup>6</sup> 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 have not to date been forwarded for the second reading. Amendments prohibiting discrimination were adopted to the Law on Social Security in 2005<sup>7</sup>, 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'.

---

<sup>5</sup> Latvia/Likums Grozījumi Administratīvo pārkāpumu kodeksā [Law Amendments to the Administrative Violations Code] (17.05.2007), Art. 204<sup>17</sup>, available at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/61FE6B48F447AF71C22572F1002B6688?OpenDocument> (24.02.2008).

<sup>6</sup> Latvia/Likums Grozījumi Krimināllikumā [Law Amendments to the Criminal Law] (21.06.2007), Art. 149.<sup>1</sup>, available at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?OpenDocument> (24.02.2008).

<sup>7</sup> Latvia/Likums Grozījumi likumā Par sociālo drošību [Law Amendments to the Law on Social Security] (01.12.2005), Art. 2.<sup>1</sup>, available at: <http://www.tc.lv/index.php?skip=240&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

In 2005-2006, amendments to the Labour Law, which were elaborated by the Ministry of Welfare in order specifically to include sexual orientation as one of the prohibited grounds on the list, led to sharp debates in the *Saeima* [Parliament]. One of the harshest opponents to 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 (member of *Latvijas Pirmā partija* (LPP) [Latvia's First Party]), 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.

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.<sup>8</sup> After reaction of the Ministry of Welfare, *Ārlietu ministrija* (ĀM) [Ministry of Foreign Affairs] 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,<sup>9</sup> sent an explanatory letter to the Speaker of Parliament requesting to return the amendments for parliamentary review.<sup>10</sup> On 21.09.2006 the Parliament reviewed and adopted amendments to the Labour Law that explicitly ban discrimination on ground of sexual orientation.<sup>11</sup> In line with the generally homophobic tone of the debate on these amendments, Latvia's First Party proposed amendments to the *Satversme* [Latvian Constitution] rephrasing Article 10 ('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

---

<sup>8</sup> Available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (24.02.2008).

<sup>9</sup> 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.'

<sup>10</sup> *Latvijas Vēstnesis* [Herald of Latvia], [http://www.lv.lv/index.php?menu\\_body=DOC&id=138230&menu\\_left=LAIIDIENS&PHPSESSID=67](http://www.lv.lv/index.php?menu_body=DOC&id=138230&menu_left=LAIIDIENS&PHPSESSID=67) (22.06.2006).

<sup>11</sup> Latvia/Likums Grozījumi Darba likumā [Law Amendments to the Labour Law] (21.09.2006), available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (24.02.2008).

same-sex marriage, despite the fact that the Article 35(2) of the Civil Law<sup>12</sup> already explicitly bans marriage between persons of the same sex.<sup>13</sup>

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’.<sup>14</sup>

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 differential treatment concerning access to goods and services on grounds of gender, race and ethnicity.<sup>15</sup> The Law on Prohibition of Discrimination of Physical Persons Conducting Commercial Activities, adopted on 21 May 2009 prohibits differential treatment on grounds of gender, race or ethnic origin of persons conducting commercial activities in their access to goods or services.<sup>16</sup> 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] 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.<sup>17</sup>

---

<sup>12</sup> Latvia/Civillikums (28.01.1937), available at: <http://www.tc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>13</sup> Latvia/Likums Grozījums Latvijas Republikas Satversmē [Law Amendment to the Constitution of the Republic of Latvia] (15.12.2005), available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (24.02.2008).

<sup>14</sup> Latvia/Valsts Civildienesta likums [Civil Service Law] (07.09.2000), available at: <http://www.likumi.lv/doc.php?id=10944&mode=KDOC> (24.02.2008).

<sup>15</sup> Latvia/Grozījumi Patērētāju tiesību aizsardzības likumā [Amendments to the Consumer Rights Protection Law] (19.06.2008), para 3<sup>1</sup> available at <http://www.vestnesis.lv/index.php?menu=doc&id=177913> (12.01.2010)

<sup>16</sup> Latvia/Fizisko personu-saimnieciskās darbības veicēju-diskriminācijas novēršanas likums [Law on Prohibition of Discrimination of Physical Persons Conducting Commercial Activities] (21.05.2009), Section 2, available at <http://www.likumi.lv/doc.php?id=193005> (12.01.2010)

<sup>17</sup> Latvia/Likumprojekta “Fizisku personu, kuras veic saimniecisku darbību, diskriminācijas aizlieguma likums” anotācija [Annotation to the draft law “Law on the Prohibition of Discrimination of Physical Persons Conducting Commercial Activities], available at [http://www.saeima.lv/saeima9/lasa?dd=LP1088\\_0](http://www.saeima.lv/saeima9/lasa?dd=LP1088_0) (20.01.2010)

On 17 December 2009, the Saeima adopted the Law on Patients' Rights, which will come 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."<sup>18</sup> During the second reading following the proposals of the parliamentary Social and Employment Affairs Commission, 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."<sup>19</sup> In the 3<sup>rd</sup> 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.'<sup>20</sup> 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 Saeima in the first reading to the Law on Support to the Unemployed and Job Seekers, 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.<sup>21</sup> On 12 November 2009, amendments to the Education Law which prohibit differential treatment in providing education on grounds of gender<sup>22</sup>, 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

---

<sup>18</sup> Latvia/Pacientu tiesību likums (Reg.nr. 8<sup>th</sup> Saeima 1137, 1<sup>st</sup> reading adopted on 14.12.2006), Section 3, para 1, available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/96DC7AFDC685D344C225723E0047B5AC?OpenDocument> (21.01.2010)

<sup>19</sup> Latvia/Pacientu tiesību likums (Reg.nr. 126/Lp9, 2<sup>n</sup> reading, adopted on 20.12.2007), Section 3, para 1, available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/CB326871E55A53A7C22573B1002A235C?OpenDocument> (21.01.2010)

<sup>20</sup> Latvia/Pacientu tiesību likums (17.12.2009), Section 2, para 2, available at <http://www.likumi.lv/doc.php?id=203008> (21.01.2010)

<sup>21</sup> Latvia/Grozījumi Bezdarbnieku un darba meklētāju atbalsta likumā (Nr. 1577/LP9) [Amendments to the Law on Support of Unemployed and Job Seekers] Section 2.<sup>1</sup> para 1), available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/FF748D290799AC87C22576630047AA74?OpenDocument> (13.02.2010)

<sup>22</sup> Latvia/Grozījumi Izglītības likumā (Nr.1576/LP9) [Amendments to the Education Law], Section 3.<sup>1</sup> para 1), available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/8A9166B9CFE512F4C2257663004533D5?OpenDocument> (13.02.2010)

parliamentary Education, Culture and Science Commission.<sup>23</sup> 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.<sup>24</sup>

The conclusion is that the legislator has not gone beyond the minimum requirements of the Employment Directive 2000/78/EC, and discrimination on the ground of sexual orientation is explicitly forbidden only in employment, both in the private and in the public sectors, as well as in civil service. However, sexual orientation can be implicitly read also under the 'other conditions' in the Law on Social Security after amendments of 2005<sup>25</sup>, the Law on Patients' Rights adopted in 2009.<sup>26</sup> As the Constitution<sup>27</sup> 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.

