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Latvia

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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I: Introduction

A survey of documentation relating to LGBT issues in Latvia suggests a recent gradual change in legal protection for LGBT persons. Anti-discrimination protection for LGBT people appears to have been introduced into employment legislation, and a National Human Rights Office has been created to work with human rights complaints. However, this has not been without political opposition, and also opposition from conservative religious leaders.

Apart from the legal perspective, it is undisputed that the general population in Latvia holds strongly homophobic views that pervade the social, religious, and political spheres. The gay pride events in recent years have demonstrated the degree of societal prejudice that exists. The first gay pride event in 2005 was marked with violence and harassment from counterdemonstrators. Security concerns have since been cited as reasons for the city of Riga to cancel subsequent pride events, however, the courts have allowed the events to continue with heavy police presence. Recent gay pride events have been met with harassment from crowds of protesters making homophobic remarks against pride event participants. Prominent religious figures and politicians, including a prime minister, have made homophobic remarks publicly.

No acts of physical violence against LGBT people have been noted by governmental reports, but LGBT organizations in Latvia warn that acts of violence and discrimination go unreported.

With respect to concerns regarding LGBT people in the Latvian military, a 2003 refugee law case from the United Kingdom [*MB (Homosexual – Military Service) Latvia* [2003] UKIAT 209] suggests that fear of persecution by virtue of being gay in the military may be difficult to show objectively. The tribunal in that case found that it is possible to claim exemptions to military service, and that even those who do evade military service illegally are only very rarely sentenced to imprisonment.

II: Legislation

1. Latvian Human Rights Institute, *Constitution of the Republic of Latvia*, 1922, online: <<http://www.humanrights.lv/doc/latlik/satver~1.htm#8>>.

- **Chapter VIII of the Latvian Constitution sets out fundamental human rights**
- **Article 91 is a general equality clause, stating, “all persons within the Latvia are equal before the law and the courts. Human rights shall be implemented without any discrimination.”**

[No case law or commentary could be located that spoke to whether Article 91 has been interpreted to include or exclude discrimination against LGBT persons. Also, please note that the Constitution was reportedly amended to exclude same-sex marriage, though this text does not reflect that change.]

2. Gita Feldhune & Martins Mits, *Implementing European anti-discrimination law: Latvia*, (September 2001), online: <http://www.humanrights.lv/frames_e.htm?menu/hri_e.htm>.

- **The Latvian Constitution has a general equality clause**
- **Human rights issues are focused mainly on ethnic tensions between ethnic Latvians and the large ethnic Russian minority**
- **Anti-discrimination provisions are contained in legislation, but at the time of this article's publishing, none of the cited legislation contained explicit prohibition against discrimination on the basis of sexual orientation**

This article, the authors writing from the Latvian Human Rights Institute, gives an overview of human rights protection in Latvian law. The authors are of the view that human rights concerns in Latvia are mostly focused on the tension between the majority Latvian population and the large ethnic Russian minority.

Latvia is bound by the European Convention on Human Rights, which contains an anti-discrimination clause under Article 14. [Please note that although sexual orientation is not explicitly mentioned in Article 14, the European Court of Human Rights has interpreted Article 14 to include sexual orientation. See *Salgueiro da Silva Mouta v. Portugal*] Latvia is also a party to the International Covenant on Civil and Political Rights and its non-discrimination clause under Article 26.

The Latvian Constitution has a general equality clause, but does not set out any prohibited grounds of discrimination. The constitution's fundamental rights provisions do not apply between private individuals. However, individuals can make complaints to the Constitutional Court if their fundamental rights are violated and if they have exhausted all other legal options. A National Human Rights Office was also created in recent years – both individuals and the National Human Rights Office have standing at the Constitutional Court. [Latvian LGBT-related jurisprudence, however, could not be located]

Anti-discrimination protection has been including in various private law legislation, such as the Labour Code. However, at the time of the article's publishing, sexual orientation was not an explicitly prohibited ground in that legislation. Public legislation containing anti-discrimination clauses, such as the Education Law and the Judicial Powers Law, also did not explicitly prohibit discrimination on the basis of sexual orientation.

3. International Lesbian, Gay, Bisexual, Trans and Intersex Association, *Latvia (Law)*, (26 March 2009), online: <<http://ilga.org/ilga/en/countries/LATVIA/Law>>.

