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Summary of legislation implementing

***Directive 2000/78/EC establishing a general framework
for equal treatment in employment and occupation***

with respect to sexual orientation

in Latvia

This summary was written in 2005 at the request of Kees Waaldijk & Matteo Bonini-Baraldi, when they were writing their book *Sexual orientation discrimination in the European Union: national laws and the Employment Equality Directive* (The Hague: T.M.C. Asser Press, 2006), and has been published (including a 2006 Postscript) on the website of the E.M. Meijers Institute of Legal Studies of the Universiteit Leiden; see www.emmeijers.nl/experts.

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Introduction

Sexual orientation discrimination is not explicitly prohibited by Latvian legislation. On 1 May 2004 Latvia became a member of the European Union (EU) and according to the accession process was required to implement the Employment Equality Directive (the directive) prohibiting discrimination on various grounds including sexual orientation.² However a number of attempts to fully implement the directive, so that sexual orientation is banned, have failed and there are currently no legislative plans to ban this type of discrimination, neither is there a political will to do so.

According to the EU polls on public attitudes towards homosexual people, Latvia is one of the least tolerant countries in the EU.³ All previous attempts to introduce a ban on sexual orientation discrimination failed and as Nils Muižnieks, a former Minister for Special Assignment for Social Integration Affairs, said, the mere mentioning of advancing legislation on this issue is 'political suicide'.⁴ Openly expressed homophobic views and statements by senior politicians are not rare. Latvia is probably the only EU country which does not have an organised lesbian and gay movement and/or lobby group, and in contrast with the Western European countries, general visibility of lesbian and gay people is very low.

The prohibition of discrimination

None of the Latvian laws explicitly bans sexual orientation discrimination. Article 91 of the *Satversme* (Latvian Constitution) provides a general ban on discrimination and reads: "All human beings in Latvia are equal before the law and court. Human rights will be realised without discrimination of any kind." However there is no further explanatory legislation, official guidelines or case-law interpreting the article.

Attempts to ban sexual orientation discrimination

In total there were three legislative attempts to prohibit sexual orientation discrimination in employment as required by the directive.

In 1999, the Ministry of Justice drafted a new Labour Law and the anti-discrimination article 7 of the draft contained a ban on sexual orientation discrimination in employment. However after the first reading at the parliamentary Human Rights and Social Affairs Commission, sexual orientation

² Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

³ Tables 1 and 2 in Kees Waaldijk's chapter 3 "General situation with respect to sexual orientation discrimination at national level" in *Sexual Orientation Discrimination in the European Union: National Laws and the Employment Equality Directive* (The Hague, TMC Asser Press, 2006, forthcoming); and "Homosexual marriage, child adoption by homosexual couples: is the public ready?", January 2003, Gallup Europe, www.eosgallupeurope.com.

⁴ During the meeting between the representatives of the European Social Platform and the Minister, November 2004 in Riga, Latvia.

was deleted and the Labour Law does not contain an explicit prohibition of sexual orientation in employment.⁵

In 2001, the European Commission, although praising Latvia for the introduction of the new Labour Law, pointed out that 'alignment with the *acquis* on anti-discrimination based on Article 13 of the Treaty' was needed.⁶ This clearly indicated that Latvia, in prohibiting employment discrimination on such grounds as race, religion, age and disability (as required by Article 13 and the directive) but omitting sexual orientation, failed to comply fully with EU standards.

In 2003, the Ministry of Welfare, responsible for the transposition of the directive in Latvia, drafted an amendment to include sexual orientation in the anti-discrimination article of the Labour Law. Again, MP's at the parliamentary Human Rights and Social Affairs Commission rejected this proposal. Andrejs Klementjevs, a member of the Commission, said that the MP's did not consider the issue of sexual orientation discrimination in employment as pressing and timely and thought that the introduction of a ban on sexual orientation in employment would 'artificially actualise' the issue.⁷

In March 2004, the Latvian Minister for Special Assignment for Social Integration Affairs proposed an Anti-Discrimination Bill⁸ to implement the requirements of the EU race and employment equality directives and containing a proposal to ban sexual orientation discrimination. The proposed Bill provided a definition of discrimination, direct and indirect discrimination and harassment according to the directives' requirements. It covered discrimination in terms of public law and the following areas of private law:

- labour relationships and employment,
- membership of trade unions and other professional organisations,
- education,
- social security and health care,
- access to publicly available goods and services, including housing.