## A.2. Court procedure in employment cases

The Labour Law 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.<sup>28</sup> 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.<sup>29</sup> However, provisions of the Labour Law regarding violation of the prohibition of

---

<sup>23</sup> Latvia/Grozījumi Izglītības likumā (Nr.1576/LP9) [Amendments to the Education Law], Section 3, <sup>1</sup>para 5), available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/8A9166B9CFE512F4C2257663004533D5?OpenDocument> (13.02.2010)

<sup>24</sup> Skolās ar likumu neliegs musulmaņu burku valkāšanu [Wearing of Muslim Burkas Will not be Prohibited by Law], 26 January 2010, www.delfi.lv, available at <http://www.delfi.lv/archive/print.php?id=29500055> (02.02.2010)

<sup>25</sup> Latvia/Likums Grozījumi likumā Par sociālo drošību [Law Amendments to the Law on Social Security] (01.12.2005), Art. 2,<sup>1</sup>, available at: <http://www.ttc.lv/index.php?skip=240&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>26</sup> Latvia/Pacientu tiesību likums (17.12.2009), Section 2, para 2, available at <http://www.likumi.lv/doc.php?id=203008> (21.01.2010)

<sup>27</sup> Latvia/Latvijas Republikas Satversme [Constitution of the Republic of Latvia] (15.02.1922), Art. 91. Available at: [http://www.saeima.lv/Likumdosana/likumdosana\\_satversme.html](http://www.saeima.lv/Likumdosana/likumdosana_satversme.html) (24.02.2008).

<sup>28</sup> Latvia/Darba likums (20.06.2001), Art. 30, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>29</sup> Latvia/Darba likums (20.06.2001), Art. 31, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

differential treatment in the recruitment process<sup>30</sup> when giving notice of termination of an employment contract during the probationary period,<sup>31</sup> regarding equal work remuneration,<sup>32</sup> violations of the prohibition of differential treatment in determining working conditions, occupational training or raising of qualifications or promotions<sup>33</sup> foresee a time limit of only one month for bringing a claim to the court.

On 8 October 2009, the Saeima adopted amendments in the second reading to the Labour Law. 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, in giving notice of termination of labour contract during trial period, concerning equal pay, in determining working conditions, professional training or promotion). In cases of dismissal the time limit for filing a claim in court remains the same – one month.<sup>34</sup>

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). To date, there has been only one employment case on ground of sexual orientation concerning non-hiring tried in Latvia. (See Annex 1.)

Natural persons may conduct matters in court personally or through their authorised representatives.<sup>35</sup> Any natural person may be an authorised representative in the civil procedure, taking into account restrictions, specified by the law.<sup>36</sup> Any individual litigant also has the right to hire a legal counsel to provide legal assistance in their matter.<sup>37</sup> In order to improve access to the court,

---

<sup>30</sup> Latvia/Darba likums (20.06.2001), Art. 34 Section 1, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>31</sup> Latvia/Darba likums (20.06.2001), Art. 48, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>32</sup> Latvia/Darba likums (20.06.2001), Art. 60 Section 3, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>33</sup> Latvia/Darba likums (20.06.2001), Art. 95 Section 2, available at: <http://www.ttc.lv/index.php?skip=75&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>34</sup> Latvia/Grozījumi Darba likuma [Amendments to Employment Law], (Nr.1181 /Lp9), Section 34, available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/5DAAF56642D2B5E3C22576430021DDDF?OpenDocument> (12.01.2010)

<sup>35</sup> Latvia/Civilprocesa likums (14.10.1998), Art. 82 Section 1, available at: <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>36</sup> Latvia/Civilprocesa likums (14.10.1998), Art. 83 <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>37</sup> Latvia/Civilprocesa likums (14.10.1998), Art. 82. Section 4 <http://www.ttc.lv/index.php?skip=15&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

on 01.06.2005, the Law on State-provided Legal Aid came into force,<sup>38</sup> 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 *Satversmes tiesa* [Constitutional Court] in Latvia 'reviews cases concerning the compliance of laws with *Satversme* [Constitution], [...], compliance of other regulatory 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'.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> However, none of the decisions has as of yet concerned the ground of sexual orientation.

---

<sup>38</sup> Latvia/Valsts nodrošinātās juridiskās palīdzības likums [Law on State-provided Legal Aid] (17.03.2005), available at: <http://www.likumi.lv/doc.php?id=104831&mode=DOC> (24.02.2008).

<sup>39</sup> Latvia/Satversmes tiesas likums [Constitutional Court Law] (05.06.1996), Art. 16, available at: <http://www.ttc.lv/index.php?skip=225&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>40</sup> Latvia/Grozījumi Satversmes tiesas likumā [Law Amendments to the Constitutional Court Law] (30.11.2000), Art. 17 Section 1 (11), available at: <http://www.saeima.lv/saeima7/reg.likprj> (25.02.2008).

<sup>41</sup> Latvia/Latvijas Republikas Satversme [Constitution of the Republic of Latvia] (15.02.1922; Section on fundamental rights adopted on 15.10.1998), Art. 91, available at: [http://www.saeima.lv/Likumdosana/likumdosana\\_satversme.html](http://www.saeima.lv/Likumdosana/likumdosana_satversme.html) (24.02.2008).

### A.3. Out-of-court procedures in employment cases

On 15.12.2005, in course of transposition of the Racial Equality Directive, the amendments to the Law on the National Human Rights Office were adopted<sup>42</sup> providing the *Valsts Cilvēktiesību birojs* (VCB) [National Human Rights Office (NHRO)] 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.<sup>43</sup> The NHRO created a Discrimination Prevention Department<sup>44</sup> 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 *Tiesībsarga birojs* [Ombudsman's Office] was established on the basis of NHRO and took over the duty of the NHRO to work as a specialised body for the implementation of the principle of equal treatment. Although the Ombudsman's Office started to work on 01.01.2007, the first *Tiesībsargs* [Ombudsman] was confirmed by parliament only on 01.03.2007.<sup>45</sup> The legal ground of the work of the Ombudsman's Office is the Ombudsman Law.<sup>46</sup> Like the Law on the NHRO, in addition to functions within the broad human rights and good governance mandate, the Ombudsman Law sets as one of the functions of the Ombudsman to promote the compliance with the principles of equal treatment and to prevent any kind of discrimination.<sup>47</sup> Among the duties of Ombudsman is the examination of submissions,

---

<sup>42</sup> Latvia/Likums Grozījumi Likumā par Valsts Cilvēktiesību biroju [Law Amendments to the Law on the National Human Rights Office] (15.12.2005), available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (24.02.2008).

<sup>43</sup> Latvia/Likumprojekts Grozījumi Likumā par Valsts Cilvēktiesību biroju [Draft Law Amendments to the Law on the National Human Rights Office], Reg.No. 1321 (passed the second reading in the Parliament on 07.04.2004), available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (24.02.2008).

<sup>44</sup> Operating since 16.11.2005. Information available on the website of the National Human Rights Office <http://www.vcb.lv/default.php?open=jaunumi&this=161105.202> (25.02.2008).

