

Training material for high-schools – empowerment primer

Lisbon Treaty: Empowerment of European Citizens

Being European Citizen: Rights and Responsibilities

Latvian Centre for Human Rights

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"Being European Citizen: Rights and Responsibilities"**

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1. European integration and the Lisbon Treaty

The first step in the process of successful European integration was taken on 18 April 1951, when the Treaty establishing the European Coal and Steel Community (ECSC Treaty) was signed in Paris by the representatives of six countries (Belgium, France, Italy, Luxembourg, West Germany, The Netherlands).¹ Seven years later this cooperation was extended to other economic areas and on 17 April 1957 in Rome the Treaty establishing the European Economic Community (EEC Treaty) was signed, laying the foundations for the European Economic Community (EEC).² Over time, this cooperation of European states was increased and gradually extended further. In 1993, as a result of the entry into force of the Treaty on the European Union (TEU, or the Maastricht Treaty, signed on 7 February 1992), the name of this community was changed to the "European Union" (EU).³ Gradually, more states joined the Union and currently (January 2013), there are 27 member states of the European Union.⁴ Latvia, Lithuania and Estonia joined the European Union in 2004.⁵

Lisbon Treaty (or the Treaty of Lisbon) is a new main treaty of the European Union, which determines the status and the functioning of the European Union.⁶ The document was signed on 13 December 2007 in Lisbon. The Lisbon Treaty amends the Treaty on the European Union and the Treaty on the Founding of the European Union (simultaneously re-naming the latter into the "Treaty on the Functioning of the European Union"), transforms the institutions of the European Union and introduces new methods of work, as well as continues the development of the EU policies in various areas, thus facilitating the long-term development, competitiveness and enforcing the role of the EU in the world.⁷ On behalf of Latvia, the Lisbon Treaty was signed by the President Valdis Zatlers, Prime-Minister Aigars Kalvitis and the Minister of Foreign Affairs Maris Riekstins.⁸ The Lisbon Treaty entered into force on 1 December 2009.

Why was the new main treaty necessary?⁹ The initial design of the predecessor of the European Union, - the European Community (such as structures, representation, decision-making procedures etc) was envisioned for relatively small number of

¹ Treaty establishing the European Coal and Steel Community, ECSC Treaty
http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_ecsc_en.htm

² Treaty establishing the European Economic Community, EEC Treaty
http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm

³ Treaty of Maastricht on European Union
http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm

⁴ Valstu saraksts http://europa.eu/about-eu/countries/index_lv.htm

List of countries http://europa.eu/about-eu/countries/index_en.htm

⁵ Līgums par pievienošanos Eiropas Savienībai www.mfa.gov.lv/lv/eu/arhivs/3883/3749/4004/4007

⁶ Lisabonas līgums www.mfa.gov.lv/lv/eu/akti/ligums

⁷ Lisabonas līguma veiktās izmaiņas salīdzinājumā ar esošajiem ES līgumiem
www.mfa.gov.lv/lv/eu/ligums/izmainas-salidzinajums

⁸ Lisabonas Līgums, ar ko groza Līgumu par Eiropas Savienību un Eiropas Kopienas dibināšanas līgumu, parakstīts Lisabonā 2007. gada 13. decembrī <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:LV:HTML>

⁹ Treaty of Lisbon Questions and answers http://europa.eu/lisbon_treaty/faq/index_en.htm

member-states (Belgium, France, Italy, Luxembourg, West Germany, The Netherlands). Since then, both the number of member-states and the number of the issues under the Union supervision have significantly increased. Moreover, the external environment in which the EU operates changed fundamentally and thus changed the challenges the EU is faced with. For example, European continent is no longer divided into two competing blocks, while other issues gained importance such as international migration and related human rights issues, prevention of terrorism threat, competitiveness of the European model in the world (economy, political leadership, research and science, as well as social model). The Treaty of Lisbon is also important because it widens the opportunities of the European citizens to influence the decision-making process within the European Union.

Changes in the European Union

What changes does the Lisbon Treaty bring? How does the EU work now?

1) EU – consolidated legal personality¹⁰

The Lisbon Treaty gave the consolidated status of the legal personality to the European Union. Prior to the Lisbon Treaty, the European Union did not exist as a single legal personality. The Maastricht Treaty (1992) organised the development of the European Union into the framework of "three pillars" - European Communities, Common Foreign and Security Policy, and Justice and Home Affairs. The Lisbon Treaty abolished the three pillar structure and consolidated the EU as a single legal personality.

