

LATVIA: The Status of Lesbian, Gay, Bisexual and Transgender Rights

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Latvia (11th Session)

INTRODUCTION

1. This information is submitted by ILGA-Europe¹ and LGBT and Their Friends' Association Mozaika² in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual and transgender (LGBT) people in Latvia. The report was written by Linda Freimane and Evita Goša, country experts.

2. This report provides information about the situation of LGBT people in Latvia. References of the quoted sources are included as footnotes.

OVERVIEW

There are no laws in Latvia, which provide any positive rights to LGBT people – such as, for example, the right to register their partnership, the right to marry or for same sex partners to adopt children jointly. Moreover, the fact that LGBT people exist, or that they live in lasting relationships with another person of the same sex and perhaps raise children, is not in any way recognized by the legislator. The only exception is the Latvian Labour Law, in which sexual orientation is included as the prohibited ground of discrimination as required by the EU Employment Directive 2000/78/EC.

There is also a very little representative and reliable information about the situation of LGBT people in Latvia. The national census data does not include LGBT people. There are no governmental researches nor monitoring mechanisms in relation to LGBT issues. Most LGBT people live their lives hiding their sexual orientation and/or gender identity, which results in very few discrimination and hate crime cases being reported to law enforcement authorities or brought to the courts.

Domestic research is almost non-existent – it has only been provided by NGOs or occasional surveys by researchers at the faculties of sociology and anthropology. Most of the existing research data about LGBT issues comes from international sources, and these researches are funded internationally. There is no funding allocated for LGBT research either – the government does not recognise LGBT people as a sector deserving investment in research, and private donors show no interest in the subject. So far no evidence can be found that the lack of public policies and anti-discrimination measures have been seriously questioned by

1 ILGA-Europe, the European Region of the International Lesbian, Gay, bisexual, trans and intersex Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 47 European countries; it receives financial support from the European Commission.

2 Lesbian, Gay, Bisexual, Transgender and Their Friends' Association Mozaika was founded in Riga, Latvia in 2006 and is the only NGO in Latvia working specifically for the rights of LGBT people.

influential agents (the EU for instance). The LGBT minority is not considered as a target group or a factor in any social or political sphere, thus there are no governmental policies or measures taken to monitor and diminish the inequality against this part of the population.

Public demonstrations, pride marches and other mass events are allowed by the national law, if they are peaceful and unarmed. The freedom of expression and assembly is guaranteed by the Latvian Constitution. Nevertheless, the Riga City Council on three occasions issued a prohibition to organise a pride parade in the centre of Riga – in 2005, 2006 and 2009. In 2005 the prohibition, based on “public morality”, was overturned by the District court and the parade took place. In 2006 the prohibition was upheld by the District court, using public safety as the main argument. This decision was later appealed and overturned by the Regional court as well as eventually by the Supreme Court of Latvia. As a result, amendments were made to the Latvian Law on Assemblies and Demonstrations, making it easier to organise public events. In 2009, after the pride parades had been allowed and successfully protected by the police in 2007 and 2008, the Riga City Council once again prohibited the parade. This time the reason was clearly political, since the parade was planned to take place only a few weeks before municipal elections. The ban was brought to court and overturned by the District court. The parade took place peacefully.

In the health system, there is no legal recognition of the needs of LGBT patients. There are very little reliable and official statistics and data, investigating the health and sexuality issues (for instance on HIV/AIDS issues) specifically relevant to LGBT persons. In 2008/2009 a survey was conducted among 250 men who have sex with other men by the Public Health Agency³, but the Agency was liquidated soon afterwards, and the data collected was never given an appropriate follow-up. Same-sex partners do not enjoy the same rights as married couples and blood relatives as regards the right of visitation or the right to take medical decisions on behalf of their seriously ill partner.

Two recent public surveys⁴ show that public perceptions and attitudes against LGBT people are amongst the most negative in Europe. For example, 34% of the respondents answered that they would have a more negative attitude towards a colleague if they found out that he/she is homosexual – 25% of those would have less contact with this person, 4% would discuss the matter with other colleagues and consider taking part in some action against the homosexual colleague, and 5% would try to achieve that the person cannot continue his or her work. In total more than 50% of the respondents believe that homosexual relationships should be condemned – including 23% who believe that both the homosexual and his/her relationship should be condemned and 31 % who believe that they do not have any objections against homosexuals, but that these relationships are condemnable.

RIGHT TO SECURITY OF THE PERSON

Article 20 of ICCPR

There are no reports on the level of violence and attacks against lesbian, gay and transgender persons in Latvia. Very few cases reach the courts, and the police do not report that a victim belongs to the LGBT community or has been perceived as belonging to it. There is a reason to believe that the number of actual cases is higher than statistics show, since many members of the community are not open with their sexual orientation and/or gender identity and would not

3 Sabiedrības Veselības Aģentūra, SVA – in cooperation with LGBT and Their Friends Association Mozaika, “Par pētījuma HIV prevalence un riska faktori paaugstinātā riska grupā lauka darba veikšanas iepirkumu SVA vajadzībām”, Identification No. SVA/08/B – 22.

4 Latvian polling institute SKDS December 2009 and July 2010.

risk disclosing their identity by turning to the police or label an attack as a homophobic hate crime.

During pride parades in Riga aggressive counter demonstrators are controlled by massive police forces. In 2007 a man and his 14-year old son were arrested after throwing explosives at the marchers. Suspended sentence was imposed on them, but they appealed the judgment, and the final judgment has not been adopted yet.