<sup>45</sup> Saeima – Latvian Parliament, <http://www.saeima.lv/steno/Saeima9/070301/st070301.htm> (25.02.2008).

<sup>46</sup> Latvia/Tiesībsarga likums (06.04.2006), available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (25.02.2008).

<sup>47</sup> Latvia/Tiesībsarga likums (06.04.2006), Art. 11 Section 2, available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (25.02.2008).



complaints and proposals of private individuals.<sup>48</sup> The examination procedure shall be completed by the conciliation of the persons involved in the procedure or an opinion of the Ombudsman. The opinions of the Ombudsman are not binding, they are recommendations.<sup>49</sup> The Ombudsman has a right, upon termination of an examination procedure and establishment of a violation, to defend the rights and interests of a private individual in administrative court, if that is necessary in the public interest; as well as upon termination of an 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.<sup>50</sup> To date, the Ombudsman has exercised this right in one case which concerned discrimination on grounds of gender.<sup>51</sup>

The effectiveness and even continued existence of the Ombudsman'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 Ombudsman Office sent an open letter to the Prime Minister, State President, Speaker of the Saeima and Chairperson of the Saeima Human Rights and Public Affairs Commission demanding the resignation of the Ombudsman 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 Ombudsman's opinion on essential matters.<sup>52</sup> The Ombudsman denied the allegations.<sup>53</sup> Earlier, on 12 June, a trade union was established in the Office, including 32 out of 48 staff members. Several leading NGOs criticised the Ombudsman for lack of effectiveness and called upon the parliamentary Human Rights and Public Affairs Commission to hold a hearing in view of the seriousness of the threat to effectiveness of the internal conflict.<sup>54</sup> On 14 July, the Commission heard the conflicting sides, and stated that it would not propose the dismissal of the Ombudsman and urged the parties to resolve the conflict internally.<sup>55</sup> As a result of the conflict the head of the four-person

---

<sup>48</sup> Latvia/Tiesībsarga likums (06.04.2006), Art. 12 Section 1, available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (25.02.2008).

<sup>49</sup> Latvia/Tiesībsarga likums (06.04.2006), Art. 25 Section 4, available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (25.02.2008).

<sup>50</sup> Latvia/Tiesībsarga likums (06.04.2006), Art. 13 Section 10, available at: [http://www.saeima.lv/saeima8/mek\\_reg\\_fre](http://www.saeima.lv/saeima8/mek_reg_fre) (25.02.2008).

<sup>51</sup> Ombudsman's Annual Report 2008 (in Latvian), available at [http://www.tiesibsargs.lv/lat/publikacijas/gada\\_zinojumi/?doc=596](http://www.tiesibsargs.lv/lat/publikacijas/gada_zinojumi/?doc=596) (12.01.2010)

<sup>52</sup> Letter by Staff of Ombudsman's Office to State Officials, *Diena*, 3 July 2009, available at <http://www.diena.lv/upload/manual/veestuleparprobleemaamtiesiisargabirojaa.doc> (12.01.2010)

<sup>53</sup> Dzērve, Laura. The Ombudsman does not Plan to Leave Office, *Diena*, 13 July 2009, available at <http://www.diena.lv/lat/politics/hot/tiesibsargs-amatu-pamest-negrasas> (12.01.2010)

<sup>54</sup> Non-governmental Organisations Call Upon Saeima Commission to Evaluate the Work of the Ombudsman, *LETA news agency*, 7 July 2009. (12.01.2010)

<sup>55</sup> The Conflict in the Ombudsman's Office Must Be Resolved in the Office, Jurista Vārds, 21 July 2009, available at <http://www.juristavards.lv/index.php?menu=DOC&id=194920> (12.01.2010)

Discrimination Prevention Department left the Office.<sup>56</sup> 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 Ombudsman 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 Ombudsman's Office,<sup>57</sup> but following the protests by the State President, MPs and civil society actors,<sup>58</sup> gave up the idea, but proposed further cuts in the Office's budget by 200,000 Lats (~285,700 euros).<sup>59</sup> Before the third reading on the Law on State Budget, according to information on the parliamentary website, the budget of the Ombudsman'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 Found. 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, Ombudsman's Office has undergone significant reorganisation. The Discrimination Prevention Department has been abolished, and two remaining anti-discrimination experts have been reassigned to the newly formed Legal Department although they allegedly retain special responsibility for discrimination cases.<sup>60</sup>

The *Valsts Darba inspekcija* [State Labour Inspectorate (SLI)] is a state supervisory and control institution under the Ministry of Welfare. According to the State Labour Inspectorate Law<sup>61</sup>, 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

---

<sup>56</sup> Without Any Changes in Ombudsman's Office, Head of Discrimination Department Leaves Office, *LETA news agency*, 12 August 2009. (12.01.2010)

<sup>57</sup> Government Discussed the Liquidation of the Ombudsman's Office, 24 September 2009, available at <http://www.delfi.lv/news/budget10/news/valdiba-apspriesta-tiesibsarga-biroja-likvidesana.d?id=27024603> (12.01.2010)

<sup>58</sup> Šupstika Laura, Zatlērs Stands against the Closure of Ombudsman's Office, *Diena*, 26 September 2009, available at <http://www.diena.lv/lat/politics/hot/vike-freiberga-likvidet-tiesibsarga-biroju-nedrikst> (12.01.2010).

<sup>59</sup> Ombudsman's Office Will not be Closed; Costs will be Decreased by 200,000 Lats, *LETA news agency*, 3 October 2009. (12.01.2010)

<sup>60</sup> Information provided to Latvian Centre for Human Rights by the Ombudsman's Office on 08.02.2010.

<sup>61</sup> Latvia/Valsts darba inspekcijas likums (13.12.2001), available at: <http://www.likumi.lv/doc.php?id=56939&mode=KDOC> (25.02.2008).

of opinion between employers and employees.<sup>62</sup> 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).<sup>63</sup> 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.<sup>64</sup>

Article 14 of the Law on Trade Unions 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.<sup>65</sup> 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.<sup>66</sup> The Labour Dispute Law 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.<sup>67</sup> However, in practice, available information suggests that there has not yet been any application of these provisions concerning cases of discrimination. 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 very 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.<sup>68</sup> 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

---

<sup>62</sup> Latvia/Valsts Darba inspekcijas likums (13.12.2001), Art. 3, available at: <http://www.likumi.lv/doc.php?id=56939&mode=KDOC> (25.02.2008).

<sup>63</sup> Latvia/Valsts Darba inspekcijas likums (13.12.2001), Art. 5 Section 2 (6), Art. 5 Section 3, available at: <http://www.likumi.lv/doc.php?id=56939&mode=KDOC> (25.02.2008).

<sup>64</sup> Latvia/Latvijas Administratīvo pārkāpumu kodekss (07.12.1984), Art. 215<sup>3</sup>, available at: <http://www.likumi.lv/doc.php?id=89648&mode=KDOC> (25.02.2008).

<sup>65</sup> Latvia/Likums Par arodbiedrībām (13.12.1990), Art. 14, available at: <http://www.likumi.lv/doc.php?id=64867&mode=KDOC> (25.02.2008).