2) Seven EU institutions

According to the changes, brought by the Lisbon Treaty, the Union's institutions are:¹¹

1. The European Parliament,
2. The European Council,¹²
3. The Council,¹³
4. The European Commission,
5. The Court of Justice of the European Union,¹⁴
6. The European Central Bank,

¹⁰ The Treaty of Lisbon: introduction

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0033_en.htm

Lisabonas līguma ieviestās izmaiņas ES pamatlīgumos www.mfa.gov.lv/lv/eu/ligums/izmainas

Lisabonas līguma veiktās izmaiņas salīdzinājumā ar esošajiem ES līgumiem

www.mfa.gov.lv/lv/eu/ligums/izmainas-salidzinajums

¹¹ The Treaty of European Union, Article 13

<http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>

¹² The heads of state or government of the EU member states together with the President of the European Council and the President of the European Commission; the High Representative of the Union for Foreign Affairs and Security Policy also takes part in the European Council's work.

¹³ The Council of the European Union - 27 national ministers whose portfolio includes relevant policy area

¹⁴ Seated in Luxembourg

7. The Court of Auditors.¹⁵

Changes - the European Council and the European Central Bank are given the official status of being an EU institution.

3) Two major new posts

The Lisbon Treaty introduced two major new posts:

- The President of the European Council¹⁶ and
- The High Representative of the Union for Foreign Affairs and Security Policy¹⁷.

The European Council, consisting of the heads of state or government of the member states, elects its own President, who serves for the term of two-and-a-half years. The President of the European Council represents the European Union on the world stage, as well as organises and chairs the meetings of the European Council and reports to the European Parliament after each meeting.¹⁸ On 19 November 2009 the European Council elected Herman Van Rompuy (Belgium) as its first permanent President.¹⁹ On 1 March 2012 Herman Van Rompuy was elected for the second term as the President of the European Council.²⁰ Informally, the President of the European Council is sometimes named the "President of Europe".²¹

The main task of the High Representative of the Union for Foreign Affairs and Security Policy is to coordinate and to contribute to the development of the common foreign and security policy of the European Union and to represent the EU in external relations.²² On 4 December 2009 the European Council appointed Catherine Ashton (United Kingdom) to the post of the High Representative of the Union for Foreign Affairs and Security Policy²³. Informally, the High Representative of the Union for

¹⁵ The European Court of Auditors

¹⁶ The Treaty of European Union, Article 15

<http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>

¹⁷ The Treaty of European Union, Article 18

<http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>

¹⁸ The European Council

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0007_en.htm

¹⁹ The President of the European Council www.european-council.europa.eu/the-president/the-presidents-role

²⁰ President Van Rompuy elected for a second term www.european-council.europa.eu/home-page/highlights/president-van-rompuy-re-elected-for-a-second-term

²¹ Belgian PM is first 'president of Europe' November 19, 2009, CNN:

http://edition.cnn.com/2009/WORLD/europe/11/19/eu.presidency/index.html?_s=PM:WORLD

Profile: First EU President Herman van Rompuy, BBC News, 20 November 2009:

<http://news.bbc.co.uk/2/hi/8358504.stm>

²² The High Representative of the Union for Foreign Affairs and Security Policy

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0009_en.htm

²³ High Representative of the Union for Foreign Affairs and Security Policy

www.consilium.europa.eu/policies/council-configurations/foreign-affairs/high-representative-of-the-union-for-foreign-affairs-and-security-policy?lang=en

Foreign Affairs and Security Policy is sometimes named the "EU foreign minister".²⁴ The High Representative of the Union for Foreign Affairs and Security Policy is also one of the Vice-Presidents of the European Commission.²⁵

4) Qualified (dual) majority voting procedure in decision-making of the Council of the European Union (the Council)²⁶

The Treaty of Lisbon provides an opportunity for more streamlined and efficient decision-making process in the Council of the European Union (the Council), which consists of representatives of each member state at ministerial level whose portfolio includes relevant policy area in question: the Lisbon Treaty determines that the Council shall act by a qualified majority voting, unless treaties provide otherwise, and establishes new definition of "qualified majority". Every member state has one vote in the EU Council, yet the influence of each depends on the size of the population of the member states: to adopt a decision by a qualified majority voting, that decision must attract votes representing at least 55% of member states which represent at least 65% of the population of the EU. If the decision under consideration is not a proposal from the Commission, the required threshold is higher: the qualified majority is achieved when at least 72% of member states representing at least 65% of the population support the decision. Under the terms of the Lisbon treaty, the blocking minority within the Council is composed of at least four member states representing over 35% of the EU population.²⁷

The new voting arrangement will take effect from 1 November 2014, although until 31 March 2017 the member states may request some specific decisions to be made according to the rules effective before the Lisbon treaty (i.e. – according to the definition of the qualified majority rule as envisioned by the Treaty on Nice, which envisioned a system of "vote weighting", whereby each member state had a fixed number of votes depending on its demographic weight (345 votes in total for 27 members) and a qualified majority was achieved if 255 votes were cast by at least 14 member states.²⁸

