



Combating Hate Crimes in Latvia: Legislation and Police Practice



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Combating Hate Crimes in Latvia: Legislation and Police Practice

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Introduction

The paper “Combating Hate Crimes in Latvia: Legislation and Police Practice” maps and analyses the situation concerning hate crimes in Latvia, including legislation and police practises, in order to identify the gaps and to improve legislative and law enforcement responses to hate crimes.

It provides an overview concerning the development of legislation criminalising hate crimes on racist and religious grounds from the Soviet period until present times, police structure in Latvia, statistics on hate crimes, police practises and challenges in investigating racist crimes as well as the increasing role of civil society in combating hate crimes.

In the understanding of hate crimes, the paper has followed the ODIHR working definition of hate crime:

A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group as defined in Part B.

B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.

While the paper predominantly focuses on racist crimes, developments in Latvia in recent years strongly argue in favour of criminal legislation that would widen protection against hate motivated crimes towards sexual minorities, providing also for religious and homophobic motives as aggravating circumstances.

The paper is one of the outputs of a two-year EU funded project, which has aimed to improve police capacity in identifying and investigating hate crimes, and to strengthen police and NGO co-operation and which has, inter alia, included mutual exchange study visits for Latvian and Czech Police and NGO representatives. The project also includes the publication of a research paper highlighting the experiences of victims of hate crimes in Latvia, national seminars and international conferences in both Latvia and the Czech Republic. All activities represent the search for new and effective ways of addressing hate crimes that would lead to improved policing, address the needs of the victims of hate crimes and foster meaningful co-operation between the police, NGOs and minority groups.

Summary

Hate crimes became a topical issue in Latvia in 2005, with the first officially recorded racially motivated violence. There was also a perceived increase of hate speech in the public discourse, predominantly on the Internet. In addition, the summer of 2005 saw public expressions of homophobia by politicians and the public during and after the first Riga Pride. In 2006, intolerance and aggressive actions took place around the closed events of the Pride after the Riga City Council banned the march.

While on several occasions state officials have publicly condemned acts motivated by hatred, especially racial violence¹, the prevalent view among Latvian politicians and the wider public has been that such cases are isolated instances and that the Latvian public is generally tolerant towards different groups in society.

At the same time, public opinion polls conducted in Latvia in 2004-2008 indicate high levels of intolerance and negative attitudes towards visible minorities, guest workers, asylum seekers, refugees, and sexual minorities. Prejudice has been high against the Kurds, Chinese, Africans, Chechens and Afghans according to polls conducted in 2004 and 2008 where over 70 % of respondents wanted either to exclude them from entry into the country or allow them in only as tourists.² Sixty percent of all respondents maintained the same attitude towards asylum seekers.³ In 2005, 70% of respondents viewed negatively potential guest workers⁴, while in 2007 the figure had slightly decreased to 62%.⁵ In 2004, 38% of polled respondents objected to having homosexuals as neighbours, while 59% of Latvians and 55% of non-Latvians had negative attitude towards "non-traditional" religions in Latvia.⁶ In a poll conducted in 2007-2008, the respondents in Riga indicated they would not want to live next to Roma (53%), homosexuals (48%), guest workers (33,7%), and Muslims (25, 5%).⁷

In recent years, some amendments have been made to the Criminal Law concerning provisions criminalising racially and religiously motivated offences, such as the inclusion of a racist motive as an aggravating factor in October 2006. However, the amendments have not come as a result of consensus reached through serious and constructive debates among legislators, practitioners and experts, and have not been evaluated in light of

¹ Aicina būt neieciētiem pret rasisma izpausmēm (Calling not to tolerate manifestations of racism), *BNS*, 28.10.2005.

² The Equal Project. „Step by Step”(2005). *The Attitude of Latvia's Inhabitants, State Officials and NGOs towards Asylum Seekers*, p. 61-62 at http://www.pmlp.gov.lv/pet_03022006.doc; Studio of Qualitative Research (2008). *Integration of New Members of Society*, p. 9-10 at <http://www.politika.lv/index.php?id=16597>

³ The Equal Project. „Step by Step”(2005). *The Attitude of Latvia's Inhabitants, State Officials and NGOs towards Asylum Seekers*, p. 61-62 at http://www.pmlp.gov.lv/pet_03022006.doc

⁴ Market and Public Opinion Research Centre SKDS (2006), *Public Attitude Towards Labour Force Migration*, p. 36 available at <http://www.liic.lv/uploads/filedir/File/Sab-bas%20attieksme%20pret%20darbaspeka%20migr.pdf>

⁵ Market and Public Opinion Research Centre SKDS (2007), *Topical Aspects of Social Integration*, p.52, at http://www.integracija.gov.lv/doc_upl/ataskaite_integracija_2_07.doc

⁶ Zepa, B., Šūpule I., Krastiņa L., (2004) *Ethnic Tolerance and Social Integration in Latvia*, Riga: Baltic Institute of Social Sciences, p.17, at http://www.bszi.lv/downloads/resources/Tolerance/Tolerance_LV.pdf

⁷ SIA Laboratory of Analytical Research and Strategy (2007-2008). *Social Economic Development Trends of the Latvian Cities*, p.96., at http://www.humanrights.org.lv/upload_file/Petijums_Latvijaspilsetusociali_ekonomiskasattibastendences.pdf

existing UN and Council of Europe standards. Legislative gaps remain, failing to address various expressions and acts of hatred against different vulnerable groups. The Criminal Law does not provide for special offences against a person because of his/her sexual orientation, and any attempts to criminalise homophobic crimes have, thus far, been thwarted. Another shortcoming of the legislation has to do with the potential conflation of incitement to hatred and hate-motivated violence into one criminal law provision.

On 14 February 2007, Latvia ratified the Council of Europe Convention on Cybercrime and Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which came into force on 1 June 2007. Despite the positive move, the Latvian legislation has not been adequately evaluated and amended in line with the Additional Protocol.

In practice, only one Criminal Law provision – Section 78 (incitement to ethnic, national and racial hatred), which is included in Chapter IX (Crimes against Humanity, War and Peace, Genocide) of the Criminal Law, has been applied. However, the issue about the appropriate place of the provision in the law has been questioned. In hate speech cases falling under the Section 78, as all crimes under this Chapter, the initial investigation is conducted by the Security Police. However, in the cases of racist crimes, including violent racist crimes occurring in the “street”, the initial investigation is conducted by the State Police, and then forwarded to the Security Police, if it is classified under Section 78.

No comprehensive system of registering racially and religiously motivated crimes has been developed. The Police only record crimes initiated under Section 78 of the Criminal Law (formerly Section 69) and around 60 cases have been registered during the last decade, most occurring within the last four years. The police do not collect criminal statistics on hate crime motives (racist, homophobic, etc.). Interestingly, however, an ‘interethnic relations motive’ has remained from the Soviet times, and has been recorded in 40 criminal cases under different sections of the Criminal Law, such as homicide, bodily injuries, etc., albeit, inconsistently.

Although NGOs have only recently begun creating mechanisms to collect unofficial statistics on hate crimes, as elsewhere, anecdotal evidence suggests that such offences are far more widespread than officially recorded and include both harassment and violence.

While the number of cases opened under Section 78 has only grown in recent years, several trends and challenges, indicating application problems, have emerged. The majority of cases have been hate-speech cases on the Internet, and some have also been related to marginal right-wing media. In hate speech cases, law enforcement and judicial authorities continue to rely on external expert opinion in evaluating whether incitement to hatred has occurred, and have not developed adequate internal capacity to investigate such cases. Criteria for the selection of external experts are insufficiently developed.

Criminal offences under Section 78 require proof of a perpetrator’s direct intent to stir up racial hatred. A major problem in investigation of such cases by the law enforcement and the judicial system has been the narrow interpretation of intent and proof of such intent. It has on occasion been sufficient for the perpetrator who has expressed racist

ideas which amount to incitement to avoid criminal liability by denying that he/she had intended to incite hatred.

The first case of racial violence was officially recorded in 2005, and 14 such cases overall until late 2008. The police have struggled in handling such cases due to lack of experience in identifying and investigating such crimes, and a low awareness of the impact of racist crimes. Initially, the cases were qualified as hooliganism or petty hooliganism without adequately examining the racial motives of the offenders, and in several cases when no substantial injuries had been caused to the victim, the case was closed. Following media and public criticism, the police attempted to qualify violent crimes under Section 78. Nevertheless, despite some prosecutions, the provision has been deemed inadequate to prosecute racial violence, as it in essence is a hate speech provision.

A Criminal Law amendment in 2006, which introduced a racist motive as an aggravating factor to all criminal offences, has yet to be applied.

The majority of incitement to hatred cases have occurred on the Internet, and under Section 78 have been resolved at the prosecutorial stage with defendants, predominantly youths, receiving significant fines for having made 1-4 comments. In contrast, in a case involving the marginal newspaper DDD of a radical right-wing organisation Latvian National Front, notorious for its anti-Russian, anti-Semitic and anti-LGBT rhetoric, all defendants were acquitted of incitement to national hatred in all three court instances, which concluded that the statements in question were protected by freedom of speech. In cases of racist violence, suspended imprisonment with probation has been predominantly applied; however, in 2008 the court, for the first time sentenced two offenders to imprisonment.

There is no victims' register in Latvia and in the case file no information is recorded about the victim's ethnic or religious background. When racist motivation is alleged, it will appear in the case file, but there is no system in place of recording such cases separately. However, the majority of victims of racist crimes are visible minorities, and have included local inhabitants, foreign employees, students, and tourists. In 2007 the first case of racist violence against a Roma was officially recorded.

In the absence of special offences in the Criminal Law against persons on grounds of their sexual orientation, in the cases of homophobic crimes, predominantly linked with annual Riga Pride events, the provisions on general crimes, such as hooliganism, have been applied and the courts have not examined the homophobic motives of the offences.

In 2005 the Secretariat for the Special Assignments Minister for Social Integration adopted a National Programme for Tolerance 2005-2009. However, neither the Programme, nor Action Plan address extreme manifestations of intolerance or envisage a long-term approach to effectively combat hate crimes. The Ministry of Interior Strategy 2007-2009, in the context of radical and extremist organisations, for the first time highlights racist and xenophobic crimes, underlining the need to educate Latvian inhabitants about manifestations of racism and xenophobia, but this is not elaborated in greater detail. A draft National Programme for Tolerance 2009-2013 envisages training for law enforcement and judicial system about hate crimes, but it has not yet been approved by the government.

Several NGOs (*Latvian Centre for Human Rights, dialogi.lv, Afrolat*) have become engaged in combating hate crimes, and the LCHR has worked to establish co-operation with the Latvian police, facilitating training and exposure of the Latvian police to police practises in other countries. Dialogi.lv has addressed the issues of online hate through promoting the accountability of Internet service providers. The needs of hate crime victims are not yet addressed, but the first awareness raising steps have been taken.

Despite some progress in recent years that has resulted in the increased awareness among various professional groups in society about the specific nature of hate crimes and the reasons why they should be prioritised, there remains a strong need for concerted and sustained effort in the capacity building of the law enforcement, the prosecution and the judiciary. Key for the success of such efforts and the effective tackling of hate crimes is the establishment and strengthening of partnerships between the police, NGOs and minority groups. In addition, there is a clear and urgent need to develop and make accessible specialised support services for victims of such hate crimes.

Diversity in Latvia

Historically, Latvia has always been ethnically diverse and at various periods ethnic minorities have formed a varying, but significant part of its population. Thus, in mid 2008, ethnic minorities formed 40% of the country's population.

Ethnic groups in Latvia, 1 July 2008

Ethnic group	Total number	%
Latvians	1,343,653	59,16
Russians	634,159	27,92
Byelorussians	83,036	3,65
Ukrainians	56,992	2,51
Lithuanians	30,603	1,35
Jews	10,076	0,44
Roma	8,608	0,38
Ethnicity not specified	18,088	0,8
Others	86,162	3,79
Total	2,271,377	

Source: Department of Citizenship and Migration Affairs

Smaller ethnic groups included Tatars (2,834), Armenians (~2,740), Estonians (2,498), Moldovans (~2,110), Azeris (~1,780), Georgians (1,137), etc.