<sup>66</sup> Latvia/Likums Par arodbiedrībām (13.12.1990), Art. 18, available at: <http://www.likumi.lv/doc.php?id=64867&mode=KDOC> (25.02.2008).

<sup>67</sup> Latvia/Darba strīdu likums (26.09.2002), Art. 8, available at: <http://www.ttc.lv/index.php?skip=120&itid=likumi&id=10&tid=59&l=LV> (25.02.2008).

<sup>68</sup> Latvia/Biedrību un nodibinājumu likums (30.10.2003), Art. 10 Section 2, available at: <http://www.ttc.lv/index.php?skip=165&itid=likumi&id=10&tid=59&l=LV> (25.02.2008).

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.<sup>69</sup> However, there are still very 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 is no known case where individual has been defended by an association or a foundation under the previously mentioned provision of law. However, 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.<sup>70</sup>

---

<sup>69</sup> Latvia/Biedrību un nodibinājumu likums (30.10.2003), Art. 10 Section 3, available at: <http://www.tc.lv/index.php?skip=165&itid=likumi&id=10&tid=59&l=LV> (25.02.2008).

<sup>70</sup> Latvia/Cēsu rajona tiesa/C1101945 (05.07.2005); Latvia/Rīgas pilsētas Ziemeļu rajona tiesa/C32242904047505 (29.04.2005) and Rīgas apgabaltiesa/C32242904 CA-1096-2 (08.06.2006).

## B. 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.<sup>71</sup> The legislation is silent on this issue with regard to partnerships registered in other countries, whether EU member states or third countries.

The Immigration Law<sup>72</sup> 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.

However, accordingly to information provided by Ms Ilze Briede, *Pilsonības un migrācijas lietu pārvaldes Migrācijas politikas nodaļas vadītāja* [Head of the Department of Migration Policy of the Office of Migration and Citizenship Affairs (OCMA)], the OCMA would refuse to issue a residence permit to the spouse of an alien (as well as to the spouse of a Latvian citizen) on the basis of a same-sex marriage or partnership registered abroad, as the Latvian Civil Law explicitly prohibits same sex marriage and there is no any regulation on civil partnership in Latvia.

This means that neither the partner him/herself nor other members of partner's family are considered to be a family for the purposes of freedom of movement or family reunification.<sup>73</sup>

This effectively means that an LGBT partner cannot accompany or join an EU citizen in Latvia as a family member, or join his/her partner on the basis of family reunification, and thus cannot benefit from the relevant EU legislation.

---

<sup>71</sup> Latvia/Civillikums [Civil Law] (28.01.1937), Art. 35(2), available at: <http://www.ttc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&I=LV> (24.02.2008).

<sup>72</sup> Latvia/Imigrācijas likums [Immigration Law] (31.10.2002), Art. 26, available at: <http://www.likumi.lv/doc.php?id=68522>

<sup>73</sup> Information provided by the Office of Citizenship and Migration Legal Department on 18.02.2008.

While there are known instances of LGBT partners living in Latvia, the exercise of the freedom of movement or family reunification has never been the legal basis for entry and residence, the ‘accompanying’ partner always having a separate and distinct official ground for entry and residence (such as to work, to study etc.).<sup>74</sup>

---

<sup>74</sup> Information provided by Alliance of LGBT and their friends ‘Mozaika’ on 18.02.2008.

## C. Asylum and subsidiary protection

Until the adoption of the new Asylum Law on 15 June 2009, the refugee definition included persecution based on membership of a particular social group<sup>75</sup> as grounds for refugee status.<sup>76</sup> However, it was not clear if the interpretation of the provision would include persecution because of sexual orientation. The new Asylum Law, elaborated with the intention to implement the EU directives on minimum standards, 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 seeker’s: [...] 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.”<sup>77</sup>

According to the information provided by *Pilsonības un migrācijas lietu pārvalde (PMLP)* [Office of Citizenship and Migration (OCMA)], no asylum seeker has applied for asylum in Latvia on grounds of sexual orientation.<sup>78</sup>

Under the new 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 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.<sup>79</sup>

The overall context of Latvian situation of asylum needs to be taken into account. Since 1998 when Latvia introduced the asylum procedure, 306 persons have applied for asylum in Latvia, according to information of the Office of Citizenship and Migration. The status of refugee has been granted to 22 persons

---

<sup>75</sup> 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.

<sup>76</sup> Latvia/Patvērums likums [Asylum Law] (07.03.2002), Art. 23, available at: <http://www.likumi.lv/doc.php?id=60721&mode=KDOC> (25.02.2008).

<sup>77</sup> Latvia/ Patvērums likums [Asylum Law] (15.06.2009), Section 22 para (1), 4), b) available at <http://www.vestnesis.lv/index.php?menu=doc&id=194029> (04.02.2010)

<sup>78</sup> Letter No. 24/7-473 as of 13.02.2008 to the Latvian Centre for Human Rights; Letter No. 24/1-29/356 as of 09.02.2010 from the Head of OCMA to the Latvian Centre for Human Rights.

<sup>79</sup> Latvia/Patvērums likums [Asylum Law] (07.03.2002), Art. 35, available at: <http://www.likumi.lv/doc.php?id=60721&mode=KDOC> (25.02.2008).

between 1998 and 2009. Two refugees subsequently became Latvian citizens through naturalisation. Subsidiary status (alternative status by Latvian law) has been granted to 27 persons in the period from 2002 to 2009.<sup>80</sup>

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” 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.<sup>81</sup>

The Latvian Civil Law explicitly prohibits same sex marriage and there is no regulation on civil partnership in Latvia. Subsequently, according to information provided by the Office of Migration and Citizenship Affairs (OCMA), the OCMA would refuse to accept LGBT partners as family members in the context of asylum and/or subsidiary protection, including in cases where the same-sex marriage or partnership is registered in a country which recognises it.

According to OCMA, there have been no applications from LGBT partners to join their spouses under asylum and/or subsidiary protection in Latvia.<sup>85</sup> There also is no other evidence on such cases either from non-governmental LGBT organisations. As a result there are no relevant statistics on the number 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.

---

<sup>80</sup> Information available at: [http://www.pmlp.gov.lv/lv/news/pazinojumi.html?news\\_id=494](http://www.pmlp.gov.lv/lv/news/pazinojumi.html?news_id=494) (13.02.2010).

<sup>81</sup> Latvia/Ministru kabineta Nr.74 Kārtība, kādā Latvijas Republikā notiek bēgļa, alternatīvo statusu vai pagaidu aizsardzību ieguvušās personas ģimenes atkalapvienošana [Cabinet of Ministers Regulation nr 74 Procedure of Family Re-Unification of a Person who has Received Refugee, Alternative Status of Temporary Protection in the Republic of Latvia], (26.01.2010), Section 2, available at <http://www.likumi.lv/doc.php?id=204326> (10.02.2010)

<sup>85</sup> Letter No. 24/7-473 of 13.02.2008 to the Latvian Centre for Human Rights; Letter No 24/1-29/356 of 09.02.2010 to the Latvian Centre for Human Rights.