The Bill contained an extensive list of grounds on the basis of which discrimination would have been prohibited, including sexual orientation. It also provided a right for non-governmental organisations (NGO's) working in the field of human rights and equality to submit a complaint on behalf of a victim of discrimination, provided the victim agreed and did not submit the complaint him/herself. The Bill proposed to expand the Latvian National Human Rights Office's mandate with a duty to ensure the implementation of this legislation.

Nevertheless on 7 April 2004 the parliamentary Human Rights and Social Affairs Commission deleted sexual orientation from the Bill during its first reading. In autumn 2004 the idea of a comprehensive piece of anti-

⁵ The current Labour Law was adopted on 20 June 2001 and is in force since 6 July 2002. Useful link: translation of the Latvian Labour Law by the Translation and Terminology Centre: <http://www.ttc.lv/New/lv/tulkojumi/E0223.doc>.

⁶ 13 November 2001, regular report on Latvia, Chapter 13 'Social policy and employment', SEC(2001)1749, available at: <http://europa.eu.int/scadplus/leg/en/lvb/e02104.htm>.

⁷ Latvian news portal, available at: www.delfi.lv.

⁸ The Latvian version is available at: <http://www.politika.lv/index.php?id=109355&lang=lv>.

discrimination legislation was abandoned and on 31 May 2005, the Bill was finally rejected by the Commission.

On 2 December 2004 the Secretariat of the Minister for Special Assignment for Social Integration Affairs submitted a new package of draft amendments to several laws implementing the requirements of the EU Racial Equality Directive, thus, only leaving the employment directive to ban sexual orientation in employment.⁹

Recent amendments to the Labour Law on equal treatment

On 22 April 2004 the Labour Law was amended improving the provisions of equal rights and non-discrimination in employment. These amendments are in force since 8 May 2004.¹⁰

Article 29 "Prohibition of unequal treatment" more clearly prohibits discrimination on the grounds of gender.

The law now defines direct and indirect discrimination on the basis of gender. The Labour Law states:

29 (5) "Direct discrimination exists if in comparable situations the attitude against a person based on gender is, was or might be less favourable as compared to another person".

29(6) "Indirect discrimination exists if in comparable situations a seemingly neutral provision, criterion or practice creates or may create unwelcome consequences on the basis of gender unless this provision, criterion or practice has an objective basis, a legitimate aim and is proportional."

Article 29(3)¹¹ provides for a shared burden of proof between a victim and an employer. Accordingly, the victim has to identify the circumstances which she/he believes could be the reason for discrimination and the employer has to prove that unequal treatment was caused by objective circumstances not related to the victim's gender, or the victim's gender is a relevant, objective and justified prerequisite for the employment.

The Labour Law also defines harassment as a form of discrimination (Article 29(7)), and prohibits the instruction to discriminate (Article 29 (4)).

Article 29(9) adds that discrimination on the grounds of "race, skin colour, age, disability, religious, political or other beliefs, national or social origin, property or family status, and other grounds" is also banned. Nevertheless there is a problem with the grounds of discrimination other than gender and some experts suggest the wording of Article 29 implies that only direct discrimination is

⁹ This legislative package is available at <http://www.politika.lv/index.php?id=108365&lang=lv>.

¹⁰ *Latvijas Vēstnesis*, No. 72, 7 May 2004.

¹¹ Article 29. Prohibition of Differential Treatment

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

prohibited in regards to these grounds.¹² Again, the law still fails to explicitly name sexual orientation as a prohibited ground of discrimination.

Case-law

The new amendments were interpreted by the Latvian court as including sexual orientation. When Māris Sants won a case of sexual orientation discrimination,¹³ it was the first and is so far the only success in Latvian anti-discrimination case-law to date.

Facts

On 12 August 2004, the Riga School of Culture published a vacancy advert for the post of a teacher of the history of religion. At the end of August Sants telephoned the director of the School inquiring about the vacancy but was told that at the end of July there was already an agreement with another person; on 9 August 2004 this person was interviewed and it was agreed to sign a contract with this person on 30 August 2004. Despite these facts, on 24 August 2004, Sants submitted his application letter and CV for the advertised post. On 30 August 2004 Sants inquired about his application by phone and was told that the post was given to another applicant. The director refused to provide written results of the competition and reasons for refusing Sants' application. There were only two applicants for this vacancy, Sants and the person with whom the school agreed to sign contract even before publishing the vacancy advert.