- **Male-to-male relationships in Latvia are not prohibited by law**
- **The age of consent is equal between heterosexuals and homosexuals**
- **Hate crimes based on sexual orientation are not considered an aggravating circumstance**
- **Incitement to hatred based on sexual orientation is prohibited**

- **Same-sex couples cannot adopt children together, and there are no laws recognizing same-sex partnerships**
- **Discrimination on the basis of sexual orientation is prohibited in the employment context**

[The actual texts for these laws could not be located. Also, the Latvia Translation and Terminology Center website at www.ttc.lv was inaccessible at the time this report was written.]

III: Jurisprudence

Canadian Jurisprudence

No relevant reported Canadian tribunal or court jurisprudence was found.

1. LexisNexis Quicklaw

Tribunal Cases, Immigration and Refugee Board Decisions

Search terms: “Latvia! & homosexual! OR gay OR lesbian OR bisexual! OR sexual orientation”

Search terms: “Latvia! /100 sex!”

Court Cases, Federal Court of Canada, Group Source

Search terms: “Latvia! & homosexual! OR gay OR lesbian OR bisexual! OR sexual orientation”

Search terms: “Latvia! /100 sex!”

United Kingdom Jurisprudence

MB (Homosexual – Military Service) Latvia [2003] UKIAT 209

Case available online: <http://www.bailii.org/uk/cases/UKIAT/2003/00209.html>

- **The claimant was to be drafted into the Latvian military. He claimed that he fled for fear of persecution on the basis of his sexual orientation**
- **It was accepted that homosexuals face discrimination by the general population**
- **While draft evasion and desertion is punishable under the criminal code, it is possible to claim an exemption from military service and many people do manage to evade military service.**
- **Tribunal found a low likelihood that the claimant would be required to fulfill his military service and that if he attempted to evade it, it was unlikely that he would be sentenced to imprisonment**

The claimant, a gay man, fled to the United Kingdom for fear of persecution upon being conscripted into the Latvian army for his military service. The claimant attended one interview as part of the conscription process, but failed to attend a second interview and fled the country. He received a visit from the police asking why he has not done his military service.

The tribunal accepted that there is still discrimination by the general population towards homosexuals, however his claim was based specifically towards performing military service in Latvia as a gay man, or in the alternative, being imprisoned for evading military service.

Counsel for the claimant, relying on a bulletin from the United Kingdom's Country Information and Policy Unit (CIPU), submitted that the penalty for refusing to undertake military service is twelve months imprisonment. [Please note that the CIPU bulletin referred to in this case could not be located.]

The tribunal also relied on the CIPU bulletin in finding that it is possible to claim an exemption from military service and that large numbers of people successfully evade military service. While draft evasion and desertion are punishable under the criminal code, rarely are people ever sentenced for it. The bulletin read that out of 2000 people charged for draft evasion in 1995, only two were ever sentenced.

The tribunal held that there was little likelihood that the claimant would be required to do his military service, and if he refused, then there was still little likelihood that he would be sentenced to imprisonment.

Secretary of State for the Home Department v. A (Latvia) [2003] UKIAT 189

- **Immigration Appeal Tribunal found that it would not be proportionate to interfere in the claimant's right to family life in the interest of immigration control.**
- **The tribunal found that, given homophobic attitudes in Latvia, it would be unrealistic to expect the claimant to return to Latvia with his same-sex partner**

Case available online: <http://www.bailii.org/uk/cases/UKIAT/2003/00189.html>

Claimant feared persecution on the basis of his Armenian ethnicity and also as a homosexual, however, the appeal in this case related to the claimant's right to family life under the Human Rights Convention. Since arriving in the United Kingdom, the claimant had met and begun living with a same-sex partner.

The tribunal considered whether it would be proportionate to interfere in the claimant's right to family life in the interest of immigration control. The tribunal found that it was unrealistic to expect the claimant to return to Latvia with his partner partially because of homophobic views in Latvia.

IV: Government Organizations

1. U.S. Department of State, *2009 Human Rights Report: Latvia* (11 March 2010), online:< <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136040.htm>>.