Since the re-establishment of independence in 1991, Latvia has, on occasion, faced tensions between representatives of the largest Latvian and Russian-speaking communities over issues of citizenship, language rights, including in education. However, other indicators show a high level of interethnic tolerance in society among the traditional ethnic groups. Historically, Jewish and Romani minorities have in different ways been most vulnerable to prejudice and discrimination. Anti-Semitism remains a concern, as evidenced by hate speech on the internet, and Roma experience discrimination in various spheres of life.

But in recent years the visibly different minorities, still few in numbers, are most exposed to racism. Persons of darker skin colour, those originating from outside Europe, and Muslims are particularly vulnerable. Surveys indicate that racist and xenophobic attitudes are equally widespread among Latvians and established minority representatives.

Since the introduction of asylum procedure in 1998, the number of asylum applications during the decade has been small – around 250, while by mid November 2008 only 17 persons had been granted refugee and 21 – alternative status.

During recent years of economic growth, following acute shortages of local labour force, Latvia has also witnessed an increase in the number of guest workers, and both in 2007 and 2008 work permits were issued to around 3,000 persons, predominantly from the

Ukraine and Moldova, but also from countries such as Uzbekistan and Thailand.

Although statistics indicate a significant number of population belonging to the three largest Christian denominations (Protestants, Catholics, Russian Orthodox), surveys show that Latvia is largely a secular society. Non-Christian religious groups remain small, but have been growing in number. Several sources put the number of Muslims between 5,000 – 10,000, who are predominantly from the former Soviet Asian Republics.

Diversity on other grounds, such as sexual orientation, had received far less attention in public debate and general awareness until in 2005, amidst heavy police security, Latvia witnessed the first Gay Pride in the capital Riga. Also in relation to subsequent annual Pride and other LGBT rights related events sexual minorities and their supporters have been subject to manifestations of homophobia by some politicians, religious, and different other anti-LGBT groups as well as certain sections of the general public.

The increasing mobility in Europe and globally, emergence of new minority groups, contributes to the changing make-up of the country. This increasing diversity in Latvia poses challenges to the law enforcement, prosecution, judicial system and public at large as manifestations of intolerance and hatred have become more visible and widespread. Meeting these challenges will require a sustained effort in their eradication to ensure that all individuals in Latvia, irrespective of their ethnic or national origin, colour, race, language, sexual orientation and other features can enjoy a life based on equality, dignity and safety.

1. Legislative Developments

Soviet Period⁸

1950s-60s

While many Latvian experts assume that the incitement to national and racial hatred and the criminalisation of the restriction of rights based on racial or ethnic affiliation (Section 69 until 1999, Section 78 since 1999) have been recently introduced, these provisions were adopted in the early 1960s, during the Soviet period, in circumstances very different from today. The provisions were amended in the late 1980s in Soviet criminal legislation, in response to ethnic unrest in parts of the Soviet Union, and then replicated in the criminal codes of the Soviet republics, including the Latvian SSR.

Until the break-up of the Soviet Union and the subsequent (re)-establishment of independent states, the Soviet criminal legislation system was comprised of the legislation of the USSR and the legislation of the Soviet republics. The USSR criminal legislation envisaged that USSR Laws on Criminal Liability for Crimes against the State and Military Crimes, and the USSR Criminal Codes on liability for other crimes are to be included in the respective Criminal Codes of the Soviet republics.

On 25 December 1958 the Supreme Soviet of the USSR adopted the Law on Criminal Liability for Crimes against the State. Article 11 on Violation of National and Racial Equality criminalised *“propaganda or agitation aimed at the incitement of racial and national hatred or enmity, as well as the restricting, directly or indirectly, of the rights of citizens or the creating, directly or indirectly, of privileges for citizens based on their racial or national origin”* and for such violations envisaged a prison sentence from six months to three years, or internal exile from two to five years. This provision was included in Section II: Other Crimes against the State alongside divulging state secrets, loss of documents containing state secrets, smuggling, mass unrest, evasion of military service, illegal departure from and entry into the USSR, violation of regulations on currency transactions, etc.⁹

The Criminal Code and Criminal Procedure Code of the Latvian SSR became effective on 1 April 1961. The provisions of the Law on Criminal Liability for Crimes against the State were fully copied into the Criminal Code of the Latvian SSR and became Section 69. Thus, two different types of crime - incitement to racial and national hatred and discrimination, on the grounds of racial or national origin, were placed in one clause.

⁸ Legislative Developments in the USSR and prior to the break-up of the Soviet Union have been described in: B.V.Volzhenkin „Iz istorii stanovleniya st.74” (From the History of the Development of Section 74 (of the Criminal Code of the Russian Federative Soviet Socialist Republic) at http://www.memoru/hr/referats/hatespch/izi_wol.htm

⁹ Zakon „Ob ugolovnoj otvetstvennosti za gosudarstvenniji prestupleniya” [Law on Criminal Liability for State Crimes]. Verhovnij Sovet SSR, 25 December 1958 at http://ru.wikisource.org/wiki/Закон_СССР_от_25.12.1958_Об_уголовной_ответственности_за_государственные_преступ...

For propaganda or agitation aimed at the incitement of racial and national hatred or enmity, as well as the restricting, directly or indirectly, of the rights of citizens or the creating, directly or indirectly, of privileges for citizens based on their racial or national origin,

– shall be punishable by imprisonment from 6 months to three years or by internal exile from two to five years.¹⁰

The existence of discrimination was never recognised in the USSR, whilst expressions of 'nationalist sentiment' were qualified as anti-Soviet propaganda. As a result, the provision was rarely applied in practise throughout the former Soviet Union, and from 1962 until the amendments in April 1989 it was applied in 77 cases in the entire USSR, including seven cases concerning Latvia (three in 1970, three in 1972, and one in 1978).¹¹ (See Table on p.13). The number of cases increased after April 1989.

1980s–1991

As a result of a growing number of interethnic conflicts in various parts of the Soviet Union, which led to interethnic violence (an anti-Armenian pogrom in the Azerbaijani city of Sumgayit in the end of 1980s, etc.) on 8 April 1989 the Presidium of the Supreme Soviet amended the clause on the Violation of National and Racial Equality.

In addition to intentional acts aimed at inciting racial and ethnic hatred or enmity and restriction of the rights of citizens on racial and national origin grounds, the amendments also criminalised acts that debase national dignity and honour. It provided for criminal liability for same intentional acts if connected with violence, fraud or threats, and if committed by an official, a group of persons or if the acts have led to the death of persons or other grave consequences and envisaged higher penalties of up to ten years imprisonment¹².

The same amendments were included in the Criminal Code of the Latvian SSR on 1 March 1990.

Section 69 now included four separate criminal offences

- Incitement to national and racial hatred
- Debasement of national honour and dignity
- Restriction of rights based on national and racial grounds
- Other racially motivated acts, such as violence

¹⁰ J.Dzenitis, Niedre A. (ed.), (1982). Latvijas PSR Kriminālkodeksa komentāri. (Commentaries to the Criminal Code of the Latvian SSR). Riga: Avots, 1982, p. 233.

¹¹ In: J.M.Schmidt (ed.), (1993). Problema otvetstvennosti za razzhiganiya natsionalnoi rozni (Problems of Liability for Incitement to National Hatred). Conference Proceedings. M:Memorial, 1993, p. 99-100 at <http://www.memo.ru/hr/referats/hatespch>.

¹² Ukaz Prezidiuma Verkhovnogo Soveta SSSR ot 08.04.1989 "O vneseniye izmenenii i dopolnenii v Zakon SSSR "Ob ugovolnoi otvetstvennosti za gosudarstvenniye prestupleniya" i nekotoriye drugiye zakonodatelniye akti SSSR [Decree of the Presidium of the Supreme Soviet of the USSR of 8 April, 1989 "On Introducing Amendments to USSR Law "On Criminal Liability for State Crimes" and several other legislative acts of the USSR] at <http://www.bestpravo.ru/ussr/index.htm>.

Section 69

Violation of National and Racial Equality

For a person who commits acts knowingly directed towards instigating national or racial hatred or enmity, or debasement of national honour and dignity, the restricting, directly or indirectly, of the rights of citizens or the creating, directly or indirectly, of privileges for citizens based on their racial or national origin

- the applicable sentence is the deprivation of liberty for a term not exceeding three years or a fine not exceeding thirty minimum salaries

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 or by an official, -

- the applicable sentence is the deprivation of liberty for a term not exceeding five years or a fine not exceeding fifty minimum salaries

For acts in paragraphs (1) and (2), if committed by a group of persons and if these acts have resulted in the death of persons or other serious consequences,

- the applicable sentence is the deprivation of liberty for a term not exceeding ten years.

Following the collapse of the former Soviet Union, this provision, with occasional amendments, has been retained in the Criminal Codes of a significant number of the former Soviet republics, e.g. Criminal Codes of Ukraine (Section 161), Belarus (Section 130), Armenia (Section 226), etc.

Statistics about criminal cases opened under Section 74 of the Criminal Code of the Russian SFSR and respective sections in the Criminal Codes of Soviet Republics 1962-1991

Year	entire USSR	Russian SFSR	Ukrainian SSR	Belorussian SSR	Uzbek SSR	Kazakh SSR	Georgian SSR	Azerbaijani SSR	Lithuanian SSR	Moldavian SSR	Latvian SSR	Kyrgyz SSR	Tajik SSR	Armenian SSR	Turkmeni SSR	Estonian SSR
1962	1	1														
1963																
1964																
1965	2	1							1							
1966	7	1						2		3					1	
1967	4									3					1	
1968																

Year	entire USSR	Russian SFSR	Ukrainian SSR	Belorussian SSR	Uzbek SSR	Kazakh SSR	Georgian SSR	Azerbaijani SSR	Lithuanian SSR	Moldavian SSR	Latvian SSR	Kyrgyz SSR	Tajik SSR	Armenian SSR	Turkmeni SSR	Estonian SSR
1969	3				3											
1970	6								3		3					
1971	6				3			1		2						
1972	4				1						3					
1973	4	1							3							
1974	8													8		
1975																
1976																
1977																
1978	2	1									1					
1979																
1980	5						1							4		
1981																
1982	4	3				1										
1983	3									3						
1984																
1985																
1986																
1987	9					9										
1988	1							1								
1989	9				2		1	5					1			
1990	19		1		6	1	6						5			
1991	12	1						5				6				

Source: Ministry of Justice of the USSR¹³

With the growth of independence movements and the increasing nationalist sentiment in the Soviet republics, there was another legislative attempt by the Soviet authorities claiming as an aim to strengthen the equality of Soviet citizens, but largely oriented

¹³ Statistics compiled by A.Roginskii, Y.Rachninskii. In: J.M.Schmidt (ed.), (1993). Problema otvetstvennosti za razzhiganiya natsionalnoi rozni (Problems of Liability for Incitement to National Hatred). Conference Proceedings. M:Memorial, 1993, p. 99-100 at <http://www.memo.ru/hr/referats/hatespch/pril.htm>.

towards the restriction of these organisations' activities, to prevent the break-up of the former Soviet Union.

On 2 April 1990 the USSR Supreme Council adopted the Law "On Reinforcing Responsibility of the Violation of the National Equality of Citizens and Forcible Break-up of the Territorial Unity of the USSR." It deemed illegal and subject to banning the activities of any citizen association, including political parties, public organisations and mass movements aimed at inciting national or racial hatred, enmity or scorn, resorting to violence on national, religious or racial grounds as well as activities aimed at the forcible break-up of the territorial unity of the USSR, soviet republics or autonomous regions or districts.

The law amended, inter alia, Article 34 of the Fundamentals of the Criminal Legislation of the USSR by introducing a new aggravating circumstance 'committing a crime on the grounds of national or racial hatred or scorn/disdain'.¹⁴ These provisions, however, were not replicated in the Criminal Code of the Latvian SSR.

New Criminal Law - 1998

Seven years after the re-establishment of independence, in June 1998, Latvia adopted a new Criminal Law which came into force in April 1999. Section 69 became Section 78 and underwent some amendments. The debasement of national dignity and honour provision was deleted and paragraphs (2) and (3) were merged into one paragraph.

Section 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 the 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 a company or an organisation, the applicable sentence is the deprivation of liberty for a term not exceeding ten years.