Claim

Sants claimed that by refusing him employment, the school treated him unequally, that his sexual orientation was the only reason for such treatment and that according to Article 29 of the Labour Law, which bans discrimination on the grounds of race, skin colour, age, disability, religious, political or other beliefs, national or social origin, property or family status, and other grounds, such treatment was illegal. Sants claimed that the open end of the Article 29 covers sexual orientation and referred to the directive which explicitly bans sexual orientation discrimination in employment.

Judgment

The judge concluded that Sants indeed was unequally treated and his sexual orientation was the only grounds for refusing him employment. The judge pointed out that Sants had the higher academic grade and more professional experience required for the position compared to the applicant with whom the school signed the contract. The judge concluded that the School's director knew

¹² Ineta Ziemele, *Report on the Situation of Fundamental Rights in Latvia in 2004*, EU Network of Independent Experts on Fundamental Rights, CFR-CDF/LV/2004, p. 47, available at http://www.politika.lv/polit_real/files/lv/fundrights_latvia.pdf.

¹³ Case of *Māris Sants pret Rīgas kultūras vidusskolu*, No.C32242904047505, C-475/3, 29 April 2005. Rīgas pilsētas Ziemeļu rajona tiesa (Court of the Ziemeļu District of Riga), judge G. Ozoliņa (Latvian version of the judgement is available at <http://www.politika.lv/index.php?id=111436&lang=lv>).

about Sants' sexual orientation¹⁴ and did not provide any objective justifications for unequal treatment. The judge agreed that there was no doubt that Article 29 of the Labour Law covered sexual orientation and awarded Sants 2,000 Lats (circa 3,000 euro) in moral damages.

Social security and other similar payments

On the 8 September 2005, the parliament accepted the government's proposal to amend the law On Social Security and sent it to the Human Rights and Public Affairs and Social and Employment Matters (responsible) Committees.

The amendment to Article 2 is proposed to read as follows:

“(1) Differential treatment in providing social services – irrespective of a person's race, skin colour, gender, age, disability, health status, religious, political or other conviction, ethnic or social origin, property or marital status or other circumstances is prohibited.

(2) Differential treatment includes direct and indirect discrimination, harassment and instruction to discriminate.

(3) Direct discrimination exists if in comparable situations the treatment of a person in relation to one of the grounds mentioned in paragraph 1 of this Article is, was or may be less favourable than in respect of another person.

(4) Indirect discrimination exists if in comparable situations evidently neutral provisions, criteria or practice cause or may cause adverse consequences for persons because of one of the grounds mentioned in paragraph 1 of this Article.

(5) Harassment, in the context of this law, is a person being subjected to an action, unwanted in view of this person, which is related to the grounds mentioned in paragraph 1 of this Article, if the result or aim of this action is to violate the dignity of a person and to create an intimidating, hostile, degrading, humiliating or offensive environment.

(6) Differential treatment (except harassment) in relation to one of the grounds mentioned in paragraph 1 of this Article is permitted only if such treatment is objectively justified by a legitimate aim and the selected means to achieve this aim are proportionate.”

Article 13(1) will read:

“Social services, in the context of this law, are such state or local authorities' payment(s) or other material supplements or other services which promote full realisation of a person's social rights.”

Exceptions

Although there is no legislation explicitly banning sexual orientation discrimination, the Latvian Evangelical Lutheran Church (LELC), already before Latvia joined the EU, expressed their concerns and demanded a state

¹⁴ In 2002, Sants, who was a minister with the Latvian Evangelical Lutheran Church, came out as gay and was immediately excommunicated by the Church. The story was widely covered by the Latvian media.

guarantee for the independence of the church's beliefs and teachings after the accession. Jānis Vanags, Archbishop of the LELC, who has strong and long standing homophobic attitudes, regards same-sex relations as sinful and has said that after joining the EU, his church would not be able to implement its resolution on homosexuality¹⁵, which would be a significant threat to church freedom. In 1994, LELC adopted a resolution stating that 'deliberately' practising homosexuals cannot be allowed to fulfil any responsibilities during parish services or within the church hierarchy, and that they would also be excluded from Eucharistic communion.

Exceptions for genuine occupational requirements can be found in articles 29(2) and 32(1) of the Labour Law.¹⁶

Enforcement

The Latvian National Human Rights Office (LNHRO) (*Valsts Cilvēktiesību birojs*)¹⁷ is an independent national institution working to promote the observance of human rights and is the main equality and human rights institution in Latvia. The Office was established in 1996.