## D. 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.<sup>86</sup> The legislation is silent on this issue with regard to partnerships registered in other countries, whether EU member states or third countries.

The Immigration Law<sup>87</sup> 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.

However, according to information provided by the Office of Migration and Citizenship Affairs (OCMA), the OCMA would refuse to issue a residence permit to the spouse of an alien (as well as to the spouse of a Latvian citizen) on the basis of a same-sex marriage or partnership registered abroad,<sup>88</sup> as the Latvian Civil Law explicitly prohibits same sex marriage and there is no any regulation on civil partnership in Latvia.

This means that neither the partner him/herself nor other members of partner's family are considered to be a family for the purposes of freedom of movement or family reunification.<sup>89</sup>

This effectively means that an LGBT partner cannot accompany or join as a family member, or join his/her partner on the basis of family reunification, and thus cannot benefit from the relevant EU legislation.

---

<sup>86</sup> Latvia/Civillikums [Civil Law] (28.01.1937), Art. 35(2), available at: <http://www.ttc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>87</sup> Latvia/Imigrācijas likums [Immigration Law] (31.10.2002), Art. 26, available at: <http://www.likumi.lv/doc.php?id=68522>

<sup>88</sup> Letter No 24/1-29/356 of 09.02.2010 to the Latvian Centre for Human Rights.

<sup>89</sup> Information provided by the Office of Citizenship and Migration Legal Department on 18.02.2008.

While there are known instances of LGBT partners living in Latvia, the exercise of the freedom of movement or family reunification has never been the legal basis for entry and residence, the ‘accompanying’ partner always having a separate and distinct official ground for entry and residence (such as to work, to study etc.).<sup>90</sup>

---

<sup>90</sup> Information provided by Alliance of LGBT and their friends ‘Mozaika’ on 18.02.2008.

## E. Freedom of assembly

The Latvian law stipulates that ‘The State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets’.<sup>91</sup> The Law on Meetings, Processions and Pickets<sup>92</sup> 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, 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<sup>93</sup> 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

---

<sup>91</sup> Latvia/Latvijas Republikas Satversme [Constitution of the Republic of Latvia] (15.02.1922; Section on fundamental rights adopted on 15.10.1998), Art. 103, available at: [http://www.saeima.lv/Likumdosana/likumdosana\\_satversme.html](http://www.saeima.lv/Likumdosana/likumdosana_satversme.html) (24.02.2008).

<sup>92</sup> Latvia/Likums Par sapulcēm, gājieniem un piketiēm [Law on Meetings, Processions and Pickets] (16.01.1997), available at: <http://www.likumi.lv/doc.php?id=42090&mode=KDOC> (25.02.2008).

<sup>93</sup> Latvia/Likums Par sapulcēm, gājieniem un piketiēm [Law on Meetings, Processions and Pickets] (16.01.1997), available at: <http://www.likumi.lv/doc.php?id=42090&mode=KDOC> (25.02.2008).

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.<sup>94</sup>

Refusal to organise meeting, procession or picket is subject to judicial review and can be appealed to the *Administratīvā rajona tiesa* [Administrative District Court] which has to review a case within three days. The court decision is effective immediately upon adoption.<sup>95</sup>

## E.1. 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.

### E.1.1. Riga Pride 2005

At the beginning of July 2005, *Latvijas geju un lesbiešu jaunatnes atbalsta grupa* [Latvian Gay and Lesbian Youth Support Group] obtained permission from *Rīgas pilsētas izpilddirektors* [Riga City Executive Director] 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.<sup>96</sup> This followed after strong political pressure, mainly from *Latvijas Pirmā Partija* [Latvian First Party], and after a threat to organise public disorder issued by the radical nationalist organisations *Klubs 415* [Club 415] and *Nacionālā Spēka savienība* [Union of National Force], 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

---

<sup>94</sup> Latvia/Likums Par sapulcēm, gājieniem un piketiēm [Law on Meetings, Processions and Pickets] (16.01.1997), Art. 16, available at: <http://www.likumi.lv/doc.php?id=42090&mode=KDOC> (25.02.2008).

<sup>95</sup> Latvia/Likums Par sapulcēm, gājieniem un piketiēm [Law on Meetings, Processions and Pickets] (16.01.1997), Art. 17, available at: <http://www.likumi.lv/doc.php?id=42090&mode=KDOC> (25.02.2008).

<sup>96</sup> 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.

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.<sup>97</sup>

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 thousands 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.

### E.1.2. 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.

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, *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.<sup>98</sup>

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

---

<sup>97</sup> Latvia/Administratīvā rajona tiesa/A42349805 A3498-05/19 (22.07.2005), available at: <http://www.politika.lv/index.php?id=5309> (25.02.2008).

<sup>98</sup> Information available at: [http://www.lv.lv/index.php?menu\\_body=DOC&id=139772&menu\\_left=LAIDIENS&PHPSESSID=8ae6202bfb119fe1e59f3e15eddb0c80](http://www.lv.lv/index.php?menu_body=DOC&id=139772&menu_left=LAIDIENS&PHPSESSID=8ae6202bfb119fe1e59f3e15eddb0c80) (26.02.2008).

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.<sup>99</sup>

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 will not be known 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. 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.<sup>100</sup>

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.<sup>101</sup>

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, 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 declared refusal to organise the gay Pride 2006 as unlawful.<sup>102</sup>

---

<sup>99</sup> Information available at: [http://www.lv.lv/index.php?menu\\_left=LAIDIENS&mode=DOC&id=139809&PHPSESSID=67](http://www.lv.lv/index.php?menu_left=LAIDIENS&mode=DOC&id=139809&PHPSESSID=67) (26.02.2008).

<sup>100</sup> Latvia/Administratīvā rajona tiesa/ (21.07.2006).

<sup>101</sup> Information available at: [http://www.ilga-europe.org/europe/guide/country\\_by\\_country/latvia/riga\\_pride\\_2006](http://www.ilga-europe.org/europe/guide/country_by_country/latvia/riga_pride_2006) (25.02.2008).

<sup>102</sup> Latvia/Administratīvā apgabaltiesa/AA43-0838-07/7 (12.04.2007).

Riga City Council submitted cassation appeal to the Supreme Court Administrative Department, which upheld the decision of the Administrative Regional Court on 15.11.2007.<sup>103</sup> (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.<sup>104</sup>

### E.1.3. Riga Pride 2007

In the beginning of 2007, the new 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.<sup>105</sup> 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.<sup>106</sup>

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.

---

<sup>103</sup> Latvia/Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments/A42443906 SKA – 442/2007 (15.11.2007), available at: <http://www2.mozaika.lv/?lang=1&mid=79> (25.02.2008).

<sup>104</sup> Latvia/Satversmes tiesa/2006-03-0106 (23.11.2006).

<sup>105</sup> Information available at: <http://news.bbc.co.uk/2/hi/europe/6716287.stm> (25.02.2008); <http://uk.reuters.com/article/worldNews/idUKL0311434220070603> (25.02.2008). +

<sup>106</sup> Information provided by Alliance of LGBT and their friends Mozaika on 18.02.2008.

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.