¹⁴ Zakon SSSR ot 02.04.1990 N 1403-1 „Ob ysileniye otvetstvennosti za posyagatelstva na natsionalnoye ravnopraviye grazhdan ir nasilstvennoye narusheniye yedinstva territorii Soyuza SSR" [USSR Law of 2 April, 1990 N 1403-1 „On Reinforcing Responsibility of the Violation of the National Equality of Citizens and Forcible Break-up of the Territorial Unity of the USSR], at <http://pravo.levonevsky.org/baza/soviet/sssr0976.htm>

In its recommendations assessing Latvia's 2nd report, the European Commission against Racism and Intolerance expressed regret that Section 78 no longer contained a provision explicitly prohibiting acts aimed to debase the national dignity of a person, as was the case in Section 69 of the previous Criminal Code. It noted that, as is the case in other countries, racist speech in Latvia often takes the form of degrading or humiliating expressions based on characteristics such as national or ethnic origin.¹⁵

Place of Section 78 in the Criminal Law

The 1961 Criminal Code of the Latvian SSR placed Section 69 on Violation of National and Racial Equality (incitement to racial and ethnic hatred and discrimination on grounds of race and ethnicity) in the category of the gravest crimes under the Chapter on "Crimes against the State."

After re-gaining independence in 1991, the Soviet Latvian Criminal Code was subsequently renamed the Latvian Criminal Code, but retained much of the structure and criminal offences of the previous code while at the same time undergoing frequent amendments due to the new emerging reality.

In April 1992 Latvia became party to the UN Convention on the Prevention and Punishment of the Crime of Genocide, and in April 1993 it amended its Criminal Code providing for criminal responsibility for crimes against humanity, genocide¹⁶, crimes against peace, and war crimes. A new sub-chapter "On Crimes against Humanity, Genocide, Crimes against Peace and War Crimes" (Section 68.1-3) was created and included in chapter I between "Crimes against the Republic" (Sect.59-68) and "Other State Crimes" (69.-84.1).

In the new Criminal Law, which was adopted in June 1998, a new Chapter "On Crimes against Humanity, Genocide, Crimes against Peace and War Crimes" was created and Section 78 on Violation of National and Racial Equality and Restrictions of Human Rights was also included in this Chapter, among the gravest crimes.

¹⁵ European Commission against Racism and Intolerance, 2nd Report on Latvia Strasbourg 23 July 2002, p. 12 at http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-latvia-eng.pdf

¹⁶ The definition of "genocide" from the Convention was initially taken over only in part, but also expanded by the Latvian legislator.

1961

Other Crimes against the State

Section 69

Violation of National and Racial Equality



1993

(Chapter 1)

Crimes against the Republic (Sect.59-68)

Crimes against Humanity, Genocide, Crimes against Peace, War Crimes
(Chapter 1A, Section 68.1-3; introduced in the Criminal Code in 1993)

Other Crimes against the State (69.-84.1 - 1991)

Section 69

Violation of National and Racial Equality



1999

Chapter IX

Crimes against Humanity, Genocide, Crimes against Peace, War Crimes

Section 78

Violation of National or Racial Equality and Restriction of Human Rights
Instigation to National, Ethnic or Racial Hatred (from 2007)

While it has been acknowledged that by placing these criminal offences among international crimes or among 'criminal offences above all others' Latvian legislators have recognised the seriousness of racially motivated crimes and their potentially destructive impact on society and these crimes are, therefore, being investigated by the Security Police. However, the Rome Statute Explanatory Memorandum states that "murder, extermination, torture, rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice."¹⁷

Criminal cases under Section 78 in Latvia have included individual acts of incitement to hatred or enmity or individual racially motivated assaults or attempted assaults. The place of the Section in this Chapter remains questionable and suggestions have been made by some experts to move it to the Chapter on Criminal Offences Against Fundamental Rights and Freedoms of a Person. At the same time occasional concern has been voiced that if the section is moved to another chapter, racist crimes will not be accorded the same significance and will not be investigated by the Security Police as these crimes will fall solely under the jurisdiction of the State Police.

¹⁷ As quoted by Guy Horton in *Dying Alive - A Legal Assessment of Human Rights Violations in Burma* April 2005, co-Funded by The Netherlands Ministry for Development Co-Operation. See section "12.52 Crimes against humanity", Page 201. He references RSICC/C, Vol. 1 p. 360 at <http://burmalibrary.org/docs3/Horton-2005.pdf>

Section 150 (137)

Other hate crime provisions that have existed in the Latvian legislation since 1991 concern incitement to religious hatred, offence to a person's religious sensibilities, and violation of principle of equality based on religious beliefs. In fact, they replaced a provision in the USSR Criminal Code: "The Violation of Regulations on the Separation of Church from the State and the Separation of School from Church" (Section 137).¹⁸

On 17 April 1991 USSR President M. Gorbachev passed the Law "On Introducing Amendments and Additions to Several Legislative Acts of the USSR in Relation to the Adoption of USSR Law "On Freedom of Conscience and Religious Organisations". The amendments were introduced to the USSR Law of 25 December 1958 "On Criminal Responsibility for Crimes against the State", to Section 11 concerning the "Violation of National, Racial Equality and Equality of Citizens in Relation to their Attitude towards Religion", which criminalised incitement to hatred and discrimination on religious grounds.¹⁹

The provision on "violation of equality of individuals in relation to their attitude towards religion" was introduced as a separate Section in the Latvian Criminal Code on 6 August 1991 in the Chapter on "Citizen Political, Labour and Other Rights". This section, in fact, was similarly constructed as the Section 78 and also included several criminal offences – discrimination, offence to a person's religious sensibilities or incitement to hatred in relation to a person's attitude towards religion or atheism.

In the new Criminal Law adopted in June 1998 the Chapter was renamed as "Criminal Offences against Fundamental Rights and Freedoms of a Person" and Section 137 became Section 150 "The Violation of Equal Rights of Persons on the Basis of their Attitudes towards Religion."

Section 150 Violation of Equality Rights of Persons on the Basis of their Attitudes towards Religion

For a person who directly or indirectly restricts the rights of persons or creates whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion, except activities in the institutions of a religious denomination, or commits a 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 the deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage.

The Latvian Criminal Law includes another section dealing with potential manifestation of religious intolerance.

¹⁸ Latvijas PSR Kriminālkodeksa komentāri.(Commentaries to the Criminal Code of the Latvian SSR). Rīga: Avots, 1982. – p.442.

¹⁹ Zakon SSSR ot 17.04.1991 N 2121-1 O Vneseniye izmenenii i dopolnenii v nekotoriye zakonodatelniye akti Soyuza SSR v svyazi prinyatiyem zakona SSR „O Svobode sovesti i religioznh organizatsii” [USSR Law of 17 April, 1991 N 2121-1 On Introducing Amendments and Additions to Several Legislative Acts of the USSR in Connection with the Adoption of the USSR Law „On Freedom of Conscience and Religious Organisations”] at <http://www.bestpravo.ru/ussr/data01/tex10309.htm>

Section 151. Interference with Religious Rituals

For a person who commits intentional interference with religious rituals, if such are not in violation of the law and are not associated with a violation of personal rights, the applicable sentence is community service, or a fine not exceeding ten times the minimum monthly wage.

Other Legislation

Incitement to racial and national hatred is also prohibited in several other special laws. The Law "On Meetings, Marches and Pickets" prohibits propaganda of violence, national and racial hatred, open Nazi or fascist ideology (Section 10), and the display by the participants of such marches of flags, coats of arms, anthems and symbols (including in a stylized form) of Nazi Germany, as well as the former USSR and the Latvian SSR.

The Law "On Press and other Mass Media" prohibits the publication of information propagating racial, national or religious superiority and enmity (Section 7). The courts can rule on the closure of a mass media if it has published information which the court has established as the violation of racial and national equality. The Law also prohibits journalists to disseminate news listed in Section 7, while section 27 provides for criminal liability for publication of information propagating racial, national or religious superiority or enmity.

Several provisions of the Law on Radio and Television, such as general rules about the creation of programmes and broadcasts prohibit incitement to national, racial, gender and religious hatred, and debasement of national honour and pride (Section 17.3). Restrictions on advertisements and teleshop include prohibition of racial, gender, ethnic discrimination and insult to religious feelings or political conviction (Section 20).

The Law on Religious Organisations provides that a religious organisation can be banned by court if it propagates ideas of religious intolerance and hatred (Section 18.4).

2. Latvian Police Structure

The Latvian police include the State Police and the Security Police, which operate on the whole territory of Latvia and are funded from the state budget, and the Municipal Police, which operate in most urban areas, and are established and funded by local governments. The State Police and the Security Police are subordinated to the Minister of Interior.

State Police

The State Police have a central headquarters and subordinated territorial and organisational divisions. Until 2008, the State Police had 28 territorial divisions, with one police territorial department located in each of the 26 administrative districts in Latvia, the capital Riga and resort town Jurmala. The police reform envisages the formation of five regional police departments with centres in Riga, Jelgava, Daugavpils, Valmiera and Kuldīga and smaller policing districts that will serve 109 *novadi* (administrative districts) created as a result of the administrative regional reform. The boundaries of the regional police departments will correspond to the boundaries of the regional courts.²⁰ On 1 January 2008 the Riga City Police Department was merged with the Riga District Police Department, thus forming the largest regional territorial police division in Latvia²¹, and a further merger is expected with two neighbouring police territorial divisions. In autumn 2008, 10,000 persons (around 9,000 police officers and 1,000 non-uniformed staff) worked in the State Police, and the largest police force, including around 3,700 officers, was operational in the Riga Regional Police Department.

Each of the police territorial divisions consists of three major service units: the Criminal Police, Public Order Police and the Administrative Division. The State Police Chief issues instructions on the separation of police powers. The Riga Regional Police Department (formerly the Riga City Police Department) has its central headquarters, nine police precincts in the City of Riga and six police precincts of the formerly Riga District, which follow a generally similar structural division without the specialised departments of the police headquarters. Most documents detailing the structure and functions of different police subdivisions are classified information and, therefore, publicly unavailable.

Criminal Police

The Criminal Police are tasked with crime prevention and resolving of criminal offences. They conduct preliminary investigations in the majority of cases, search for individuals evading investigation, trial and punishment, and missing persons, and ensure the participation of detectives in investigatory activities. The Criminal Police cooperate with the Public Order Police and the Municipal Police. It has the right to examine all case files at the disposal of the Public Order and the Municipal Police, and to take over any case file on criminal offences and offenders from the Public Order Police.

²⁰ Segliņš: Reģionālā reforma nodrošinās sabiedrisko kārtību un drošību [Seglins: Regional Reform will Ensure Public Order and Safety], *Leta*, 13 June, 2008

²¹ State Police Riga Regional Department at <http://www.vp.gov.lv/?sadala=153>

Public Order Police

The Public Order Police are tasked with ensuring public order, crime detection and prevention, the examination of individual complaints, and providing security services to enterprises and organisations. The Public Order Police includes patrol police, traffic police, an operational management division, personnel inspection, convoy services, a protection services unit, juvenile police, short-term detention facilities, licensing and permit division. The Public Order Police has a special task force "Alfa."

Municipal Police

The Municipal police were established in the late 1980s to counteract potential disloyalty by the Soviet militia to the re-emerging independent Latvian state. The municipal police are tasked with enforcing local council regulations, and handling administrative offences, ensuring public order and crime prevention. The Municipal police support the State Police and the Security Police. The Municipal police may also have certain social work functions, such as assisting high-risk families, youth offenders, persons released from prison. In several localities, the State Police have delegated certain functions to the Municipal Police, while in areas with no Municipal Police these functions may be performed by the State Police. The number of police officers employed by a municipality ranges from a few to several hundred police officers. The capital Riga has the largest municipal police force – around 800 officers.

Security Police

The Security police in Latvia originated in 1993 when the Government Security Service, established in 1990 and the Information Department set up in 1991, were merged into the Economic Sovereignty Department of the Ministry of Interior. In 1994 the department was reorganised leading to the establishment of the Security Police. The Security Police are one of the three national security agencies. The Security Police conduct counter-intelligence activities and are engaged in combating crimes against humanity, war crimes, genocide, organised crime and economic crimes, terrorism, sabotage and other crimes against national security, banditry, corruption, illegal distribution of weapons of mass destruction, etc. It also co-ordinates anti-terrorism activities, and in 2005, an Anti-Terrorism Centre was set up within the Security Police, which is tasked with regular monitoring of the threat of terrorism (analysis of information related to the threat of terrorism), co-ordinating anti-terrorism activities of the state, local government institutions and legal entities and supervising the planning of a national anti-terrorism system.²² The Security Police also conduct surveillance of radical and extremist organisations.