²⁴ 'As trade commissioner she had a good reputation', The Guardian, 20 November 2009

www.guardian.co.uk/politics/2009/nov/20/lady-ashton-eu-reaction

Toulouse school shootings: Israel demands Baroness Ashton resign after she compares incident to Gaza, The Telegraph 20 March 2012

www.telegraph.co.uk/news/worldnews/europe/france/9155477/Toulouse-school-shootings-Israel-demands-Baroness-Ashton-resign-after-she-compares-incident-to-Gaza.html

²⁵ Vice President of the European Commission http://ec.europa.eu/commission_2010-2014/ashton/index_en.htm

²⁶ The Council of the European Union

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0008_en.htm

Ko maina Lisabonas līgums salīdzinot ar esošajiem līgumiem?

www.am.gov.lv/data/file/ES/izmainas_ll_01072008_esia.pdf

²⁷ The Council of the European Union

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0008_en.htm

²⁸ The Council of the European Union

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0008_en.htm

The qualified majority voting mechanism in the Council's decision-making applies to a wide range of areas, such as transport policies, issues of climate change, energy security, humanitarian assistance, cooperation in the fight against terrorism, justice and home affairs (including combating crime and illegal immigration).

5) European Parliament²⁹

Provisions of the Lisbon Treaty give substantially more powers to the European Parliament, extending its legislative power to the majority of the EU law areas. In fact, the European Union has a bicameral legislature: the European Parliament, which represents the interests of the citizens and the Council of the European Union, which represents the interests of the member states. The co-decision procedure, which is renamed to "ordinary legislative procedure", envisages the same powers to the Parliament as to the Council, is extended to over 40 new areas according the Lisbon Treaty, such as agriculture, energy security, immigration, justice and home affairs, health and structural funds. The issues of common foreign and defence policy are not subject to the co-decision procedure.

The Lisbon Treaty also elevates the European Parliament to an equal footing with the Council regarding the EU budget. Prior to the Lisbon Treaty the European Parliament could only make proposals and did not have a decisive word on "compulsory" expenditures (such as agricultural as well as expenditures, envisioned by treaties; these expenditures accounted for nearly a half of the EU budget). Now the European Parliament, together with the member states governments represented in the Council, takes full responsibility for the entire EU budget.

It also has to be noted that the Lisbon Treaty reduced the total number of seats in the European Parliament to 751 (750 MEPs and the EP President). Besides, the distribution of seats among the member states has been slightly altered as well (e.g. the Latvia gained one seat, increasing its representation to nine MEPs).

6) The role of the member states' parliaments in decision-making

Some critics of the European Union argue about certain democratic deficit and the lack of transparency in decision-making. In order to at least partially address these issues, the Lisbon Treaty clarifies the role of the member states in the decision-making of the EU: the national parliaments are entitled to make their assessment of whether the proposed EU initiative complies with the principle of subsidiarity (whether the said initiative could be better solved at the EU or the member state level).³⁰ The EU bodies

²⁹ The European Parliament

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0010_en.htm

The European Parliament and the Lisbon Treaty

www.europarl.europa.eu/aboutparliament/en/0042423726/Parliament-and-the-Lisbon-Treaty.html;jsessionid=7A09FC7F96B3B11F921D6657E89C6D74.node1

³⁰ The principle of subsidiarity

http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0017_en.htm

are obliged to inform the parliaments of the member states about the draft legislation, and within eight weeks the national parliaments could present their reasoned opinion if they believe the draft initiative does not comply with the principle of subsidiarity. The Lisbon Treaty does not give the national parliaments the right to block the EU initiatives. However, the national parliaments can collectively object against the draft initiatives through the „yellow card“ procedure (more than a one-third of the votes of the national parliaments are objecting against the initiative) or the „orange card“ procedure (more than a half of the votes of the national parliaments are objecting against the initiative).³¹

7) Secession³²

The Lisbon Treaty introduces an exit provision, regulating procedures pertaining to possible withdrawal of the member states from the Union. Unlike the Soviet Union legislation, the exit provision of the European Union does not require mandatory referendum on the issue. The decision shall be taken according to the constitutional requirements of the state itself. For example, in Latvia this issue is covered by the Article 68 of the Constitution, which envisions that the membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the Parliament. The EU member state cannot withdraw from the Union immediately. The member state should through negotiations resolve all the issues relevant to its withdrawal, including possible compensations for investments as well as determine its future relations with the Union. The outcome of the negotiations is a treaty, which enters into force following the approval by the European Parliament and the European Council (at least 72% of the members representing at least 65% of the residents of the EU). If the state and the EU are not able to reach an agreement on the conditions of the secession, two years since that state informed about its decision to leave the Union, the EU treaties are no longer binding for that state.