#### E.1.4. 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.<sup>107</sup> 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.

On 16 October 2008, Riga City Centre District Court found two persons, a father and his underage son guilty of hooliganism, as in 2007 they had thrown petards at the end of the Pride March which took place in a closed area in Vermane Park under heavy police security. 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 register with the probation service. The father had also been charged with malicious abuse of the rights of a guardian.<sup>108</sup> The decision has been appealed, and the hearing at the Riga Regional Court has been scheduled for 18.03.2010.

---

<sup>107</sup> Praidā balance – pieci aizturētie (Pride Account – Five Detained), available at <http://www.apollo.lv/portal/news/articles/128909>. (05.02.2010)

<sup>108</sup> Latvia/Rīgas pilsētas Centra rajona tiesa/ Case nr. Nr.11087100907/16.10.2008



### E.1.5. 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 “Mozaīka” 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.<sup>109</sup>

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.<sup>110</sup> The Riga Vice-Mayor called the Friendship Days an “intentional provocation threatening the standards of security and morals in the city.”<sup>111</sup> 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.<sup>112</sup>

---

<sup>109</sup> 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.

<sup>110</sup> 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.

<sup>111</sup> 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.

<sup>112</sup> Copy of the Letter by the Riga City Executive Director to Association of LGBT and their Friends “Mozaīka” Nr 421.1/RD-09-1326-sd of 14 May 2009.

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 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*.<sup>113</sup> 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.<sup>114</sup>

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.<sup>3</sup>). 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.<sup>115</sup>

---

<sup>113</sup> Praidu atļauj – tiesas zālē arī nesaskaņas (Pride Permitted,, Disagreement in Court Room), available at <http://www.apollo.lv/portal/news/articles/167054> (05.02.2010)

<sup>114</sup> Tiesa izbeidz lietu pret «Jauno paaudzi» par protesta akcijām [Court Terminates Case against the ‘New Generation’ for Protest Actions], *Leta*, 3 September 2009 available at <http://www.diena.lv/lat/politics/riga/tiesa-izbeidz-administrativo-lietu-pret-jauno-paaudzi-par-protesta-akcijam-draudzibas-dienu-gajieni> (05.02.2010)

<sup>115</sup> Senāts noraida Pujata un Šmita lūgumu par pieaicināšanu trešās personas statusā (Senate Turns Down Pujats and Smits request of Participation as Third Persons in the Case), available at <http://www.at.gov.lv/information/about-trials/2009/200911/20091112/> (05.02.2010)

## F. Criminal law

The Latvian Criminal Law<sup>116</sup> 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’.<sup>117</sup>

### F.1. Amending the Criminal Law with anti-discrimination provisions

The amendments to the Criminal Law were initially drafted by *Īpašu uzdevumu ministra sabiedrības integrācijas lietās sekretariāts* (IUMSILS) [Secretariat of Special Assignments Minister for Social Integration] 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 78<sup>118</sup> were envisaged, separating the incitement to racial and ethnic hatred provision from the anti-discrimination provision, and to Article 150,<sup>119</sup> where violation of prohibition of discrimination

---

<sup>116</sup> Latvia/Krimināllikums (17.06.1998), available at: <http://www.ttc.lv/?id=59> (24.02.2008).

<sup>117</sup> Latvia/Likums Grozījumi Krimināllikumā [Law Amendments to the Criminal Law] (21.06.2007), Art. 149.<sup>1</sup>, available at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?OpenDocument> (24.02.2008).

<sup>118</sup> Latvia/Krimināllikums (17.06.1998), wording as of 01.01.2007. 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.

<sup>119</sup> Latvia/Krimināllikums (17.06.1998), wording as of 01.01.2007. 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.

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.<sup>120</sup>

On 11.01.2007 the Parliament adopted the new 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'.<sup>121</sup> 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, *Tieslietu ministrija* [Ministry of Justice], 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.<sup>122</sup> In her letter to the Speaker of the

---

<sup>120</sup> Latvia/Likums Grozījumi Krimināllikumā (23.11.2006), available at: [http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=\(Title\)=\\*krimināllikumā\\*&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=(Title)=*krimināllikumā*&SearchMax=0&SearchOrder=4) (25.02.2008)

<sup>121</sup> Latvia/Likums Grozījumi Krimināllikumā (11.01.2007), available at: [http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=\(Title\)=\\*krimināllikumā\\*&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webAll?SearchView&Query=(Title)=*krimināllikumā*&SearchMax=0&SearchOrder=4) (25.02.2008).

<sup>122</sup> Latvia/Latvijas Republikas Satversme [Constitution of the Republic of Latvia] (15.02.1922), 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

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.<sup>123</sup>

On 21.06.2007, the Parliament adopted new amendments to the Criminal Law.<sup>124</sup> 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 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 149<sup>1</sup> (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.<sup>125</sup>

## F.2. Hate crimes with a 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

---

State shall not have the right to raise any further objections.’ Available at:

[http://www.saeima.lv/Likumdosana/likumdosana\\_satversme.html](http://www.saeima.lv/Likumdosana/likumdosana_satversme.html) (24.02.2008).

<sup>123</sup> Letter of President of Latvia Vaira Vīķe Freiberga to Speaker of Parliament Indulis Emsis (24.05.2007), available at: [http://www.saeima.lv/saeima9/lasa?dd=LP0015\\_v](http://www.saeima.lv/saeima9/lasa?dd=LP0015_v) (25.02.1008).

<sup>124</sup> Latvia/Likums Grozījumi Krimināllikumā [Law Amendments to the Criminal Law] (21.06.2007), available at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?OpenDocument> (24.02.2008).

<sup>125</sup> Latvia/Likums Grozījumi Krimināllikumā [Law Amendments to the Criminal Law] (21.06.2007), available at: <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2779080CB65A88A8C225730C002B58E8?OpenDocument> (24.02.2008), Art. 149<sup>1</sup>. 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.

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.<sup>126</sup>

On 15.01.2008 *Rīgas pilsētas Vidzemes priekšpilsētas tiesa* [Riga City Vidzeme district court] sentenced J. Dz. to 100 hours of community service for offence punishable under Article 231 (1) of Latvian Criminal Law – hooliganism.<sup>127</sup>

On 22.06.2006 J.Dz., knowing that a meeting and press conference of sexual minority people will take place in 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 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.<sup>128</sup>

However, *Ģenerālprokuratūras Personu un valsts tiesību aizsardzības departamenta prokurors* [Prosecutor of the Prosecutor General Office’s Department of Protection of Persons and State interests] 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

---

<sup>126</sup> Latvia/Likums Grozījumi Krimināllikumā [Law Amendments to the Criminal Law] (12.10.2006), available at: [http://www.saeima.lv/bi8/lasa?dd=LP1652\\_3](http://www.saeima.lv/bi8/lasa?dd=LP1652_3) (25.02.2008).

<sup>127</sup> Latvia/Krimināllikums (17.06.1998), available at: <http://www.ttc.lv/?id=59> (24.02.2008). Article 231<sup>1</sup>. Hooliganism.

(1) 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.