- **No official reports of violence or discrimination based on sexual orientation or gender identity**
- **LGBT organizations complain of underreporting of attacks and widespread intolerance**
- **There is a LGBT organization in Latvia that works on LGBT rights issues**
- **Permit for gay pride march revoked by the city of Riga and then restored by court order; marchers faced verbal abuse but no physical attacks, though there were physical attacks in previous years**

There were no official reports of societal violence or discrimination based on sexual orientation, gender identity, or HIV/AIDS status. However, leaders of lesbian, gay, bisexual and transgender (LGBT) organizations complained of widespread intolerance and underreporting of physical attacks. Mozaika was the most prominent LGBT organization in the country [note that additional information in English from the Mozaika website was not available as of November 2010]. The organization worked on legal issues surrounding LGBT rights and organized the annual gay pride march. After first revoking a previously approved permit on security grounds, the city of Riga respected a court order to grant a permit and allowed a gay pride march to take place in the city center under heavy police protection. An estimated 300 persons took part in the parade, while approximately 500 demonstrators behind police barricades jeered the marchers and carried signs accusing LGBT persons of being linked to AIDS and pedophilia. In contrast to previous years, there were no physical attacks.

2. U.S. Department of State, *2008 Human Rights Report: Latvia* (25 February 2009), online:< <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119087.htm>>.

- **No reports of homophobic social violence or discrimination, but intolerance for homosexuality widespread**
- **Gay pride event permitted under heavy police protection**
- **LGBT community removed from national program on promotion of tolerance**

There were no reports of societal violence or discrimination against homosexuals; however, the population at large appeared to have little tolerance for homosexuality. The city of Riga permitted a gay pride event under heavy police protection. There were reports of verbal harassment by opponents from outside the security perimeter, but there were only minor violations of public order. The minister for the Secretariat of Social Integration removed a list of "vulnerable groups" from the national program on the promotion of tolerance after his consultations with church representatives; some human rights NGOs believed that the list was removed because it included the LGBT community.

3. European Union Agency for Fundamental Rights, *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis* (February 2008), online: <http://194.30.12.221/fraWebsite/research/background_cr/cr_hdgso_en.htm>.

- **Discrimination on grounds of sexual orientation prohibited in employment**
- **Latvia prohibits same-sex marriage and there is no civil partnership registration**
- **Constitution was reportedly revised to preclude same-sex marriage**
- **Discourse surrounding annual Pride parades overwhelmingly negative**
- **No criminal law provisions regarding homophobic hate speech**
- **Orientation not included as a specified ground in criminal law prohibition on discrimination**
- **Homophobic motivation not included as aggravating grounds in criminal cases**

In forbidding discrimination on the basis of sexual orientation in the sphere of employment only (public and private sector, and civil service), the Latvian legislature implemented the minimum requirements of the Employment Directive 2008/78/EC. There has been one court case regarding alleged discrimination on the grounds of sexual orientation in a labour relationship, which was dismissed. [Please note that this case could not be located. English translations of Latvian jurisprudence could not be located] Latvia recognizes neither same-sex marriage nor civil partnership (the Civil Law expressly prohibits same-sex marriage, and the Constitution was amended to define marriage as between a man and a woman). Partners in same-sex relationships therefore do not benefit from European Union Provisions regarding freedom of movement and family reunification.

Since the first Latvian Gay Pride parade in 2005, the discourse surrounding the parade (including participation by politicians, representatives of administrative power, and religious groups) has been overwhelmingly negative. The Riga City Council banned the 2006 Pride march for “security reasons”, though the Supreme Court later declared the ban illegal. Latvian criminal law contains no provisions regarding hate speech related to homophobia, although there are civil remedies for homophobic speech. The criminal law does not include sexual orientation as a specified ground in discrimination, or as an aggravating ground in criminal cases, such that courts do not take homophobic motivation into account when considering merits and sentencing.

4. European Union Agency for Fundamental Rights, *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part II – The Social Situation* (March 2009), online: <http://194.30.12.221/fraWebsite/research/background_cr/cr_hdgso-p2_en.htm>.