8) Citizen initiative

For the first time an element of direct democracy is introduced in the European Union: the European Citizens' Initiative (ECI) enables EU citizens to ask the European Commission to propose a new legal act. According to the provisions of the Lisbon Treaty “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”.³³

³¹ Opinions of the national Parliaments http://ec.europa.eu/codecision/stepbystep/text/index_en.htm

³² The Treaty of European Union, Article 50
<http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>

³³ The Treaty of European Union, Article 11, Paragraph 4
<http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>

It is important to emphasise that the citizens' initiative is only applicable to those areas, which lay within the scope of the competence of the EU and only within the framework of the powers of the European Commission in order to implement the treaties. For example, the citizens' initiative may be enacted in the policy areas such as internal market and competition, environment, consumer protection, transport and energy, justice and home affairs (immigration, asylum, border checks).³⁴ Demands to amend existing treaties or to conclude new treaties are not eligible within the framework of the citizens' initiative.

The threshold for the citizens' initiative (one million citizens, i.e. 0.2% of the total EU population) is not very high comparing to Latvian direct democracy norms: according to 1994 Law "On Referendums and Legislative Initiatives" signatures of citizens 10 000 (0.5% of the total) had to be collected in support of a legislative initiative in order to initiate referendum procedure, while according to amendments to the same law (adopted by the Parliament on 8 November 2012) starting from 1 January 2015 the required number of signatures is 10% of the citizenry (approximately 154 000).

Specific requirements and procedures of the European citizens' initiative are determined by the Regulation (EU) No 211/2011³⁵ of the European Parliament and the Council adopted on 16 February 2011 (the "Regulation on the citizens' initiative"). The Regulation envisages that in order to begin the citizens' initiative, a "citizens' committee" has to be established, comprising of at least seven EU citizens (organisers) being resident in at least seven different member states. The initiative should comply with the formal criteria and the citizens' committee should register its initiative on the website of the Official Register of the European Citizens' Initiative³⁶ and receive a confirmation in order to begin the collection of signatures. EU citizens can express their support for the initiative by filling in the "statement of support" form provided by the organisers, on paper or online. The organisers have one year to collect the signatures for the support of their initiative.

Nationals of at least seven member states should support the initiative and a minimum number of signatories is determined for each state. For example, the minimum number of signatories for Latvia is 6750 (one signatory per 302 residents), for Germany – 74250 (one per 1102), for Lithuania – 9000 (one per 334), for Estonia – 4500 (one per 298) and for Malta – 4500 (one per 92).³⁷

Once the required number of signatures was collected, the citizens' initiative is submitted to the European Commission. The organisers will have an opportunity to present and explain their initiative to the representatives of the Commission and in the European Parliament. Within three months following the submission of the initiative

³⁴ Can your idea be a citizens' initiative? <http://ec.europa.eu/citizens-initiative/public/competences>

³⁵ REGULATION (EU) No 211/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 February 2011 on the citizens' initiative <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:065:0001:0022:EN:PDF>

³⁶ The European Citizens' Initiative Official Register: <http://ec.europa.eu/citizens-initiative/public/welcome>

³⁷ Minimum number of signatories per member state: <http://ec.europa.eu/citizens-initiative/public/signatories>

the Commission will adopt an official response, whereby describing what actions, if any, the Commission will take to implement the initiative, and the reasons for this action or inaction. If the Commission decides to propose new legislation as a result of the initiative of the EU citizens, this legislative proposal will be submitted to the legislator – the European Parliament and the Council (in some cases only the Council). The European Commission is not obliged to propose any legislation in response to the citizens' initiative which was endorsed by the required number of signatories.

9) Charter of Fundamental Rights of the European Union

The entry into force of the Treaty of Lisbon also gave force to the Charter of Fundamental Rights of the European Union, which now has the same legal value as the main treaties of the EU. The Charter is a codified catalogue of fundamental rights of the EU citizens. It includes six major rights, common for all – dignity, freedoms, equality, solidarity, citizens' rights and justice.³⁸ For example, the Charter guarantees the right to life, freedom of expression and information, protection of personal data, the right to education, consumer protection, cultural, religious and linguistic diversity, the rights of the elderly, integration of persons with disabilities.

³⁸ www.europarl.europa.eu/charter/default_en.htm

2. The Charter of Fundamental Rights of the European Union

Initially, the Charter was signed and proclaimed in 2000, although at that time it did not gain official legal force. During the development of the draft Lisbon Treaty, it was decided that the Charter should become a separate document with the same legal value as the European Union main treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union).³⁹

The main purpose of the Charter is to protect the fundamental rights of the people of Europe, which could be impacted by the decisions of the European Union institutions, or by the decisions of the member states implementing the EU law. Moreover, the Charter made more visible the fundamental rights applicable at the EU level: for the first time in the history of the Union, one document consolidates fundamental rights and principles contained in various international (UN, ILO) and regional (Council of Europe, European Union) documents, as well as important legal principles of member states. For the first time one document includes civic, political, economic and social rights of the people of Europe. For the most part, the rights enshrined in the Charter are applicable to all people in Europe, regardless of citizenship or the place of residence. The Preamble of the Charter states that "the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice." In 2012, the European Union was awarded the Nobel Peace Prize "for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe".⁴⁰

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http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/l33501_en.htm . The Charter entered into force as the Treaty of Lisbon entered into force – on 1 December 2009.