²² Security Police, at <http://www.iem.gov.lv/iem/2nd/?cat=136>

3. Police Jurisdiction over Investigation of Hate Crimes

The Constitutional Protection Bureau

From 1995 – 2002 cases under Section 78 (formerly Section 69) of the Criminal Law were investigated by the Constitutional Protection Bureau (the leading national security agency, hereinafter CPB). On 24 July 2002 amendments were adopted to the Law on the Constitutional Protection Bureau according to which the CPB no longer has investigative powers. Earlier Section 3.7 of the Law on the Constitutional Protection Bureau provided that one of the bureau’s tasks was “the investigation of crimes against national security and in national security agencies, and in other cases when the investigation has been assigned by the Prosecutor General.”²³ From 1995 until 2002 the CPB received six complaints (three in 2000, three in 2001) concerning Section 78 (formerly Section 69) and opened three criminal cases (three in 2000).²⁴

The Security Police and the State Police

According to Section 387 of the Criminal Procedure Code the State Police are tasked with the investigation of all criminal offences except for those crimes falling under the jurisdiction of the Security Police, the Finance Police, the Military Police, Prison Administration, Office of Prevention and Combating of Corruption, Customs, the State Border Guard, captains of seafaring vessels, and in cases when investigation of the crime has been assigned by the Prosecutor General. The Security Police have investigative powers concerning crimes against national security, crimes committed in national security agencies, and other crimes within its competence, and in cases when the investigation has been assigned by Prosecutor General. Thus, the Security Police are the police agency responsible for the investigation of crimes included in Chapter IX (Crimes against Humanity, War and Peace, Genocide) of the Criminal Law, which also include racist crimes under Section 78.²⁵

However, while in hate speech cases falling under Section 78, the investigation is conducted by the Security Police from the start, in the cases of racist incidents, including violent racist crimes in the “street”, the initial investigation is conducted by the State Police, and, if classified by them under Section 78, the case is then transferred to the Security Police. If the crime is classified under other sections, with racism as the aggravating factor of Section 48, then the investigation remains with the State Police.

Racist assault and other racist crimes	→ State Police	→ Security Police
Racist speech (Internet, media)		→ Security Police

The investigation of criminal offences under Section 150 and 151 falls under the jurisdiction of the State Police.

²³ Satversmes aizsardzības biroja likums [Law on the Constitutional Protection Bureau], adopted on 05.05.1994, in force from 19.05.2004, with amendments until 04.05.2004.

²⁴ Written Communication to LCHR from Baibas Rāta-Saliņa, press officer of the Constitutional Protection Bureau, 16 April 2007.

²⁵ Law on Criminal Procedure, adopted on 21.04.2005, in force from 1.10.2005, with amendments until 29.07.2008.

4. Hate Crime Statistics

Statistics on criminal offences and offenders are collected by the Ministry of Interior Information Centre, which maintains the National Crime Register. The scope of information on crimes and the procedure of submitting that information by relevant investigative institutions (police, prosecutor's office, court, other) is governed by the Cabinet of Ministers regulations on the National Crime Register²⁶. Police territorial divisions also keep their own separate internal criminal offence registers. The Ministry of Interior Information Centre provides for centralised registration of opened criminal proceedings²⁷, criminal offences and offenders. This information is collected from the three so-called registration cards used 'On Registration of the Criminal Offence,' 'On Criminal Offence Investigation Results' and 'Description of a Person who has Committed a Criminal Offence', which the relevant investigative institution (police, prosecutor's office, court, other) is required to forward to the Information Centre of the Ministry of Interior on-line. There is no victim register in Latvia, and the only available statistics are on children who have become victims of crime.

Recording Hate Crimes

Police record crimes falling under Section 78 of the Criminal Law which prohibits incitement to racial and ethnic hatred. The statistics are collected by both the Information Centre of the Ministry of Interior and the Security Police, as they are responsible for the investigation of crimes against national security, thus also crimes falling under Section 78. Statistics on crimes falling under Section 150 and 151 are collected by the Information Centre of the Ministry of Interior.

1990s

In the 1990s the provision was rarely applied in practise and only a few criminal cases concerning incitement to hatred were opened under Section 69, to be subsequently closed due to the absence of a criminal offence or, at times, a lack of expertise, or out of particular concern about restrictions on freedom of speech after decades of censorship during the Soviet period.

The first court case took place only in 2000, when nine members of the Latvian neo-Nazi group "Thundercross" were found guilty of attempting to blow up the Victory monument to soviet soldiers, of assault and other crimes they had committed in 1997. Three of them were also found guilty of inciting national hatred and subsequently received prison sentences.²⁸

Other general criminal law provisions, such as the desecration of a grave (Section 228), intentional destruction or damage of property (Section 185) have also been applied in criminal cases with an allegedly racist motive, but the racist motive has apparently not been examined.

²⁶ MK noteikumi Nr.756 "Noziedzīgu nodarījumu reģistra noteikumi" [Regulations of Cabinet of Ministers no 756 on the Register of Criminal Offences], adopted on 4 October 2005, in force from 13 October 2005.

²⁷ A reason for initiating criminal proceedings is the submission of information indicating a possible criminal offence to an investigative institution, the Office of the Prosecutor, or court or should an institution responsible for criminal proceeding acquire such information.

²⁸ Riga Regional Court Criminal Case Court Collegium/Case nr. K-79/8/Nr.51603097/2000, 29 May 2000.

Thus, in October 1999, a Holocaust memorial to 30,000 local Jews in the city of Daugavpils was desecrated and memorial stones were defaced with swastikas and other Nazi symbols. The offence was committed when the city was visited by academics from Jerusalem and Vilnius to discuss the history of Judaism. The academics discovered the anti-Semitic signs while visiting the memorial. Two perpetrators were identified, and during a search of one of the offender's flats a self-made SS uniform, cap, cards and posters with SS symbols, and a self-made photograph of Adolf Hitler were found. The offenders were, nevertheless, charged only with desecration of a grave by a group (Section 228.2), and eventually given a suspended sentence.²⁹

In cases of anti-Semitic attacks against Jewish property (memorials, cemeteries) that took place predominantly in the 1990s and have been fewer in number in the following years, only a few were registered under Section 78 (formerly 69), and thus, investigated as hate crimes.

Post-1990s

According to the Ministry of Interior Information Centre, 63 criminal cases have been registered under Section 78 (69 of the old Criminal Code) during the period 1997-October 2008, while the Security Police has registered 57 cases from 2000 to 2008.³⁰

The increase in hate speech in public discourse in 2004-2005, mainly on the Internet, led to an unprecedented increase in the number of criminal cases initiated by the Security Police under Section 78, and cases opened in 2005-2008 (13 – 2005, 14-2006, 16 – 2007, 9 - 2008) account for the majority of criminal cases under Section 78. During 1999 – 2008 the Security Police refused to initiate criminal proceedings in at least 54 cases (1999-2003 - 13 cases³¹, 17 cases in 2005, 10 in 2006, six in 2007³², eight in 2008³³), where the persons filing a complaint alleged incitement to racial or national hatred.

²⁹ Daugavpils Court/Case nr.1-483/2000/23 May 2000.

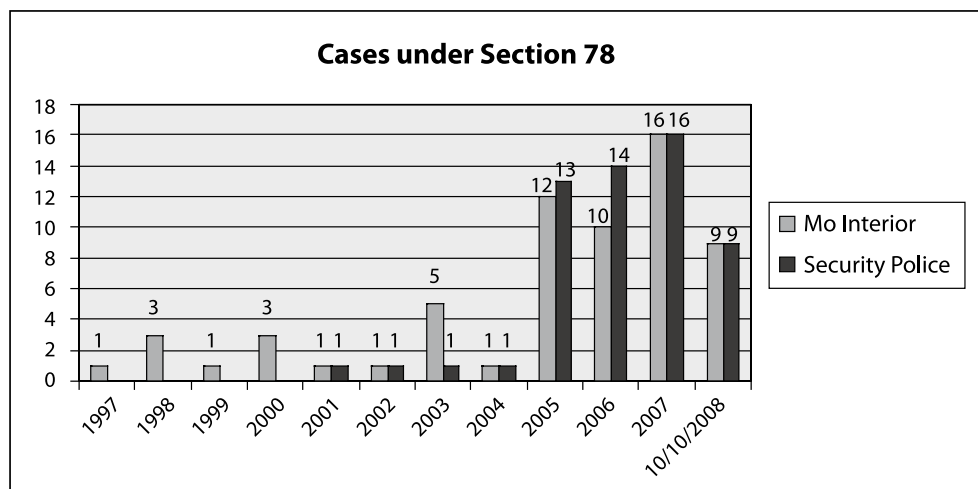
³⁰ Written Communication to LCHR from the Information Centre of the Ministry of Interior, and the Security Police.

³¹ In: Artūrs Kučš (2004). *Vārda brīvības robežas: goda un cieņas aizskaršana, naida kurināšana* (Boundaries of the Freedom of Speech: Defamation and incitement to Hatred). Centre for Public Policy "Providus", Rīga: 2004.

³² Jānis Maizītis, Prosecutor General of Latvia (2008). Presentation during the ECRI Round-Table discussion on Third Report on Latvia, 19 May 2008.

³³ Written Communication to LCHR from the Security Police, October 2008.

Number of Cases Registered by the Ministry of Interior and Security Police under Section 78



Source: Information Centre of the Ministry of Interior, Security Police

The Security Police also provide a further break-down of statistics, in particular, criminal hate speech cases according to the medium where it has occurred.

Year	Internet	Newspapers	Leaflets	Graffiti	Assault	Other
2000		1				
2001			1			
2002			1			
2003	1					
2004	1					
2005	6	3		1		3
2006	4			2	6	2
2007	9				5	2
11/2008	7				2	
Total	28	4	2	3	13	7

Source: Security Police, communication to LCHR

“Interethnic Relations” as a Criminal Motive

In registering crimes, racist and other hate crime (homophobic, religious) motives are not recorded by the police. However, two of the registration cards which are forwarded by the police to the Information Centre of the Ministry of Interior – those of criminal investigation results and the description of an offender list 14 motives (such as greed,

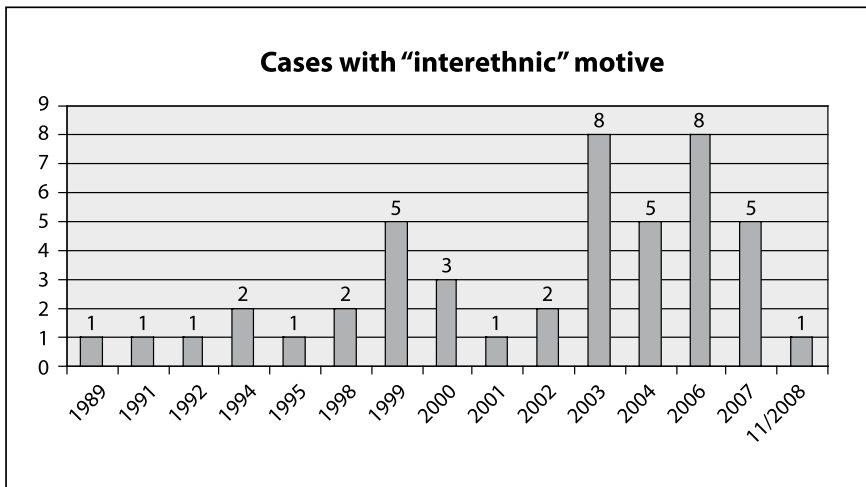
hooliganism, jealousy, vengeance, sexual disposition, political views, acquisition of drugs, alcohol, etc.) of a criminal offence. The list also includes “interethnic relations” as a criminal motive. The registration card of the criminal offence, which is the first of the registration cards, filled out by the police and other law enforcement bodies following the opening of criminal proceedings, does not include “criminal motives”.