<sup>128</sup> Latvia/Latvijas Administratīvo pārkāpumu kodekss (07.12.1984), available at: <http://www.likumli.lv/doc.php?id=89648&mode=KDOC> (25.02.2008). Art. 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.

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 protected’.<sup>129</sup>

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 1<sup>st</sup> instance court judgment. On 10.06.2008, the Riga Regional Court upheld the ruling of the 1<sup>st</sup> instance court,<sup>130</sup> and on 03.10.08 the Supreme Court Senate dismissed the cassation complaint.

### F.3. Non-criminal remedies against homophobic hate speech

Civillikums (the Civil Law) provides in Article 2352.<sup>1</sup> 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’.<sup>131</sup>

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. *Jūrmalas pilsētas tiesa* [Jurmala City court] rejected claim of I.K.<sup>132</sup> (See Annex 1).

---

<sup>129</sup> Latvia/Rīgas pilsētas Vidzemes priekšpilsētas tiesa/K30-176/5-2007.g. Nr. 11087092307 (15.01.2008).

<sup>130</sup> Latvia/Rīgas apgabaltiesas Kriminālietu tiesas kolēģija/KA04-0253-08/26, Nr. 11087092307 /10.06.2008)

<sup>131</sup> Latvia/Civillikums (28.01.1937), available at: <http://www.ttc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>132</sup> Latvia/Jūrmalas pilsētas tiesa/C 17043006, Lietvedības Nr. [record-keeping No.] C-0430-06/3 (25.04.2006).

## G. 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 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.<sup>133</sup> 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.<sup>134</sup> 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. The most common answer to hypothetical questions to the state authorities is that the person will be treated as indicated in the record of gender in his/her official documents. The answer is indicative that there is not yet any awareness of potential problems relating to the issue.

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.<sup>135</sup>

On 18 August 2009, the Cabinet of Ministers approved amendments to the laws on Sexual and Reproductive Health and Civil Status Documents aimed at eliminating legal gaps concerning gender reassignment. The amendments were

---

<sup>133</sup> Latvia/Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments/A42229505 SKA – 5/2008 (14.01.2008).

<sup>134</sup> Letter No. 24/7-473 as of 13.02.2008 from the Head of OCMA to the Latvian Centre for Human Rights – with respect to freedom of movement, asylum/subsidiary protection and family reunification.

<sup>135</sup> Information provided by Alliance of LGBT and their friends Mozaika on 18.02.2008.



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.

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.<sup>136</sup> 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."<sup>137</sup> Section 29 "On Person's Responsibility" provides for individual's responsibility for submitting medical documentation related to gender reassignment to the above commission.<sup>138</sup>

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 permitted<sup>139</sup> and there is no legal regulation of civil partnership. To date there have been no cases in Latvia when a person who registered his/her change of gender would have been married.<sup>140</sup>

---

<sup>136</sup> Latvia/Likumprojekts 'Grozījumi Seksuālās un reproduktīvās veselības likumā [Draft Law 'Amendments to the Sexual and Reproductive Health Law, Section 28 para 1, available at [http://www.mk.gov.lv/doc/2005/TMLik\\_160709\\_dzim.2765.doc](http://www.mk.gov.lv/doc/2005/TMLik_160709_dzim.2765.doc) (05.01.2009)

<sup>137</sup> Latvia/Likumprojekts 'Grozījumi Seksuālās un reproduktīvās veselības likumā [Draft Law 'Amendments to the Sexual and Reproductive Health Law, Section 28, para 2, available at [http://www.mk.gov.lv/doc/2005/TMLik\\_160709\\_dzim.2765.doc](http://www.mk.gov.lv/doc/2005/TMLik_160709_dzim.2765.doc) (05.01.2009)

<sup>138</sup> Latvia/Likumprojekts 'Grozījumi Seksuālās un reproduktīvās veselības likumā [Draft Law 'Amendments to the Sexual and Reproductive Health Law, Section 29, available at [http://www.mk.gov.lv/doc/2005/TMLik\\_160709\\_dzim.2765.doc](http://www.mk.gov.lv/doc/2005/TMLik_160709_dzim.2765.doc) (05.01.2009)

<sup>139</sup> Latvia/Civillikums (28.01.1937), Art. 35(2), available at: <http://www.tc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>140</sup> 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 22.02.2008.

## G.1. Change of gender/sex in the Birth Register

In early 2010 the Latvian law provision in force which indicates the possibility to change gender in a legal sense is Article 32 of the Civil Status Documents Law of 2005 which provides: '(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'.<sup>141</sup>

Previously the same issue was similarly regulated by Article 33 of the Law on Civil Status Documents<sup>142</sup> 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.<sup>143</sup>

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

---

<sup>141</sup> Latvia/Civilstāvokļa aktu likums [Civil Status Documents Law ] (17.03.2005), Art. 32 Other Additions to the Birth Register, available at:

<http://www.ttc.lv/index.php?skip=180&itid=likumi&id=10&tid=59&l=LV> (25.02.2008).

<sup>142</sup> Latvia/Likums Par civilstāvokļa aktiem [Law on Civil Status Documents] (21.10.1993), not effective from 01.04.2005.

<sup>143</sup> Latvia/1998. gada 2. septembra instrukcija Par civilstāvokļa aktu reģistrāciju Latvijas Republikā [Instruction as of 02.09.1998 on registration of civil status documents in the Republic of Latvia], unofficial translation of Sections 130, 131. Not effective from 01.07.2005.

Birth Register itself, but to ask the Ministry of Health 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 *Veselības ministrija* [Ministry of Health], thus leading to violation of the principle of confidence in legality of actions<sup>144</sup>, 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.<sup>145</sup> (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.

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.”<sup>146</sup> 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

---

<sup>144</sup> Latvia/Administratīvā procesa likums [Administrative Procedure Law] (25.10.2001), Art.10, available at: [http://www.likumi.lv/doc.php?id=55567&menu\\_body=KDOC](http://www.likumi.lv/doc.php?id=55567&menu_body=KDOC) (25.02.2008).

<sup>145</sup> Latvia/Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments/A42229505 SKA-5/2008 (14.01.2008).

<sup>146</sup> Latvia/Likumprojekts ‘Grozījumi Civilstāvokļa aktu likumā’ [Draft Law ‘Amendments to the Civil Status Document Law’], Section 32 para 2, available at [http://www.mk.gov.lv/doc/2005/TMLik\\_120809\\_CAL.2764.doc](http://www.mk.gov.lv/doc/2005/TMLik_120809_CAL.2764.doc) (06.01.2010)

by the person who has requested to supplement the entry, and the head of the registry department.<sup>147</sup>

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 2<sup>nd</sup> 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 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’.<sup>148</sup>

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 have been sent back to the working group, which drafted the amendments, for elaboration.

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’ records”.<sup>149</sup> 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]’.<sup>150</sup> 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

---

<sup>147</sup> Latvia/Likumprojekts ‘Grozījumi Civilstāvokļa aktu likumā’ [Draft Law ‘Amendments to the Civil Status Document Law’], Section 41 para 5, available at [http://www.mk.gov.lv/doc/2005/TMLik\\_120809\\_CAL.2764.doc](http://www.mk.gov.lv/doc/2005/TMLik_120809_CAL.2764.doc) (06.01.2010)

<sup>148</sup> Transcript of parliamentary session of 9 November 2009, available at <http://www.saeima.lv/steno/Saeima9/091112/st091112.htm> (07.01.2010)

<sup>149</sup> Latvia/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” (29.11.2005), available at: <http://www.likumi.lv/doc.php?id=122684&mode=DOC> (25.02.2008).