⁴⁰ The Nobel Peace Prize 2012 European Union (EU)

www.nobelprize.org/nobel_prizes/peace/laureates/2012/press.html

General Picture*

* Gabriel N. Toggenburg (EU Fundamental Rights Agency)

Economic, Social and Cultural Rights Civil and Political Rights



← European Court of Human Rights

European Court of Justice →



Content

The Charter consists of a preamble and 54 articles, grouped in seven chapters. The rights, enshrined in the Charter, are divided among the six large substantive chapters (dignity, freedoms, equality, solidarity, citizens' rights and justice); the seventh chapter clarifies the general provisions regarding the interpretation and implementation of the Charter.

From the formal point of view, the Charter distinguishes between the "rights", "freedoms" and "principles".⁴¹ The distinction between the "rights" and "freedoms" is insignificant, as the Charter itself uses these terms inconsistently.⁴² There is, however, a significant difference between the "rights"/"freedoms" on one hand and the "principles" on the other, because the "principles" do not give the individuals the right to demand its implementation by the EU or the member states.⁴³ There is a possibility that over time, the "principles" might develop into "rights".

The Charter of Fundamental Rights of the European Union recognises the following rights:

⁴¹ See, e.g. the Preamble, Articles 2, 3, 10-13 and 51.

⁴² Anderson D., Murphy C.C. The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe., *EU Working Paper*, 2011/08.

⁴³ For example, Article 27 of the Charter envisage that "Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices".

Chapter I: Dignity	
<ul style="list-style-type: none"> - human dignity - right to life - right to the integrity of the person 	<ul style="list-style-type: none"> - prohibition of torture and inhuman or degrading treatment or punishment - prohibition of slavery and forced labour
Chapter II: Freedom	
<ul style="list-style-type: none"> - right to liberty and security - respect for private and family life - protection of personal data - the right to marry and found a family - freedom of thought, conscience and religion - freedom of expression and information - freedom of assembly and association 	<ul style="list-style-type: none"> - freedom of the arts and sciences - the right to education - freedom to choose an occupation and the right to engage in work - freedom to conduct a business - the right to property - the right to asylum - protection in the event of removal, expulsion or extradition
Chapter III: Equality	
<ul style="list-style-type: none"> - equality before the law - non-discrimination - cultural, religious and linguistic diversity - equality between men and women 	<ul style="list-style-type: none"> - the rights of the child - the rights of the elderly - integration of persons with disabilities
Chapter IV: Solidarity	
<ul style="list-style-type: none"> - workers' right to information and consultation within the undertaking - the right of collective bargaining and action - the right of access to placement services - protection in the event of unjustified dismissal - fair and just working conditions - prohibition of child labour and protection of young people at work 	<ul style="list-style-type: none"> - family and professional life - social security and social assistance - health care - access to services of general economic interest - environmental protection - consumer protection
Chapter V: Citizens' rights	
<ul style="list-style-type: none"> - right to vote and to stand as a candidate at elections to the European Parliament - right to vote and to stand as a candidate at municipal elections - the right to good administration - the right of access to documents 	<ul style="list-style-type: none"> - European Ombudsman - the right to petition - freedom of movement and residence - diplomatic and consular protection
Chapter VI: Justice	
<ul style="list-style-type: none"> - the right to an effective remedy and a fair trial - presumption of innocence and the right 	<ul style="list-style-type: none"> - principles of legality and proportionality of criminal offences and penalties - the right not to be tried or punished

of defence	twice in criminal proceedings for the same criminal offence

Implementation

Institutions of the European Union (the European Parliament, the Council, the European Commission) have to comply with the norms of the Charter of Fundamental Rights of the European Union, including in drafting and implementing the legal acts of the European Union.