- **There has been progress in legal protection of LGBT rights, but progress beyond the legal realm has been minor**

- **Surveys demonstrate widespread intolerance of sexual minorities, with large percentage support barring gays and lesbians from working in schools, army service, and other occupations**
- **Notion that homosexuality is an illness is widespread**
- **2007 survey showed tolerance decreased since 2006**
- **Incidences of homophobic hate crime and workplace discrimination difficult to assess, but LGBT organizations claim underreporting due to fear of exposure**
- **Police officer fired following newspaper interview with his male partner**
- **No civil partnership rights for LGBT couples**
- **Vehement opposition to Pride events**
- **Anti-LGBT statements by political and religious leaders in media**
- **Sexual minorities are the most discriminated group in Latvian press**

Partially due to external pressure, Latvia has improved legal protections for LGBT individuals. However, progress beyond the legal realm has been minimal, with several surveys indicating low levels of tolerance for sexual minorities. For example, a 2007 survey found that 45% believe that gays and lesbians should be banned from work in schools, the army, and other occupations. The same survey demonstrated a decrease in tolerance since 2006.

The incidence of homophobic hate crime is difficult to assess, but hate crime does pose a threat to LGBT individuals and activists; the LGBT organization Muzaika reported five known cases of homophobic assaults, but noted that most assaults are not reported due to fear of exposure. Similarly, the incidence of homophobic workplace discrimination is challenging to evaluate, partially because many LGBT individuals are closeted in their workplaces. One example reported by the Latvian Ombudsman's Office concerned a police officer who was fired following a newspaper interview with his male partner.

The non-recognition of same-sex partnerships by the state leads to discrimination in several areas, including: inheritance; healthcare; immigration; access to welfare services; and access to insurance, pension, and employment benefits. Pride parades in Latvia have attracted fierce opposition, particularly from fascist and right-wing Christian groups. Leaders of the Catholic and Lutheran churches have been prominent campaigners against LGBT rights (the Cardinal, for instance, described homosexuality as "complete corruption in the sexual sphere"). A recent study found that sexual minorities were the most discriminated-against group in the Latvian press, which published complaints about LGBT visibility in society, calls for excluding LGBT persons from the public sphere, and suggestions that homosexuality is a disease. The negative discourse in the media on LGBT persons and issues featured statements by politicians calling for violence, exclusion, and discrimination.

5. Council of Europe Commissioner for Human Rights, *Memorandum to the Latvian Government* (16 May 2007), online:

<<https://wcd.coe.int/ViewDoc.jsp?id=1134279&Site=CommDH&BackColorInternet=FE C65B&BackColorIntranet=FE C65B&BackColorLogged=FFC679>>.

- **Discrimination against LGBT persons becoming usual**
- **Several politicians opposed 2005 Gay Pride parade**
- **Right-wing demonstration violently attacked group of homosexuals**
- **Visible minority participants in Pride parade required police protection following threats by anti-homosexual activists**

According to this memorandum, discrimination against lesbians, gays, bisexuals and transgendered (LGBT) people is becoming usual in Latvia. The Gay Pride parade on July 23, 2005 was prohibited by the mayor of Riga, but later authorized by the Riga Administrative Court. Several politicians, including the Deputy Speaker of Parliament, openly opposed initiatives of this type. A demonstration involving extreme right-wing party members violently attacked a group of homosexuals who were attending a religious service after a Riga court prohibited the organization of another Gay Pride on July 21, 2006. The official reason given by the city authorities for not authorizing the parade was the risk of public disorder, with some politicians describing the parade as the worst threat facing Latvia since the collapse of the Soviet Union. Members of visible minority groups who arrived in Riga to take part in this parade were threatened by a group of 70 anti-homosexual activists. They had to be evacuated from a hotel where they had taken refuge, escorted by the police (who took a long time to intervene). Several persons were detained and brought to trial for derogative behaviour towards sexual minorities in connection with the Pride parade.

When Latvia recently amended its labour legislation, it included sexual minorities into anti-discrimination provisions set out in the text, after the first text adopted by Parliament had been vetoed by the President.

V: Reports by Non-Governmental Organizations

1. Amnesty International, *Lesbian, Gay, Bisexual and Transgender Rights in Poland and Latvia* (15 November 2006), online: <<http://www.asylumlaw.org/docs/sexualminorities/PolandLatviaAI111506.pdf>>.

- **Government and court decisions to ban Gay Pride events**
- **Prime Minister of Latvia and the Deputy Speaker of Parliament were reported to have made homophobic comments**
- **Lack of police action to protect Gay Pride event participants**

The above report focused on the Gay Pride events that took place in Riga in 2005 and 2006. In both years, the Riga City Council decided to ban the parade. The Riga Municipal Court overturned the decision in 2005 but upheld it in 2006. Homophobic comments were made by Prime Minister Aigars Kalvitis, who stated:

“This [parade] is not acceptable. Latvia is a state based on Christian values. We cannot advertise things which are not acceptable to the majority of our society.”