Information describing a criminal offence

8. Motive: greed (1), hiding of another criminal offence (2), hooligan disposition (3), jealousy (4), dispute (5), other reasons related to the household (6), revenge (7), interethnic relations³⁴(8), political views (9), sexual disposition (10), acquisition of narcotic or psychotropic substances (12), acquisition of toxic substances (13), acquisition of alcoholic beverages (14), other motives

The notion “interethnic relations” (starpnacionālās attiecības) has soviet roots and was used to denote relations between ethnic groups in the USSR and this specific terminology, thus carries certain negative connotation. The regulations do not make it a mandatory requirement to include “motive” in the crime registration cards, thus it is difficult to ascertain whether it has been or is being marked consistently by the police.

Nevertheless, from 1989 until November 2008, the data base of the Ministry of Interior Information Centre contains information on 46 criminal cases, which mention “interethnic relations” as a criminal motive.



While 11 of the cases have been registered under Section 78 (69), 35 cases have been registered under different Sections of the Criminal Code and Criminal Law. Since the coming into force of the Criminal Law on 1 April 1999, the motive has been marked in 26 other crimes than under Section 78.³⁵

³⁴ Official translation the “international relationship” misrepresents the notion, therefore, “interethnic” has been substituted by the authors in this publication.

³⁵ Written communication to LCHR from the Information Centre of the Ministry of Interior, 15 August 2007, 10 November 2008.

- homicide under aggravating circumstances (Section 118) – three cases
- Intentional serious bodily injury (Section 125) – one case
- Intentional bodily injury of medium severity (Section 126) – one case
- Intentional bodily injury of minor severity (Section 130) – one case
- hooliganism (Section 231) – seven cases
- minor theft, fraud (Section 180) – nine cases
- misappropriation (Section 179) – one case
- illegal production, acquisition, possession and transportation of drugs and psychotropic substances (Section 253) – one case
- intentional destruction or damage of property (Section 185) – one case
- unlawful activities with financial instruments and means of payment (Section 193) – one case

LCHR has not had the opportunity to examine the case files in detail to ascertain the reasons why “interethnic relations” have been marked as a motive. In a case tried on 14 April 2005, six youths were given a suspended sentence of imprisonment for apparently causing damage to a section of a house inhabited by Roma by throwing stones and a Molotov cocktail on two occasions. They were sentenced for hooliganism and “interethnic relations” motive had been marked in the document forwarded to the Information Centre of the Ministry of Interior.³⁶

In a case in December 2006, when several skinheads racially insulted and threw a bottle at a visiting Brazilian female tourist who was accompanied by two locals, the State Police initially qualified the incident under Section 78.2, which was upheld by the Security Police, but was re-qualified to hooliganism under Section 231.2 by the Prosecutor’s Office, marking the motive “interethnic relations”.³⁷

³⁶ Written Communication to LCHR from the Information Centre of the Ministry of Interior. Case Nr. 11380034404/K36-101/05, 14 April 2005.

³⁷ Written Communication to LCHR from the Information Centre of the Ministry of Interior. Riga City Centre District Court/Case Nr. 11087297306/29 May 2007.

5. Racist Crimes (under Section 78)

The increase in the number of criminal cases under Section 78, starting in 2005, has outlined the difficulties and challenges faced by the law enforcement, the prosecutors and the judiciary concerning racist crimes. There is a need for the raising of the capacity of the entire criminal justice system, and the challenges faced in practice also highlight shortcomings of the legislation.

Courts

Latvia has a three-tier court system – district courts as 1st instance courts, five regional courts (as appeal courts and 1st instance courts, in cases of especially serious crimes), and a Supreme Court, as the final appeal court. All courts have Criminal Case and Civil Case divisions.

According to the Section 442 on the court's jurisdiction of criminal cases of Chapter 40 of the Criminal Procedure Code a regional court has the jurisdiction as a court of first instance over criminal cases regarding crimes against humanity, peace, war crimes, genocide and crimes against the state. All the criminal cases opened under Section 78 have occurred in Riga, these cases have been dealt with by the prosecutor's office of the Riga Regional Court District and tried by the Riga Regional Court Criminal Case Division, and only a few cases have been tried by district courts.

Hate Speech Cases

The majority of criminal cases initiated under Section 78 in recent years have been hate speech cases, predominantly on the Internet (28), in newspapers (4), leaflets (2) and in a public discussion (1). From 2005 until November 2008 16 incitement to hatred cases have been resolved at the prosecutorial or trial stage (11 – prosecutor's injunction, 5 – court). In all Internet cases but one, authors of racist postings on social networking sites or commentaries to the articles in the news portals have been called to criminal responsibility, while in one instance a criminal case was opened against a person (a Latvian himself) who had created a webpage and uploaded a song which called for violence against Latvians. In the majority of cases the authors have been 15 to 24 old youth, who have made between one and four racist comments, pleaded guilty, and have been fined from 4-12 minimum salaries (320-960 Ls / 450 ~ 1,370 EUR). In one case in early 2008, a person was for the first time sentenced to 120 hours community service.

Due to the placement of Section 78 in the Criminal Code (Chapter on Genocide, Crimes against Humanity, etc.), there are no statutory limitations to racist speech crimes, even if it concerns an archived racist comment on the Internet. Thus, in one case a racist comment on the Internet had been written by a 9th grader in December 2004, the criminal case was opened after three years in September 2007, and the person was fined in the amount of 480 Lats (~ 685 EUR) in December 2007.³⁸

Prosecutors, when evaluating the comments have concluded that three postings or commentaries have a "tendency for regularity"³⁹, while in the case of four postings the

³⁸ Decision on Prosecutor's Injunction in Criminal Proceedings nr. 11840004107, 18 December 2007.

³⁹ Decision on Prosecutor's Injunction in Criminal Proceedings nr. 11840004106, 14 February 2007.

prosecutor concluded that the offender has engaged in “systematic and intentional activities aimed at incitement of racial hatred and enmity.”⁴⁰ The comment(s) have been directed against Russians, Latvians, visibly different minorities (including people of Asian and African origin) and have called for violence and extermination, expressed disdain or superiority versus other ethnic groups.

In contrast to the above cases, on 28 May 2007 the Riga Regional Court (1st instance court) acquitted three members of the radical right-wing Latvian National Front (LNF). One was an editor of the marginal right-wing newspaper “DDD” and two were authors of articles printed in that newspaper in 2004-2005. They were charged with incitement to national hatred under Section 78.1 for anti-Semitic, anti-Russian statements, calling for the deportation from Latvia of “occupants” and restricting the rights of non-Latvians. The complaints had been submitted by the then parliamentary secretary of the Secretariat of the Special Assignments Minister for Social Integration and the Daugavpils National Cultural Society. The court acquitted all three due to the absence of a criminal offence, indicating that the subjective factor of the crime – the direct intent of the defendants to incite national hatred and enmity, was not proven. The prosecutor in the case appealed the decision. However, the Criminal Court Chamber of the Supreme Court upheld the decision of the 1st instance court noting that such expressions were protected by freedom of speech, and underlined that it took note of two European Court of Human Rights decisions against Latvia which established a violation of freedom of expression⁴¹ – although both of these referred to the defamation of a politician and a state official, and did not relate to racist speech. Following the prosecutor’s appeal concerning the admissibility of expert opinions submitted by the defence, questioning the neutrality and competence of the experts, the Supreme Court Senate Criminal Law Department concluded they were in line with requirements of the criminal procedure law and also upheld the decision of the appeal court.⁴²

LNF has been active in Latvia for over a decade and has gained notoriety for its systematic anti-Russian, anti-LGBT and occasional anti-Semitic rhetoric. In 2001 and early 2002, its chairman Aivars Garda organised several essay contests on themes such as “Latvia’s liberation from 700,000 colonists is task number 1,” “Latvia without Homosexuality”, on drafting a law “On Latvia’s decolonisation”. In June 2003, the Minister of Social Integration requested the Security Police to launch an investigation for incitement to hatred after DDD began to publish “The Protocols of the Elders of Zion.”⁴³ In March 2007, Latvian Radio refused to air one of the paid advertisements submitted by the LNF chair to the Russian Service (Radio 4) where he offered “non-citizens to leave Latvia in good faith and in good time” for the benefit of all.⁴⁴

These cases illustrate the inconsistent response by the prosecutors and the judiciary, when a systematic and widespread public use of hateful comments by a known radical right-

⁴⁰ Decision on Prosecutor’s Injunction in Criminal Proceedings nr. 11840002605, May 2007.

⁴¹ LR Supreme Court Criminal Case Chamber/Case nr. PAK-99/. 28 February 2008.

⁴² LR Supreme Court Senate Criminal Case Department/Case nr.SKK-404/08. 6 October 2008.

⁴³ Nils Muižnieks. Latvia. In: Racist Extremism in Central and Eastern Europe, ed. Cas Mudde. Routledge, 2005, p.109-111.

⁴⁴ Latvian Radio Censors Paid Advertisement at <http://www.dddlmf.com/content/view/243/2/> (24.09.2008)

wing organisation for a sustained period of time led to an acquittal, but cases involving isolated intolerant comments by youth have drawn significant fines.

Use of Hate Symbols

Latvia does not have a list of prohibited hate symbols, and the Criminal Law does not explicitly ban public display of Nazi symbols. The display of Nazi and Soviet symbols is expressly prohibited only in marches, demonstrations, pickets, and the Code of Administrative Offences provides for administrative punishment for the violation of regulations governing such actions.

The Latvian courts have struggled with the interpretation of the use of swastika, failing to take note of the context of its use. Thus, on 9 May 2007 Riga Municipal Police officer issued an administrative citation concerning the use of the symbol of Nazi Germany during a march by a Latvian radical I.Šiškins to oppose Victory Day celebrations. On 15 May 2007, Riga City Zemgale District Court, accepting the arguments of the defendant that the symbol [Laima Cross, *Laimas krusts* in Latvian] (which was swastika rotating clock-wise)⁴⁵ related to Latvian mythology symbols, and the banner displayed the symbol of his association. In its conclusion the court relied solely on the sources of information submitted by the defendant⁴⁶. I.Šiškins runs an NGO "Gustavs Celmins Centre". In the 1930s, G.Celmiņš established a national radical organisation "Thundercross", which adopted fascist ideology, but was banned after President's Ulmanis coup d'état. "Thundercross" was revived in the 1990s and was implicated in the attempt to blow up the Victory Monument, when I.Šiškins was among 3 members of the "Thundercross" who were tried for the incitement to racial and ethnic hatred. In 2008, Šiškins also ran a webpage with swastika against the background of black, white, red colours which are generally associated with Nazi Germany symbolism.

Expert Opinions

In hate speech cases that have fallen under Section 78 of the Criminal Law the Security Police have generally requested external expert opinions in assessing whether an incitement to racial or national hatred has occurred, and so far have not developed adequate internal capacity to handle such cases.

The Criminal Procedure Code determines on what basis expertise can be requested, cases when such expertise is mandatory, the types of expertise, expert opinion, etc. Experts may be requested in cases when issues relevant to criminal procedure necessitate research, which requires special knowledge in the field of science, technology, art and craft. (Section 194). The Criminal Procedure Code lists eleven cases when an expert opinion is mandatory. Expert opinion in hate speech cases is not mandatory. The decision to request expertise is taken by the investigator. Complex expertise is requested when experts from different fields are required to research a case (s) for the purposes of identification of an issue relevant to criminal procedure. Experts who carry out complex expertise issue a joint opinion, while an expert who disagrees with the joint opinion may issue a separate opinion (Section 199). A repeated expert opinion may also be requested. An expert issues a written opinion which includes information on the research methodology, results,

⁴⁵ Explanation provided by the authors.

⁴⁶ Riga City Zemgale District Court Decision on Discontinuation of Case Proceedings Nr P131037407

and answers to questions put to the expert or reasons why no answer can be provided. (Section 203).