Example: the Constitutional Court of Belgium asked the European Court of Justice to assess whether the Council Directive 2004/113/EC (implementing the principle of equal treatment between women and men in the access to and supply of goods and services) are compatible to the principle of equality between men and women as determined by the Treaty on European Union. In particular, the Directive 2004/113/EC provided the member states with the possibility, on the basis of actuarial data and reliable statistics to permit differences in treatment between women and men in the field of insurance (such as gender as a factor in determining premiums and benefits). The Court of Justice declared the said provision of the Directive 2004/113/EC to be invalid. In its judgment, the Court of Justice also pointed out that the said provision of the Directive is incompatible with the Articles 21 and 23 of the Charter of Fundamental Rights of the EU.⁴⁴

The EU member states also must comply with the norms of the Charter when transposing and/or implementing the EU law. If the decisions or measures of the EU institutions violate the provisions of the Charter, the Court of Justice has the power to review the legality of these decisions or actions. If a member state's institutions violate the Charter when implementing the EU law, national courts of the respective state have the power to ensure the compliance with the norms of the Charter of Fundamental Rights.⁴⁵ Moreover, the European Commission is entitled to initiate "infringement procedure" against those member states which fail to ensure timely and complete transposition of the EU law or in some other way violate the EU treaties.⁴⁶

Example: the European Commission initiated infringement procedure against Hungary for a number of violation of the EU law: 1) Hungary lowered the retirement age for the judges from 70 to 62 years (thus violating the prohibition of discrimination on the ground of age determined by the EU Directive; besides, the retirement age was lowered for the

⁴⁴ Judgement of the Court (Grand Chamber), 1 March 2011, In Case C-236/09 Test-Achats: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-236/09>

http://ec.europa.eu/dgs/legal_service/arrets/09c236_en.pdf

⁴⁵ What can I do if my rights are breached? Available at: http://ec.europa.eu/justice/fundamental-rights/charter/rights-breached/index_en.htm

⁴⁶ Information prepared by the Ministry of Justice of the Republic of Latvia: http://www.tm.gov.lv/lv/daliba_es/ekt/

representatives of only one profession); 2) Hungary did not ensure adequate protection for the institution responsible for the data protection (in Latvia this institution is Data State Inspectorate).⁴⁷

Representatives of the United Kingdom, Poland and the Czech Republic achieved an opt-out of the application of the Charter to their countries. A special protocol "On the Application of the Charter of Fundamental Rights to Poland and to the United Kingdom" was added to the Lisbon Treaty.⁴⁸ The United Kingdom was concerned that: 1) the social rights envisioned by the charter could complicate and raise the costs of the business activities; 2) as a result of the adoption of the Charter the UK nationals could apply to the European Court of Justice in order to enforce on the UK soil the rights provided by the Charter. Poland wanted to ensure that the Fundamental Rights Charter of the European Union does not influence Polish family law,⁴⁹ and therefore announced its decision to join the opt-out protocol. In the meantime, the Czech Republic was worried that ethnic Germans, who were *en masse* deported from the country after the Second World War, could demand abolition of the deportation and property confiscation decisions, as well as put forward the demands of compensation.⁵⁰ In October 2009 the European Council agreed that the provisions of the protocol on the application of the Charter of Fundamental Rights to Poland and to the United Kingdom will also apply to the Czech Republic.⁵¹ Article 1 of the protocol determines two substantial provisions:⁵²

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

⁴⁷ European Commission launches accelerated infringement proceedings against Hungary, 2012.gada 17.janvāris, available at: http://ec.europa.eu/economy_finance/articles/governance/2012-01-18-hungary_en.htm

⁴⁸ Protocol (No 7) On The Application Of The Charter Of Fundamental Rights To Poland And To The United Kingdom <http://www.consilium.europa.eu/uedocs/cmsUpload/cg00002re01en.pdf>
Protocol (No 30) of the Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union <http://consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf#page=400>

⁴⁹ BBC: No EU rights charter for Poland (23 November 2007)
<http://news.bbc.co.uk/2/hi/europe/7109528.stm>

⁵⁰ The Treaty of Lisbon and the Czech Republic <http://www.czech.cz/en/Discover-CZ/Facts-about-the-Czech-Republic/Politics/The-Treaty-of-Lisbon-and-the-Czech-Republic>

⁵¹ Brussels European Council 29/30 October 2009 Presidency Conclusions, 1 December 2009
www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/110889.pdf

⁵² Protocol (No 7) On The Application Of The Charter Of Fundamental Rights To Poland And To The United Kingdom <http://www.consilium.europa.eu/uedocs/cmsUpload/cg00002re01en.pdf>
Protocol (No 30) of the Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union <http://consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf#page=400>

In order to clarify when the rights envisioned by the Charter are violated, the European Commission has committed itself to improving the European e-Justice Portal (<https://e-justice.europa.eu>). The portal shall make available information about what to do when someone's fundamental rights are violated.⁵³

⁵³ 2010.gada ziņojums par ES Pamattiesību hartas piemērošanu, Eiropas Savienība, 2011, 7.lpp.: http://ec.europa.eu/justice/fundamental-rights/files/annual_report_2010_lv.pdf