The Deputy Speaker of the Latvian Parliament, Leopolds Ozolins, referred to gay men as “shit stirrers”. In 2006, organizers of Gay Pride events notified the police that there would be violent counterdemonstration at their meetings, but the police failed to act on that information.

2. Open Society Institute and Kimeta Society, *Sexual Orientation Discrimination in Latvia*, online:

<<http://www.asylumlaw.org/docs/sexualminorities/Latvia%20CU%20SO.pdf>>.

- **Homophobic comments from Defence Minister despite the Ministry’s stance on permitting LGBT individuals to serve in armed forces**
- **LGBT Latvians subject to homophobic violence and harassment**
- **Fear of reporting instances of violence to police due to hostility and intolerance**

LGBT participation in the Latvian armed forces was addressed in this report. In 1999, the Latvian Defence Ministry expressed that “any citizen, irrespective of his or her sexual orientation, is free to serve in the Latvian armed forces”. However, in 2000, Defence Minister Girts Kristovskis, was quoted in an interview, stating:

“I have received no complaint of homosexuality in the armed forces. We are thinking about ways in which to create a health environment in the army. The main thing is that commanders and instructors must have the correct sexual orientation. Sure, people may say, ‘Don’t offend sexual minorities, we were born that way!’ but as far as I’m concerned, homosexuality is a perversion. It’s based on the principle of ‘I’ve tried everything else, so let me try this’. Children aren’t born homosexual; they are influenced and turned into homosexuals.”

One respondent in a survey of 25 LGBT Latvians who have served in the armed forces stated that he or she encountered discrimination while serving in the armed forces.

3. Amnesty International, *Mixed weekend for LGBT marches* (17 May 2009), online: <<http://www.amnesty.org/en/news-and-updates/news/mixed-weekend-lgbt-marches-20090518>>.

- **Gay Pride event banned by City Council but ban was overturned by Municipal Court**

Amnesty International reported that the first ever Baltic Pride march was met with resistance by the Riga City Council, which voted to ban the event. This decision was overturned by Riga’s Municipal Court the day before the event took place.

VI: Media Reports

1. Linda MacDonald, "Crucible of hate," *The Guardian* (1 June 2007), online: <<http://www.asylumlaw.org/docs/sexualminorities/Latvia070601CrucibleofhateSpecialreportsGuardianUnlimited.pdf>>.

- **Neofascist and ultra-religious counterdemonstrators at Riga Gay Pride event in 2005**
- **Assault of Gay Pride participants – spat at and hurling of bags of human excrement**
- **Lack of police action to address aforementioned assault**

A 2005 Gay Pride event in Riga was heavily protested by religious extremists and neofascists, with clear acts of assault on event participants that were ignored by the police. Then Latvian Prime Minister, Aigars Kalvitis, attempted to support a ban on the event, stating that he could not condone "a parade of sexual minorities."

VII: Scholarship

1. Dimitry Kochenov, "Gay rights in the EU: A Long Way Forward for the Union of 27" (2007) *Croatian Yearbook of European Law and Policy* 443.

- **Latvia has one of worst records in EU states for discrimination on the basis of sexual orientation**
- **Overwhelming societal prejudice against LGBT individuals**
- **Equality Parade prohibitions**
- **Public embrace of homophobic discourse, including statements by politicians**
- **Main problems with respect to achieving non-discrimination are not structural or legal, but rooted in societal prejudice**

Kochenov writes that Latvia ranks amongst the worst of the EU states in terms of discrimination against LGBT individuals. Constitutional rights of freedom of assembly and expression are threatened by prohibitions on Pride parades; courts have played a valuable role in protecting these rights for LGBT activists by overturning these local bans. Politicians participate in the country's homophobic discourse. For example, [then-Prime Minister of Latvia] Aigars Kalvitis opposed the 2005 Pride parade, stating that "Latvia is a state based on Christian values. We cannot advertise things which are not acceptable to the majority of our society." Discrimination appears to be rooted mainly in societal prejudice, and not legal or structural factors.