Anyone may submit complaints to the LNHRO of possible violations of human rights. The investigation of complaints is confidential and free of charge. It results in the voluntary agreement of both parties on a possible solution – conciliation or a recommendation and is not legally binding. Other main functions of the LNHRO are the analysis and study of the human rights situation, and educating and informing officials, human rights specialists and the general public on human rights issues.

From the very beginning of its work, the LNHRO established a close working relationships with the lesbian and gay organisations in Latvia. As a result of this, in 1996 the Office submitted a proposal to the parliamentary Human Rights and Social Affairs Commission to include sexual orientation in the anti-discrimination provisions of the Criminal Law. However, the proposal was rejected by the Commission.

In 1997 the Office investigated a complaint from a dismissed gay policeman and for the first time in Latvia concluded that there was a discriminatory violation of human rights based on sexual orientation.¹⁸

¹⁵ See the 1994 LELC Resolution "On the practice and propaganda of homosexuality", available at: <http://www.gay.lv/go.php?to=News&file=article&sid=32>.

¹⁶ Article 29(2): 'Differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition, which is reasonable for the legal purpose reached as a result, for the performance of the relevant work or for therelevant employment.'

Article 32(1): 'A job advertisement (a notification by an employer of vacant work places) may not apply only to men or only to women, except in cases where belonging to a particular gender is an objective and substantiated precondition for the performance of relevant work or for a relevant employment.'

¹⁷ See website at: www.vcb.lv.

¹⁸ Valsts Cilvēktiesību biroja viedoklis Gata Bugovecka sūdzības lietā, 1998, available at: <http://www.gay.lv/go.php?to=News&file=article&sid=27>. Also see article from Euro-Letter, February 1998, online at http://www.steff.suite.dk/eurolet/eur_60.pdf.

In 1999 the LNHRO commissioned extensive research into the legal situation for lesbians and gay men in Latvia, other jurisdictions and how the issues of lesbian and gay rights are addressed in international human rights law and by the international organisations.¹⁹ An integral part of this research was a conclusion that lesbians and gay men in Latvia are subjected to discrimination. As a result, the LNHRO submitted a proposal to introduce an institute of registered partnerships for same-sex couples in Latvia (which was subsequently rejected by the parliamentary Human Rights and Social Affairs Commission).

The latest package of legislative proposals from the the Secretariat of the Minister for Special Assignment for Social Integration Affairs²⁰ includes an amendment to the law 'On the Latvian National Human Rights Office' to clarify that the LNHRO is Latvia's national institution for the promotion of equal treatment.

Furthermore standing for interest groups is currently being considered by the Latvian parliament. The amendment to the existing law on societies and establishments was prepared by the Minister for Special Assignment for Society Integration Affairs in the beginning of 2005 and adopted by the government last summer. On 8 September 2005, the parliament decided to accept the proposal for consideration and sent it to the Human Rights and Public Affairs and Public Administration and Local Government (responsible) Committees.

The proposal provides that non-governmental societies and establishments whose statutes and aims cover the protection of individual and human rights, should have a right to submit a petition/complaint or a court petition to protect the rights of a person or legal interests in cases related to the breach of the principle prohibiting unequal treatment.

Concluding remarks

Already in the second year of her membership in the EU, Latvia still fails to fully transpose the directive's requirement to explicitly ban sexual orientation in employment. All previous attempts to do so were blocked by the MP's and as Boriss Cilevičs, one of the parliamentary Human Rights and Social Affairs Commission's members who supports such ban, said, the chances of getting this legislation through the parliament are 'next to nil'. He pointed out that the only realistic avenue to achieving a legislative ban on sexual orientation discrimination in employment is through the EU taking legal action against Latvia at the European Court of Justice in Luxembourg for not complying with the EU directive.

On a positive note, the recent court ruling in a case of sexual orientation discrimination is somewhat surprising but a positive development demonstrating progressive and 'European' thinking of the Latvian court.

¹⁹ Juris Lavrikovs "Geju un lezbiešu tiesību stāvokļa analīze Latvijā", September 1999, available at: <http://www.gay.lv/go.php?to=News&file=article&sid=27>.

²⁰ See above footnote 6.

Postscript: On 15 June 2006 the Latvian Parliament rejected a proposal to explicitly include sexual orientation as a prohibited ground of discrimination in the Labour Law. For more information on this see the ILGA-Europe website at www.ilga-europe.org.