The types of expertise that have been assigned in hate speech cases have varied – linguistic, human rights, philosophical, journalistic, and the choices made in favour of one or the other areas of expertise is not always clear. In several cases complex expertise has been assigned. Representatives of different fields from the University of Latvia, the University's Human Rights Institute within the Law Faculty, the Ombudsman (formerly the National Human Rights Office), the State Language Agency, and NGOs – the Latvian Centre for Human Rights, the Centre for Public Policy "Providus" – have provided expert opinions. However, no specific criteria have been developed for selecting the experts. In several cases, the defence has called upon their own experts, which have, inter alia, included known right-wing activists, such as a Latvian linguist from the Baltic languages department of the Latvia University, who ran for the 2006 parliamentary elections from the ultra right-wing Latvian party "National Power Unity." The need for clear criteria and standards in the evaluation and selection of experts has also been called for by the Prosecutor General.⁴⁷

Racist Violence

In 2005, Latvia witnessed the first officially recorded cases of racially motivated violence (physical assault and attempted assault) and racial harassment against an Indian, an Egyptian national, the chairman of the NGO Afrolat, a staff member of the U.S. Embassy in Latvia, and a rabbi of the Riga Jewish community. Initially the police qualified the cases as hooliganism or petty hooliganism, without adequately examining the racial motives of the offenders and in several cases, when it was found that no substantial injuries had been caused to the victim, the case was closed. Both the State and Security Police were reluctant to apply the incitement to racial and national hatred provision to violent acts. However, following media and public criticism, the police made attempts to qualify violent crimes under Section 78.2.

The first case of racist violence tried under Section 78.2 involved an Afro-American staff member of the American Embassy who was assaulted by several youths with skinhead leanings. Initially the offence was qualified as hooliganism, however, the Riga Regional Court sent the case back to the police for review and the case was then re-qualified under Section 78.2.⁴⁸

During 2005-2008 of the 14 publicly known cases involving racial assault or attempted assault, Section 78.2 has been invoked in six cases, including the two most recent cases - the first recorded attack against Roma (two juvenile girls) in autumn 2007, and an attack on two Armenian nationals in spring 2008. Racist insults, calls to leave Latvia, presence of skinhead (Nazi) memorabilia have served as evidence of racist motive in prosecuting the cases. At the same time, the Police continued to struggle in handling such cases due to a lack of experience in recognising and investigating such crimes, and a low awareness of the impact of racist crimes on victims and communities. It has also been highlighted

⁴⁷ Jānis Maizītis, Prosecutor General of Latvia. The Role of the Criminal Justice System in Preventing and Responding to Racist Incidents, ECRI round-table in Latvia, 19 May 2008.

⁴⁸ Riga Regional Court Criminal Case Court Collegium/Case nr. K-04-0253-06/20/2006, 31 March 2006.

that the relevant legislative provision may not be adequate to prosecute racial violence, as it is essentially a hate speech provision, but no attempt has been made to use the aggravating factor norm.

In cases of verbal racial abuse criminal proceedings have not been opened, or have been discontinued on account of an absence of a criminal offence.

Racist Crimes Tried under Section 78

Since 1997 until November 2008, 22 cases under Section 78 (formerly Section 69) have resulted in sanctions imposed either by prosecutor's office or courts.

Number of cases under Section 78 with sanctions imposed by prosecutor's office or court, 1997-November 2008

Section 78	Number of cases
Section 78.1	17 (prosecutor's office -11, court -6)
Section 78.2	5 (court)
Total	22

Since the first tried cases under Section 78 (formerly Section 69) until November 2008, 33 offenders have been punished by a prosecutor's injunction or by a court.

Sections	Fine	Community service	Suspended imprisonment	Imprisonment	Total
78.1	11	1	4	1	17
78.2 (69.3)			11	5 (3 persons according to 69.3)	16
	11	1	15	6	33

Nearly all hate speech cases involving sanctions, relate to hate speech on the Internet. The offenders have predominantly been dealt with at the prosecutorial stage by prosecutor's injunction and have been fined. In early 2008 a person was for the first time sentenced to 120 hours of community work for hateful comments on the Internet.⁴⁹ In one case a person, a neo-Nazi, was sentenced to imprisonment for anti-Roma and anti-Jewish statements in a conference.

In the cases of racially motivated violence, offenders have mostly been given a suspended prison sentence and probation, since the law allows only for imprisonment. In 2007, for the first time, two offenders were sentenced to imprisonment, for six and eight months, for assaulting a Rwandan man, also a member of "Afrolat."⁵⁰

⁴⁹ Riga Regional Court Criminal Case Collegium/Case nr. K04-74-08/8, 24 January 2008.

Riga Regional Court Criminal Case Collegium/Case nr. K04-0145-08/3, 6 March 2008.

⁵⁰ Riga Regional Court Criminal Case Collegium/Case nr. K04-0113-07/18, 30 January 2007.

6. Homophobic Crimes

The Latvian Criminal Law does not specifically recognise homophobic crimes, nor does it provide for a homophobic motive as an aggravating factor. Crimes with an alleged homophobic motive are tried as general crimes. The increase in homophobic rhetoric in public discourse in recent years, often fuelled by politicians and controversies surrounding Gay Pride, have highlighted the need to widen protection against hate speech and other crimes motivated by homophobia. However, thus far, attempts to criminalise offences motivated by homophobia have been thwarted (See, Other Amendments to the Criminal Law – 2004-2008), and the discussions have mirrored the heavy opposition by some MPs, religious and other anti-LGBT groupings in attempts to legislate prohibition of discrimination on grounds of sexual orientation (the Latvian parliament only grudgingly and after the adopted law was referred back for review by the President of Latvia, transposed the requirements of the EU Council Directive, listing sexual orientation among the prohibited discrimination grounds in the Labour Law).

The 2nd Riga Gay Pride, planned for 23 July 2006, was banned by the Riga City authorities, and its decision was upheld by the Administrative District Court. The participants of Riga Pride 2006, which was held as a closed event indoors, were attacked outside by aggressive anti-gay protesters who threw human excrement, food at them and shouted homophobic slurs. During the protest events the police arrested 14 individuals, and most of whom were charged with administrative offences for petty hooliganism, and the first instance courts imposed fines in the amount of 25-50 Lats (37-75 euros). Later in the year, in six of the earlier cases the Office of the Prosecutor General opened criminal proceedings charging the perpetrators with hooliganism. On 15 January 2008, an assistant to an MP, a member of the New Generation congregation, was sentenced to 100 hours of community service by the Riga Vidzeme District Court. Although the court did not examine the homophobic motive of the perpetrator, the punishment imposed was the severest so far for public order disturbances during the Riga Pride 2006 events.⁵¹ The decision was appealed by the defendant, but on 11 June 2008 Riga Regional Court upheld the ruling of the lower instance court.

In the early hours of 25 July 2006 two gay men were beaten up by two youths. This was the first officially reported case of homophobic violence in Latvia. Both victims filed a complaint with the police⁵², however, due to an absence of relevant legislation taking account of the motivation, the case was tried under the general Criminal Law provision.

During the Riga Pride 2007 march, which took place in a fenced park in the centre of Riga amidst heavy police security, a man and his underage son were apprehended by the police as they threw petards which exploded at the end of the event. Both were charged with hooliganism under Article 231 (2) of the Criminal law and subsequently received suspended sentences.⁵³

⁵¹ Riga City Vidzeme District Court/Case Nr.K30-176/5-2007, 15 January 2008.

⁵² Piekauj homoseksuālas orientācijas dēļ (Beaten due to homosexual orientation), *Leta*, 25 July 2006

⁵³ Par petaržu spridzināšanu seksuālo minoritāšu pasākumā piespriež nosacītu brīvības atņemšanu (Sentenced to Suspended Imprisonment for Blowing up Petards during the event for sexual minorities), *Leta*, 17 October 2008

7. Other Amendments to the Criminal Law– 2004-2008

Sections 78 & 150

The Ministry of Justice is responsible for co-ordinating proposals on amendments to criminal legislation, while the Secretariat for the Special Assignments Minister for Society Integration (further Integration Secretariat) has been the ministry responsible for the drafting of legislative proposals concerning the transposition of the EU Council Directive 2000/78/EC (Racial Equality Directive). In recent years both ministries have on various occasions come up with legislative proposals for hate crime legislation, yet these efforts have remained uncoordinated. Although the details of the various initiatives may not add much to the substance, a brief overview of recent developments can serve to illustrate the process of legislative development and subsequent adoption of amendments.

Latvia was obligated to transpose the existing EU directives aimed at combating discrimination until the accession to the EU in 2004. Although the Race Directive does not directly require changes in criminal legislation, when drafting a package of legislative proposals for the transposition of the Directive in 2003-2004, the Integration Secretariat referring to the requirements of the directive, prepared amendments also to the Latvian Administrative Offences Code and Criminal Law.

Amendments to the Criminal Law envisaged the division of Section 78, separating the crime of incitement to racial and national hatred from the anti-discrimination provision. The latter was to be moved to Section 150, which then criminalised “discrimination on religious grounds” and the prohibited grounds were to be expanded to include “*sex, age, race, colour, ethnicity or ethnic origin, religion, political or any other opinion, social origin, education, social or property status, occupation, status of health or sexual orientation*”.

Although the amendments were in principle accepted by the parliament and passed in the 1st reading in April 2004, there were no further moves during the next two years.⁵⁴ The amendments were revived in November 2006 when they were passed again in the first reading by the newly elected parliament. On 11 January 2007, the parliament adopted the new version of Section 78 in its 2nd reading, however, it changed Section 150 by deleting the many prohibited grounds and introduced a general “*ban of discrimination as provided for in legislative acts if committed repeatedly within a year*.”⁵⁵ The deletion of the long list of prohibited grounds came largely as a result of several pressure groups, predominantly the largest religious denominations, who objected to the inclusion of sexual orientation among prohibited grounds.

In December 2006, the Ministry of Justice, apparently unaware of the parallel developments, drafted its own amendments to Section 78 and 150, which were neither co-ordinated with the parliament nor the Secretariat for Integration. Earlier in the year, following aggressive protests by anti-gay protesters during the closed events of the

⁵⁴ Draft Law “Amendments to Criminal Law”, Reg.No.739, adopted by the Saeima in the 1st reading, 7 April 2004.
Draft Law “Amendments to Administrative Offences Code”, Reg.No. 740, adopted by the Saeima in the 1st reading, 7 April 2004.

⁵⁵ Draft Law “Amendments to the Criminal Law”, second reading, 11 January 2006 at http://www.saeima.lv/saeima9/lasa?dd=LP0015_2

banned Riga Gay Pride on 26 July 2006, the Prime Minister had charged the Minister of Justice to draft amendments to Section 78 to include other hate grounds.⁵⁶ In its proposals the Ministry of Justice similarly divided the incitement to racial and national hatred from ban on discrimination based on national and racial grounds in Section 78.1 and moved the latter to Section 150. Incitement to religious hatred was added to Section 78.1, which now included incitement to racial, ethnic and religious hatred. Section 78.2 remained in its previous wording. Section 150.1 was renamed “The Violation of Equality of Persons” and criminalised discrimination naming an additional 11 grounds and leaving an open ended list – “*sex, age, colour, public or other opinion, social origin, education, social or property status, occupation, status of health, sexual orientation or any other features, if substantial damage has been caused to the interests and rights of individuals protected by law.*” Section 150.2 criminalised the intentional incitement to hatred on all the above listed grounds. Section 150.3 foresaw criminal responsibility for activities in paragraphs 1 and 2 if connected with violence or the threat of violence or if committed by a group of persons, or state official or an employee.⁵⁷

In February 2007, following protests by religious leaders and anti-LGBT organisations about the inclusion of sexual orientation among the groups protected from discrimination⁵⁸ the Ministry of Justice retracted the drafted amendments noting that they did not significantly differ from legislative proposals by the parliament.⁵⁹

In June the parliament again amended Sections 78 and 150 in the third reading. Section 78 was supplemented by “the incitement to national, racial and ethnic hatred by violating the principle of equal treatment”, while in Section 150 the parliament abandoned the general prohibition of the discrimination provision it had adopted during the 2nd reading, and returned to the original version of Section 150 which prohibits incitement to religious hatred and discrimination on grounds of religion. The adopted decision was influenced by several MPs, including the Chairman of the parliamentary Human Rights Commission, a priest, member of Latvia’s First Party, notorious for his homophobic rhetoric, who reiterated the concerns of leaders of the largest religious denominations about the ‘disappearance’ of religion from Section 150.

Several left-wing opposition MPs called on the President not to promulgate the newly adopted amendments since at this stage they had been reduced to banning only discrimination based on religion, and not on race, ethnicity, language, sex, or other grounds. The President sent the amendments back for another review⁶⁰ and on 21 June, the parliament amended Section 78 and 150, and adopted a new Section 149.1, which criminalised “*discrimination due to racial or ethnic origin or for the violation of discrimination prohibitions specified in other regulatory enactments if it committed repeatedly within a one year period.*” The amendments came into force on 19 July 2007.