<sup>150</sup> Unofficial translation of Section 120.4.4.

the person had before the change of gender, as according to Latvian grammar endings of names differs depending on gender.<sup>151</sup> Amendments to Regulations are to be adopted after the approval by the Saeima of the Laws on Civil Status Documents and Sexual and Reproductive Health. In the past in practice, according to information provided by Tieslietu ministrijas Dzimtsarakstu departamenta Dzimtsarakstu nodaļa [Register Office's Unit of the Department of Civil Registers of the Ministry of Justice] 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.<sup>152</sup>

On 8 April 2009 the Saeima (parliament) adopted the Law on the Change of a Name, Surname and Ethnicity Entry. 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.<sup>153</sup> 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.”

---

<sup>151</sup> E.g., -a, -e for female names, -s, -is for male names.

<sup>152</sup> Latvia/Likums Par vārda, uzvārda un tautības ieraksta maiņu [Law on the Change of a Given Name, Surname and Ethnicity Record] (15.06.1994), available at: <http://www.likumi.lv/doc.php?id=57418&mode=KDOC> (25.02.2008).

<sup>153</sup> Latvia/ Vārda, uzvārda un tautības ieraksta maiņas likums [Law on the Change of Name, Surname and Ethnicity Entry] (08.04.2009), Section 2 para 6, available at <http://www.vestnesis.lv/index.php?menu=doc&id=191209> (05.02.2010)

## H. 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 *Patērētāju tiesību aizsardzības centrs* (PTAC) [Centre for Protection of Consumer Rights (CPCR)] concluded that the advertisement is discriminatory and fined the publisher the amount of Ls 1,500 (~EUR 2,134) under the Latvian Administrative Violation Code.<sup>154</sup> The *Tiesībsarga birojs* [Ombudsman's Office] 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 Ombudsman's Office also referred to the Race Equality Directive.<sup>155</sup> The publisher appealed the decision in the *Administratīvā rajona tiesa* [Administrative District Court]. The case was reviewed on 5 June 2009.<sup>156</sup> 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 has been appealed and has been scheduled for hearing in *Administratīvā apgabaltiesa* [Administrative Regional Court] for 09.06.2010.

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'.<sup>158</sup> However, the Civil Law allows adoption not only to married couples but also for a single person.<sup>159</sup> 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

---

<sup>154</sup> The Decision of the Centre for the Protection of Consumer Rights No E04-DAU-154, Daugavpils, 14.08.2007

<sup>155</sup> Information provided by the Ombudsman's Office on 30.01.2008.

<sup>156</sup> Information provided by the Administrative District Court on 31.01.2008.

<sup>158</sup> Latvia/Civillikums (28.01.1937), Art. 166, available at: <http://www.ttc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

<sup>159</sup> Latvia/Civillikums (28.01.1937), available at: <http://www.ttc.lv/index.php?skip=0&itid=likumi&id=10&tid=59&l=LV> (24.02.2008).

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, including draft laws, which would be similar or comparable to the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information.

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'.

## I. 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.



## 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)	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. 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. 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 the court.

### 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.
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.

Key facts of the case (max. 500 chars)	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. 166 <sup>13</sup> 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> [Ombudsman’s Office] where the advertisement was evaluated as discriminatory.
Main reasoning/argumentation (max. 500 chars)	At first, the CPCR 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. With regard to the refusal to provide legal services to sexual minorities, the CPCR 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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CPCR in its decision cited the letter of the Ombudsman’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 CPCR 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.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The CPCR 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 to date has not reviewed the case.

**Chapter E, Freedom of assembly, case 1**

Case title	On the Gay and Lesbian Pride 2005.
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 <sup>st</sup> 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 <sup>nd</sup> instance court declared refusal to organise the gay Pride 2006 as unlawful. The cassation instance court upheld the decision of the 2 <sup>nd</sup> 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 <sup>nd</sup> 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 <sup>st</sup> instance court refused the application, the 2 <sup>nd</sup> 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 <sup>nd</sup> instance court for review. The 2 <sup>nd</sup> 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 <sup>nd</sup> 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
Main reasoning/argumentation (max. 500 chars)	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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court referred to the Recommendation 1117 of 29 <sup>th</sup> 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.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	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.  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.

## 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
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 <sup>160</sup>	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 <sup>161</sup>  3) 1 case before the Centre for Consumer's Rights Protection	1) 2 written complaints, 11 oral consultations	1) 3 written complaints <sup>162</sup>
Total finding of Discrimination confirmed (by equality							2) the court find that discrimination	3) the Centre for Consumer's		

<sup>160</sup> 1) - Complaints received by the Ombudsman's Office (to 2007 – the National Human Rights Office).

<sup>161</sup> The Head of the Ombudsman's Discrimination Prevention Department Līga Biksiniece-Martinova explained that the Ombudsman'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 Ombudsman'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.

<sup>162</sup> 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.

body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)							did not take place (the labour relationships, hiring stage)	Rights Protection found discrimination in advertisement for access to the services available to the public		
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		
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment,								3) the Centre for Consumer's Rights Protection issued the administrative sanction – fine of Ls		

education, housing, goods and services etc.)									1500 (2,140 EUR) (access to services)		
--	--	--	--	--	--	--	--	--	---------------------------------------	--	--

### Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners who claimed their right to residence but were denied this right	-	-	-	-	-	-	-	-	-	-

### Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	-	-	-	-	-	-	-	-	-	-
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	-	-	-	-	-	-	-	-	-	-

**Chapter C, Asylum and subsidiary protection, protection of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	-	-	-	-	-	-	-	-
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	-	-	-	-	-	-	-	-

**Chapter D, LGBT partners benefiting family reunification**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
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
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	-	-	-	-	-	1	-	1	1	1
Number of demonstrations against tolerance of LGBT people.	-	-	-	-	-	1	2	2	1	1

**Chapter F, Homophobic hate speech**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	-	-	-	-	-	-	-	-	-	-
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	-	-	-	-	-	-	-	-	-	-
Range of sanctions issued for homophobic hate speech	-	-	-	-	-	-	-	-	-	-
Number of non-criminal court cases initiated for homophobic statements	-	-	-	-	-	-	-	-	-	-
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	-	-	-	-	-	-	-	-	-	-

**Chapter F, Homophobic motivation of crimes as aggravating factor**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
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 <sup>163</sup>	2009
Number of name changes effected due to change of gender	5 <sup>164</sup>							3	2	1
Number of persons who changed their gender/sex in your country under the applicable legislation								3 <sup>165</sup>	2	1

---

<sup>163</sup> Information provided by Register Office's Unit of the Department of Civil Registers of the Ministry of Justice on 10 February 2009.

<sup>164</sup> 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.

<sup>165</sup> 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.