3. Freedom of Movement - Migration

Charter of Fundamental Rights of the European Union

Article 45: **Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 18: **Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19: **Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Migration is an inevitable process. In 2011, 6.6% of the population in Europe were migrants (increase from 4.4% in 2001), including 2.5% (12.8 million) citizens of the EU member states residing in other EU countries, and 4.1% (20.5 million) citizens of countries outside the EU.⁵⁴ Within the EU, the greatest numbers of emigrants originate from Romania, Poland and Italy; outside the EU, the greatest numbers of emigrants come from Turkey, Morocco, Albania and Algeria. Germany, Spain, United Kingdom, Italy and France host the largest immigrant populations. Besides, every year approximately 200 thousand people from Iraq, Russia, Pakistan, Afghanistan, Somali and other countries are seeking asylum in Europe.

Factors and reasons, encouraging migration

There are two groups of factors, which encourage migration:

- **Push factors** – reasons, which force people to leave their ordinary environment and begin a journey. Quite often these factors are negative, such as - conflicts, persecution, political instability, social inequality and limited economic opportunities.
- **Pull factors** – reasons, which motivate people to choose one or another specific country as their desired destination. These factors are usually much more positive, such as – high living standards, employment opportunities, education opportunities, family reunification, or the sense of greater freedom and security.

⁵⁴ Katya Vasileva, Population and social conditions. Eurostat 31/2012. available at: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-12-031/EN/KS-SF-12-031-EN.PDF

Depending on the circumstances, which motivate people to migrate, these factors may be classified into the following groups:

- **Economic factors:** low workers' productivity, unemployment, limited opportunities for development, low income, bad employment conditions, poverty, lack of food, structure of labour market, lack of natural resources, search for better jobs, search for better life.
- **Demographic factors:** mortality/fertility rates, marriage.
- **Political factors:** search for security, political situation, restrictions on the freedom of expressions and assembly, wars, torture, persecution.
- **Climate factors:** earthquakes, floods, cyclones, droughts, colds.
- **Cultural and religious factors:** division of gender roles in the society, the role of the family, shared or similar language, accessibility of culture, the size of the immigrant community and connections, accessibility of education.

Therefore, the integration of immigrants is a topical issue in Europe (as well as in Latvia), especially because in many countries the attitudes of the politicians and the society are quite negative. Only consequent implementation of immigrant integration policy could prevent social tension, facilitate consolidation of society and achieve maximum economic, cultural and societal contribution of the immigrants to the host society, while simultaneously respecting their human rights.

Definitions

Migration – movement by people from one location to the other. Migration could occur within one country, or it could cross the state borders. The term "migration" is usually used when people are settling in the new place with the intention to stay there a long time and establish close connections.

Emigration – leaving one's country with the aim to settle permanently in another country

Immigration – arrival to another country for the purpose of settling there permanently

Foreigner – someone without citizenship or the status of non-citizen of the country

Person without citizenship (stateless, apatride) – someone who is not considered as a citizen by any state according to its law

Third-country nationals – someone who have citizenship of a country outside the European Union, European Economic Area, or the Swiss Confederation

Migrant – someone who left his/her home in search of a more secure or better place of residence. Therefore the word "migrant" has a wider meaning and it could embrace such notions as asylum-seeker, refugee, internal migrant, foreign worker, irregular migrant

Labour migrant – someone who migrates for the sake of work

Economic migrant – someone who is migrating in order to improve the quality of social and economic aspects of one's life

Migrant worker – someone who performs paid job in a foreign country

Irregular migrant – someone without valid legal status or travel documents for the entry into and residence in the country. Irregular migrants are often called "illegal migrants", although this expression should be avoided, especially because quite often these people initially enter the country legally (as tourists, students, workers), yet after the expiration of their visas or residence permits they do not leave the country and remain there illegally.

Asylum-seeker – a person who left his/her country of residence and requested another country to recognise him/her as a refugee and is awaiting the decision on this request

Refugee – someone who left his/her country of residence out of concerns over persecution or mistreatment because of his/her race, religion, association with certain social group or political views. Because of these reasons, the person is not able to get protection in his/her home country.

Person with alternative status (subsidiary protection) – a person, who cannot be granted the refugee status, however, his/her return to the country of citizenship or origin is not possible because of the danger of capital punishment, corporal punishment, torture, inhumane or degrading treatment or degrading punishment, as well as external or internal armed conflicts. In Latvia, someone who was granted the alternative status, receives a temporary residence permit of up to one year in length. This residence permit can be extended.

Persecution means that someone is being mistreated because of his/her essential features – race, ethnicity, association with certain social group or political views

Voluntary return – return to the country of origin on the ground of freely expressed will to return

Trafficking in human beings – recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion

Family reunification – a process whereby the members of the family, separated by force or voluntarily, are being reunited either in the country of origin or in another country

How do the immigrants feel themselves in the new country of residence?