⁵⁶ Kārklīņa, D. (2006) “Ministru Prezidents uzdot Jaundžeikaram sniegt atskaiti par paveikto seksuālo minoritāšu pasākumu laikā” (Prime Minister tasks Jaundžeikars with providing a report on activities undertaken during the events organised by sexual minorities), *LETA*, 23 July 2006.

⁵⁷ Likumprojekts “Grozījumi Krimināllikumā” (Draft law “Amendments to the Criminal Law”) at http://www.tm.gov.lv/objs/tm_projects/project_68925.doc.

⁵⁸ Inga Pāparde. „Seksuālās orientācijas” iekļaušana Krimināllikumā izraisa iebildumus (Inclusion of Sexual Orientation in the Criminal Law Causes Objections), *NRA*, 24 January 2007.

⁵⁹ Atsakās no seksuālās orientācijas diskriminācijas aizlieguma likumā (Prohibition of Discrimination on Grounds of Sexual Orientation in the Law Waived), www.delfi.lv, 15 February 2007

⁶⁰ Prezidente nosūta likumu otrreizējai caurlūkošanai (State President sends the Law for Repeat Review), 24 May 2007, at http://www.president.lv/pk/content/?cat_id=603&art_id=11146

History of Amendments to Section 78 (formerly Section 69)

Criminal Code of the Latvian SSR 1961-1991	Criminal Code amendments in 1990	Criminal Law (in force from April 1, 1999)*	Amendments to Criminal Law (in force from 19 July, 2007)**
<p>Chapter</p> <p>Other Crimes against the State</p>	<p>Chapter</p> <p>Other Crimes against the State</p>	<p>Chapter</p> <p>Crimes against Humanity, Genocide, Crimes against Peace, War Crimes</p>	<p>Chapter</p> <p>Crimes against Humanity, Genocide, Crimes against Peace, War Crimes</p>
<p>Section 69</p> <p>Violation of National and Racial Equality</p> <p>Propaganda or agitation aimed at the incitement of racial and national hatred or enmity, as well as the restricting, directly or indirectly, of the rights of citizens or the creating, directly or indirectly, of privileges for citizens based on their racial or national origin,</p> <p>- shall be punishable by the deprivation of liberty from six months to three years or by internal exile from two to five years.</p>	<p>Section 69</p> <p>Violation of National and Racial Equality</p> <p>For a person who commits acts knowingly directed towards instigating national or racial hatred or enmity, or debasement of national honour and dignity, the restricting, directly or indirectly, of the rights of citizens or the creating, directly or indirectly, of privileges for citizens based on their racial or national origin</p> <p>- the applicable sentence is the deprivation of liberty for a term not exceeding three years or a</p>	<p>Section 78</p> <p>Violation of National or Racial Equality and Restriction of Human Rights</p> <p>(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,</p>	<p>Section 78</p> <p>Instigation of National, Ethnic and Racial Hatred</p> <p>(1) For a person who commits acts intentionally directed towards instigating national, ethnic or racial hatred or enmity, the applicable sentence is the deprivation of liberty for a term not exceeding three years or community service, or a fine not exceeding sixty times the minimum monthly wage.</p> <p>(2) For a person who commits the same acts, if they are associated with violence, fraud or threats, or where they are</p>

* Official translation by TTC

** Official translation by TTC

	<p>fine not exceeding thirty minimum salaries.</p> <p>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 or an official, -</p> <p>- the applicable sentence is the deprivation of liberty for a term not exceeding five years or a fine not exceeding fifty minimum salaries</p> <p>For acts in paragraphs (1) and (2), if committed by a group of persons and if these acts have resulted in the death of persons or other serious consequences,</p> <p>- the applicable sentence is the deprivation of liberty for a term not exceeding ten years.</p>	<p>- the applicable sentence is the deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage.</p> <p>(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, state official, or a responsible employee of a company or an organisation, the applicable sentence is the deprivation of liberty for a term not exceeding ten years</p>	<p>committed by a group of persons, state official, or a responsible employee of a company or an organisation, or if it is committed using automated data processing systems,</p> <p>- the applicable sentence is the deprivation of liberty for a term not exceeding ten years.</p>
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While amendments concerning the relevant provision on incitement to racial and national hatred have been introduced over the course of more than four decades, and despite the recent efforts of the legislature, the provision has not undergone substantive changes. While some clarity has been introduced by the new legislation through the separation of incitement to hatred and the anti-discrimination provision into distinct clauses, and the range of sanctions for incitement to racial hatred has been expanded by adding

community service, the legislature apparently failed to take note that Section 78.1 had been applied in at least 15 cases since 2005 to prosecute racist speech on the Internet. The new provisions now make an Internet comment a serious crime punishable by imprisonment not exceeding ten years, while criminal racist comments in printed media will remain a less serious offence and will be punishable by a fine, community service or imprisonment. Another problem is the continued confusion about the difference between incitement of hatred and violent racist incidents, since Section 78.2 contains reference to violence.

History of Amendments to Section 150 (formerly Section 137)

Criminal Code of the Latvian SSR 1961-1991	Criminal Code amendments in 1991	Criminal Law (in force from April 1, 1999)	Amendments to Criminal Law (in force from 19 July, 2007)*
Crimes against Political, Labour and Other Rights of Citizens		Criminal Offences against Fundamental Rights and Freedoms of a Person	Criminal Offences against Fundamental Rights and Freedoms of a Person
<p>Section 137</p> <p>Violation of Regulations on the Separation of Church and State and the Separation of School from Church</p> <p>For violation of regulations on the separation of church and state and the separation of school from church</p> <p>- the applicable sentence is the deprivation of liberty not exceeding two years or</p>	<p>Section 137</p> <p>Violation of Equal Rights of Persons on the Basis of Their Attitudes Towards Religion</p> <p>For a person who commits direct or indirect restriction of the rights of persons or the creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion or commits a violation of religious</p>	<p>Section 150</p> <p>Violation of Equal Rights of Persons on the Basis of Their Attitudes Towards Religion</p> <p>(1) For a person who commits direct or indirect restriction of the rights of persons or the creation of preferences for persons on the basis of the attitudes of such persons towards religion, except activities in the institutions of a religious denomination,</p>	<p>Section 150</p> <p>Incitement of Religious Hatred</p> <p>(1) For a person who commits a violation of a person's religious feelings or incitement of hatred in connection with the attitudes of such persons towards religion or atheism,</p> <p>- the applicable sentence is the deprivation of liberty for a term not exceeding two years or community service, or a fine not exceeding forty</p>

* Official translation by Translation and Terminology Centre.

<p>correctional labour not exceeding one year, or a fine not exceeding 500 roubles</p> <p>For the same acts if committed by persons who have previously been sentenced for the violation of regulations on the separation of church and state and the separation of school from the church</p> <p>- the applicable sentence is the deprivation of liberty not exceeding three years.</p>	<p>sensibilities of the persons or incitement of hatred in connection with their attitudes towards religion or atheism</p> <p>-the applicable sentence is a fine not exceeding ten minimum salaries</p> <p>For the same acts if committed by a person who has been previously sentenced for the same crime as well as organisational activity aimed at committing such an offence – the applicable sentence is a fine not exceeding twenty minimum salaries</p>	<p>or commits a violation of religious sensibilities of the person or an incitement of hatred in connection with the attitudes of such persons towards religion or atheism,</p> <p>- the applicable sentence is the deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage.</p>	<p>times the minimum monthly wage.</p> <p>(2) For a person who commits the same acts, if by such acts is caused substantial harm or they are associated with violence, fraud or threats, or where they are committed by a group of persons or a state official, or a responsible employee of a company or an organisation, or if it is committed using automated data processing systems,</p> <p>- the applicable sentence is the deprivation of liberty for a term not exceeding four years or community service, or a fine not exceeding eighty times the minimum monthly wage.</p>
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It also remains unclear why in the case of incitement to religious hatred if connected with violence, threat, committed in a group, by an official, etc. a wider range of sanctions is envisaged – fine, community service and imprisonment, while in the case of incitement to racial, ethnic and national hatred, if connected with violence, threat, by a group, official, etc., imprisonment remains the only sanction.

On 28 April 2005 the parliament adopted amendments to the Criminal Law which criminalised public calls to genocide (Section 71.1) punishable by a prison sentence for up to eight years.⁶¹

⁶¹ Law "Amendments to the Criminal Law", adopted on 28.04.2005, in force from 01.06.2005.

Internet

On 5 October 2006 the parliament passed the law on the ratification of the Council of Europe Convention on Cybercrime and Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The Convention and the Additional Protocol came into force on 1 June 2007.⁶² However, Latvian legislation has not been evaluated and amended in line with the Convention, although possibly the reference to “data processing systems” in Section 78.2 was an attempt at taking this on board.

Racist motivation as an aggravating factor

Until autumn 2006, Latvian Criminal Law included 13 aggravating factors and circumstances that should be taken into account by courts when deciding upon punishment. In an unexpected move on 7 September 2006, in the second reading of other Criminal Law amendments, the parliament included a racist motive as an aggravating circumstance among these and, without any debate, adopted the amendment in the third reading on 12 October (Section 48 (1) 14) the criminal offence was committed due to racist motives).⁶³ No other hate grounds were considered. A year earlier, on 8 December 2005 the parliament voted down a similar proposal put forward by the same MP on adding “a crime committed with a racist motive or connected with discrimination” as an aggravating factor in Section 48.⁶⁴

While this development gives hope for the separation of hate speech and racist violence cases, and other racially motivated crimes, such as the damaging or destruction of property, the desecration of graves, etc., since its introduction in October 2006, the provision has not been applied in practise by either law enforcement, prosecution or the judiciary.

Genocide Denial

On 13 March 2008 the Latvian Parliament adopted a declaration “On Repressions Carried out by the USSR against the Ukrainian Nation in 1932 and 1933”. The declaration recognizes the Great Famine (golodomor) as a genocide intentionally carried out by the Stalinist regime against the Ukrainian people. The initial draft, prepared by the parliamentary Foreign Affairs Committee and Ministry of Foreign Affairs, described golodomor as “terror against the Ukrainian people”⁶⁵ but after criticism by several MPs it

⁶² Likums “Par Konvenciju par kibernoziēgumiem un Konvencijas par kibernoziēgumiem Papildu protokolu par rasisma un ksenofobijas noziedzīgajiem nodarījumiem, kas tiek izdarīti dator sistēmās” (Law “On Convention on Cybercrime and Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems”), adopted on 05.10.2006, in force on 27.10.2006.

⁶³ Likums “Grozījumi Krimināllikumā” (Law “Amendments to Criminal Law”), adopted on 12.10.2006, in force since 15.11.2006.

⁶⁴ Likumprojekts “Grozījumi Krimināllikumā” 3.lasījumam (Draft Law ‘Amendments to Criminal Law’ for the third reading) Reg. nr. 1180 at http://www.saeima.lv/bi8/lasa?dd=LP1180_3

⁶⁵ Saeimas Ārlietu komisija. Lēmuma projekts - Deklarācija “Par 1932. un 1933.gadā PSRS veiktajām represijām pret Ukrainas tautu” (Saeima Foreign Affairs Commission, draft project - Declaration “On Repressions Carried out by the USSR against the Ukrainian Nation in 1932 and 1933”), Registration Nr. 9/1- 2-14 - (9/08), 14 February 2008 at http://www.saeima.lv/saeima9/lasa?dd=LM0373_0

was substituted with “genocide.”⁶⁶ While a declaration is a political and not a legally binding document, the discussions around the definition of genocide have set the background and tone for the forthcoming discussions in parliament concerning the criminalisation of genocide denial in the context of the framework decision on combating certain forms and expressions of racism and xenophobia through criminal law. In the parliamentary debate, S. Kalniete, the former Minister of Foreign Affairs and currently an MP, justified the use of the term genocide “as it would show the attitude of the Latvian parliament that the term “genocide”, as defined by the UN Convention is incomplete and that it hinders our move towards the aim that has been set – to achieve the international condemnation of totalitarian communism.”⁶⁷

On 16 October 2008 the parliament approved in the first reading amendments to the Criminal Law which foresee criminal liability for the public glorification or justification of regimes that have committed genocide or persons convicted of genocide or denial of genocide that would be punishable by imprisonment for up to five years or community service.⁶⁸ The amendments were drafted by the Ministry of Justice and referred to Article 1.1 (c) of the draft “Framework Decision on Combating Racism and Xenophobia”⁶⁹, which calls upon Member States to take measures to criminalise intentional public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the statute of the International Criminal Court.