Since the Latvian Criminal Law does not define homophobic or transphobic motivation as an aggravating circumstance, courts do not take this motivation into account when deciding on merits and sentencing. The only victim characteristic which is protected in law and should be taken into account as aggravating circumstance is racial motivation, since the Parliament adopted respective amendments to the Criminal Law in 2006.

In 2010 Mozaika together with the Danish Institute for Human Rights developed a training program for Latvian police officers on tackling homophobic and transphobic hate crime⁵.

Recommendations:

We urge the Latvian Government to:

- Recognize homo- and transphobic motivation as an aggravating circumstance in the Criminal Law
- Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the actual or perceived sexual orientation or gender identity of any person or group of persons
- Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity
- Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished
- Undertake campaigns of awareness-raising, directed to the general public and to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity
- Train the police force in recognising, reporting and handling of crimes rooted in homophobia and transphobia

PROTECTION AGAINST HATE SPEECH

Latvian criminal law does not recognise hate speech related to homophobia and transphobia. It is not uncommon that public figures, such as politicians, express their views in terms which can be classified as hate speech towards LGBT people⁶. One political party chose to use homophobia as part of their election platform in the 2006 and 2010 parliamentary elections. However, in recent years the situation has become better among politicians and public officials. The internet is another forum where hate speech against LGBT persons can flourish. Some efforts have been made to self-regulate the anonymous news and discussion portals, but

⁵ Grant agreement nr. JLS/2000/FRAC/AG/1226: Tracing and tackling hate crimes against LGBT persons

⁶ See „Homophobic speech in Latvia: Monitoring the politicians”, survey conducted by Mozaika in 2006/2007.

still any article which touches upon LGBT issues is met with hundreds of very negative and hateful anonymous comments.

Recommendations:

We urge the Latvian Government to:

- Encourage a public debate on the rights of LGBT people as being part of universal human rights
- Define homophobic and transphobic speech and incitement to homophobic and transphobic violence as a criminal offence

RIGHT TO EDUCATION

(Article 13 of ICESCR)

The Latvian educational curriculum is strictly gender biased, representing strong heteronormative and sexist role of the man and the woman, and excluding LGBT people. Issues related to homosexuality and trans issues are not part of the educational programmes and are only discussed in schools if individual teachers choose to do so (In 2007 more than 250 teachers signed a petition urging the Parliament not to adopt planned amendments to the Criminal Law, which would have criminalized violation of prohibition of discrimination on grounds of sexual orientation).

There are no vocational training programmes developed by the government to tackle homophobic and transphobic attitudes in schools, therefore, there is no objective to raise LGBT people's competitiveness and equal opportunities on the labour market. There is also no research on homophobic or transphobic bullying of youngsters in schools, or on the relationship between juvenile suicide and homosexuality.

Recommendations:

We urge the Latvian Government to:

- Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;
- Take proactive and adequate measures to address homophobic and transphobic bullying and discrimination against LGBT pupils and teachers.

RIGHT TO RECOGNITION BEFORE THE LAW

There are no surveys, statistics or official data about the situation of the transgender, transsexual and intersex people in Latvia.

There is also 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 the Department of Administrative Cases of the Senate of the Supreme Court in a case of sex change 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.

The only Latvian law provision which indicates the possibility to change gender in a legal sense is Article 32 of the Civil Status Documents Law of 2005 on modifying entries in the birth register. However, there is no clear and explicit legal regulation on the order for modifying entries in 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 shall take a decision to change a person's gender in the birth register and on which grounds. Also, the procedure for applying to change the legal gender is not determined, and it is not clear what kind of documentation should be presented as a proof for change of person's gender.

Recommendations:

We urge the Latvian Government to:

- a) Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of gender identity in public and private employment;
- b) Take necessary and adequate measures to make the procedure for changing the name and gender in the personal documents of a transgender/transsexual/intersex person clear and non-bureaucratic;
- c) Take legislative, administrative and other provisions to allow transition therapy and gender reassignment procedures to be covered by the state and available in public hospitals.

RIGHT TO EQUALITY AND NON-DISCRIMINATION

(Article 26 of ICCPR and Article 2 of ICESCR)

The Latvian legal system only recognises the civil marriage between a man and a woman, as stated in the Latvian Constitution⁷. National legislation does not recognise same-sex marriage or any other form of same-sex partnership or cohabitation, nor does it offer legal recognition for the relation between children and co-parents in LGBT families.

This lack of legal recognition of diverse forms of families, including non-married heterosexual couples, results in discrimination in a number of areas of life. For instance, same-sex partners are not recognised as next of kin and are not entitled to benefits which are available to married couples. Mozaika is planning to submit a draft partnership law to the Latvian Parliament in early 2011.

As Latvia neither recognises same-sex marriage nor has civil partnership registration, neither the partner him/herself nor other members of the partner's family can benefit from EU legislation with regard to freedom of movement (directive 2004/38/EC), family reunification (directive 2003/86/EC) or asylum (directive 2004/83/EC).

Recommendations:

We urge the Latvian Government to:

- Ensure that Latvian legislation and policies recognise the diversity of forms of family;
- Take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or

⁷ The Constitution was amended in 2005, after the first Riga Pride, to specifically mention that marriage is only possible between one man and one woman.

gender identity of any of its members, including with regard to public benefits and immigration;

- Ensure that children of homosexual parents are not discriminated against;
- Support the draft partnership law to be proposed by Mozaika, which will be submitted to the Parliament, and initiate the adoption of a gender neutral cohabitation law.