During the debates in the European Parliament and other EU fora MEPs and other officials from the Baltic States and Poland proposed that the Framework Decision be extended to include reference to Stalinist crimes, which was rejected by the majority of EU Member States.⁷⁰ On 22 July 2008, after the approval by the government of the above amendments, the Latvian Minister of Justice, who is a member of a nationalist Fatherland and Freedom/LNNK party⁷¹, reiterated that the framework decision also needed to refer to crimes committed by all totalitarian regimes, including communist regimes.⁷²

Summary

Despite some recent positive legislative amendments, such as a provision for a racist motive as an aggravating factor, these have not come as a result of consensus reached through serious and constructive debates among legislators, practitioners and experts, but rather haphazardly. There has been no serious assessment of the existing legislative

⁶⁶ Deklarācija “Par 1932. un 1933.gadā PSRS veiktajām represijām pret Ukrainas tautu (Declaration “On Repressions Carried out by the USSR against the Ukrainian Nation in 1932 and 1933)

⁶⁷ Transcript of the Proceedings of the Saeima Plenary Session, 13 March 2008 at <http://www.saeima.lv/steno/Saeima9/080313/st080313.htm>

⁶⁸ Likumprojekts “Grozījumi Kriminālikumā” (Draft Law “Amendments to Criminal Law”) Nr.817/Lp9), 16 October 2008 at http://www.saeima.lv/saeima9/lasa?dd=LP0817_0

⁶⁹ The Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia By Means Of Criminal Law was adopted on 28 November 2008.

⁷⁰ Kristovskis, Girts Valdis (2008). “A level playing field: a few legal aspects”, Speech by the Latvian MEP at the European Parliament conference “United Europe, United History”, 22 January 2008.

⁷¹ Earlier in March, the parliament voted down a proposal by MPs from the nationalist TB/LNKK aimed at criminalising public denial or a public call to deny the fact of the occupation of the state of Latvia [by the Soviet Union] to be punished by imprisonment for up to three years or a fine not exceeding 60 minimum salaries.

⁷² Gaidis Bērziņš Considers Amendments on Glorification of Genocide to the Criminal Law as Very Essential. 22 July 2008 at http://www.tm.gov.lv/lv/jaunumi/tm_info.html?news_id=2313

framework in light of recommendations by relevant international actors (UN CERD, ECRI, and OSCE) and the best practises in the region and globally that would allow Latvia to effectively address different forms of manifestations of hatred.

8. Policy Documents

Programme for the Promotion of Tolerance

In 2002, a new ministerial post was created in Latvia – the Special Assignments Minister for Social Integration and a Secretariat subordinated to the Minister. Since its establishment the promotion of tolerance and the prohibition of discrimination have been part of its priorities. On 25 August 2004 the government approved the National Programme for the Promotion of Tolerance 2005-2009, which states that manifestations of intolerance in Latvia take place on ethnic and religious grounds. The programme highlights Roma as a group vulnerable to intolerance, acknowledges occasional manifestations of anti-Semitism and prejudice against Muslims, notes marked dislike against potential migrants, asylum seekers, refugees, intolerance towards sexual minorities, HIV/AIDS patients, and the mentally disabled. While it sets as a goal the drafting of new legislation, and the promotion of cross-institutional cooperation in the eradication of intolerance,⁷³ neither the programme nor the action plan specifically mentions the extreme forms of intolerance – hate speech and other hate crimes or suggests measures to combat hate crimes.

Programme for the Promotion of Tolerance 2009-2013 has been drafted and aims at reducing the number of hate crimes and manifestations of hatred by designing and implementing training programmes for police officers, prosecutors and judges on issues of tolerance, prevention of discrimination, combating hate crime and implementing a social campaign against manifestations of hatred and intolerance.⁷⁴ Finalization of the programme stalled, however, as political will was waning, and the programme has not been approved by the government. In addition, towards the end of year it became clear that as a result of a serious economic downturn in the country, several of the government offices were to be closed down, including that of the Secretariat for the Special Assignments Minister for Social Integration and it was planned that some of its functions would be transferred to the Ministry of Children and Family Affairs.⁷⁵ In the case of the Integration Secretariat, the absence of political consensus on issues of integration by subsequent coalition governments, since its inception, was a key underlying factor leading to its closure.

Strategy of the Ministry of Interior for 2007-2009

Thus far, the first and the only law enforcement document attempting to highlight the need to deal with racist and xenophobic crimes is the Strategy of the Ministry of Interior for 2007-2009 (in the Subsection on the Security Police). It draws attention to

⁷³ Nacionālā programma iecietības veicināšanai 2005.-2009 (National Programme for the Promotion of Tolerance) available at http://www.integracija.gov.lv/doc_upl/programma-iecietiba.pdf

⁷⁴ Projekts "Programma iecietības veicināšanai 2009. -2013. gadam" (draft "Programme for the Promotion of Tolerance 2009-2013) available at http://www.humanrights.org.lv/upload_file/IUMSILProg_220408.doc

⁷⁵ Valdība nolemj Sabiedrības integrācijas sekretariātu pievienot Bērnu ministrijai (Government Decides to Attach the Social Integration Secretariat to the Children's Ministry). *LETA*, 28 October 2008

several extremist or radically oriented organisations operating in Latvia, notes the import of extremist ideas from abroad, especially among youth, which has led to an increase in the number of manifestations of xenophobia and other extremisms, and attempts by individuals with extremist leanings to develop contacts with ideologically related organisations abroad. It anticipates an increase in the activities of extremist movements currently active in Europe and highlights the need to take action to prevent and restrict manifestations of extremism in society and the activities of extremist organisations. Among the new political initiatives the strategy also lists awareness raising and the education of residents on anti-terrorism issues, as well as inter-ethnic intolerance, racism and xenophobia, etc.⁷⁶ However, the strategy keeps silent on the need to build the capacity of the Security Police in combating such crimes, and no other documents elaborate in greater detail how the proposed awareness raising of residents is to be carried out.

9. The Role of Civil Society

Law Enforcement Capacity Building

Since mid-2005 the Latvian Centre for Human Rights has gradually developed co-operation with Riga City State Police (as of 1 January 2008 – Riga Regional Police) and Security Police in organising several training seminars and conferences, study visits to the Czech Republic and Sweden for selected police officers from the Public Order, Criminal and Security Police to study the experience of police forces in other countries in combating hate crimes and to raise the capacity of the police to identify and investigate hate crimes. In co-operation with police officers, LCHR has published a practical brochure for front line police officers, Police Academy and Police college students on hate crime. In co-operation with INACH (International Network against Cyberhate, jugendschutz.net) LCHR has organised training for its own staff and Security Police officers on technical aspects of combating on-line hate.

Online Hate

In May 2006 Dialogi.lv, an NGO, and several other organisations, including LCHR, spearheaded discussions about hate speech on the Internet and the need to facilitate self- and co-regulation by Internet service providers (ISPs). The talks resulted in the launching of the declaration on respect, tolerance and co-operation in cyberspace signed by 18 organisations including leading Internet news portals and NGOs. After a cyber-bullying case in a social networking site, involving junior students in a Riga school in spring 2008⁷⁷ led to renewed debates about the liability of ISPs, an additional five Internet portals signed the declaration bringing the total number of signatories of the declaration to 23.⁷⁸ Dialogi.lv has monitored of hate speech in leading Internet news portals following controversial events, and published a brochure called "Internet without hate" for teachers of information science.⁷⁹

⁷⁶ Strategy of the Ministry of Interior 2007-2009 2.7 Programme „Activities of the Security Police”, p. 95.-101. <http://www.mk.gov.lv/lv/mk/tap/?pid=30243211>

⁷⁷ Egils Licītis, Voldemārs Krustiņš, Juris Dalbiņš. Uz interneta pulvera mucas (On Internet Powder Keg). *Latvijas Avīze*, 29 February 2008.

⁷⁸ Deklarācija par cieņu, iecietību un sadarbību interneta telpā [Declaration about respect, tolerance and co-operation in cyberspace] <http://www.dialogi.lv/article.php?id=2487&t=0&rub=14>

⁷⁹ <http://www.dialogi.lv/article.php?id=2699&t=0&rub=14>

Victim Support

Latvia does not have a national victim support service. While the state can provide for legal aid to indigent persons and state compensation to victims of serious and grave crimes, psychological assistance is provided by a handful of NGOs, inadequately meeting the needs of crime victims. There is no specialised help available to victims of hate crimes. While several NGOs, such as Afrolat, the Alliance of LGBT and their Friends “Mozaika”, and LCHR have in various ways assisted individual victims of hate crimes, there is a dire need to raise the capacity of civil society in effectively responding to the needs of hate crime victims. Since autumn 2008 a hate crime report form in three languages (Latvian, Russian, and English) is available on the LCHR website.⁸⁰ The report form was created to provide for alternative reporting of hate crimes. LCHR also published a brochure for victims of hate crimes on the types of assistance available to victims of crime in Latvia.⁸¹ In order to raise awareness on the impact of hate crimes on victims and the need for specialised victim support services, LCHR hired an academic psychologist who conducted in-depth interviews with victims of hate crimes (with the representatives of visible minorities, including Roma, LGBT) and wrote a paper on the consequences of hate crimes on victims in Latvia, which LCHR published.⁸²

Relevant Bibliography on Hate Crimes

Only a limited amount of publications relating to hate crime and hate speech has of yet been produced. The book on Racist Extremism in Central and Eastern Europe includes a chapter on Latvia, provides an overview about Latvian and Russian radical and extremist organisations (*Thundercross, Latvian Patriot, Aivars Garda and the Latvian National Front, Russian National Unity, National Bolshevik Party*) and manifestation of racism in their activities in the 1990s until 2002, a brief overview of the national legislative framework, the institutional framework, and the reaction of civil society and political parties⁸³.

A study published in 2004 by the Baltic Institute of Social Sciences on “Ethnic Tolerance and Social Integration in Latvia” provides some context on prejudice and social distance towards different ethnic and religious groups. The study reveals that prejudice is very high against people from the Caucasus, Chinese, Africans and Kurds. The survey shows no significant differences between majority and minority respondents.⁸⁴

In 2004 the Centre for Public Policy “Providus” published a research paper The Borderline of Free Speech: Defamation, Incitement to Hatred (by 1 February 2004). The paper provides an overview of some international standards concerning defamation and racist speech, relevant Latvian legislation, undertakes the analysis of the provisions of the Criminal Law, Civil Law and court decisions (2) that have been announced by 2004.⁸⁵

⁸⁰ How to Report Hate Crime at <http://www.humanrights.org.lv/html/areas/tolerance/29523.html>

⁸¹ Latvian Centre for Human Rights, Hate Crimes, Riga: 2008 at <http://www.humanrights.org.lv/html/>

⁸² Dr Inta Dzelme, Psychological Effects of Hate Crime – Individual Experience and Impact on Community (attacking who I am), Riga: Latvian Centre for Human Rights, 2008.

⁸³ Nils Muižnieks. Latvia. In: *Racist Extremism in Central and Eastern Europe*, ed. Cas Mudde. Routledge, 2005, pp.101 -128.

⁸⁴ Zepa, B., Šūpule I., Krastiņa L., (2004) *Ethnic Tolerance and Social Integration in Latvia*, Riga: Baltic Institute of Social Sciences.

⁸⁵ Artūrs Kučs, (2004) *Vārda brīvības robežas: goda un cieņas aizskaršana, naida kurināšana*. Sabiedriskās politikas centrs “Providus”, Riga: 2004, p. 59-88.

In 2007, the NGO Alliance of LGBT and their friends “Mozaika” published a research paper “Homophobic speech in Latvia: monitoring of politicians”, which analyses public statements by Latvian politicians in relation to sexual minorities during May 2005 and July 2006.⁸⁶

⁸⁶ Mozaika, an Alliance of Lesbian, Gay, Bisexual, Transgendered Persons and their Friends in Latvia (2007) “Homophobic speech in Latvia: monitoring of politicians” <http://www.politika.lv/index.php?id=14059>