Migration can influence everyone and the society both in negative and positive way. In the new country, people are usually go through five stages of culture shock and its overcoming.⁵⁵

1. **"Honeymoon"**. Individual is full of fresh impressions about the new country; the dominating feelings are the interest and enthusiasm. The cultural identification of the individual is not affected. The individual looks at the new world as a tourist and as a discoverer.
2. **Discomfort**. The second stage begins when the individual begins to acutely feel the differences between "mine" and "new" culture. The feelings of estrangement and confusion, which negatively influence the self-consciousness, are characteristic for this stage.
3. **Aggression, denial**. The characteristic features of the individual at the third stage are aggression, denial of the new culture in order to preserve one's own self-consciousness. The differences are aggravating. The stage can be characterised by the expression "we don't do like that!"
4. **Awareness of differences and similarities**. At the fourth stage the individual begins to comprehend the unifying and dividing elements of her/his culture and the new culture. At this stage the individual becomes much more open for the new culture and is able to adequately react in various social situations according to the norms of behaviour of the new culture. To certain extent, reconciliation is taking place, which can be characterised by the phrase "Ok, you do it this way, but still, we do it differently". The individual accepts the new culture as it is and finds it possible to position his/her "self" in a new way.
5. **Integration**. At the fifth stage, the individual is able to integrate the norms of one's own culture and the norms of the new culture, which ideally creates identification with two cultures. He individual internally accepts the new culture.

In order to facilitate the development and implementation of more effective policy of integration of immigrants, the European Commission developed guidelines for integration policy.

A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union:⁵⁶

1. Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.
2. Integration implies respect for the basic values of the European Union.

⁵⁵ IOM Starptautiskā migrācijas organizācija, *Rokasgrāmata darbam ar patvēruma meklētājiem*, 55. lpp. http://www.iom.lv/docs/rokasgraamata_patv_druk.pdf; Latvijas Sarkanais Krusts (2010), *Informatīvs materiāls Latvijas Sarkanā Krusta darbiniekiem par darbu ar imigrantiem*:

<http://www.redcross.lv/faili/Sarkanais%20krusts%20drukai.pdf>

⁵⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0389:FIN:en:PDF>

3. Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible.
4. Basic knowledge of the host society's language, history, and institutions is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration.
5. Efforts in education are critical to preparing immigrants, and particularly their descendants, to be more successful and more active participants in society.
6. Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration.
7. Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens.
8. The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law.
9. The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.
10. Mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration in public-policy formation and implementation.
11. Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.

4. Discrimination prohibition

Charter of Fundamental Rights of the European Union

Article 21: Non-discrimination⁵⁷:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Definition of discrimination

Discrimination in a wider sense is an unjustified unequal treatment based on some prohibited ground, such as gender and ethnicity. These grounds are defined in international and national law.

Unequal treatment also includes direct and indirect discrimination, harassment, and instruction to discriminate.⁵⁸

It is important to remember that sometimes the unequal treatment does not mean discrimination. **Discrimination** takes place when the **unequal treatment is not justified, i.e. does not have objective and reasonable justification**. For example, the employer or provider of goods cannot objectively explain why he/she is treating someone less favourably than the other.

However, equal treatment in different situations also may lead to discrimination, if there is no objective justification for that.

Employer applies the same requirements to the candidates with disability as to the candidates without disability and does not adjust the working conditions to the needs of the persons with disability.

Grounds of discrimination

An important factor in establishing the fact of discrimination is the presence of a **prohibited ground**. If someone believes he or she was discriminated against, it is important to determine the ground, on the basis of which the differential treatment

⁵⁷ The Charter of Fundamental Rights of the European Union, www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵⁸ The Law "On Social Security" (Likums "Par sociālo drošību", 07.09.1995), available in Latvian at: <http://www.likumi.lv/doc.php?id=36850&from=off>

has taken place. The EU directives and the Lisbon Treaty⁵⁹ determine six prohibited grounds of discrimination: **gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation**. However, individual Latvian laws and the Charter of Fundamental Rights of the European Union include wider list of grounds.

Latvian Labour Law prohibits discrimination on the grounds of race, skin colour, gender, age, disability, religious, political or other persuasion, national or social origin, property or family status, sexual orientation or other circumstances.

A person cannot be treated differently on the basis of the abovementioned grounds. There are instances when someone experiences discrimination because of the reasons not mentioned in this list (hence the notion of "other circumstances"). However, this does not imply that any features can be included under the notion of **other circumstances**. The features of discrimination are that a person is unjustifiably being denied equal rights because of the stereotypes dominating in the society.⁶⁰

Discrimination could also take place because of two or more discrimination grounds at the same time. If a person was put into a less favourable situation because of more than one discrimination grounds (for example – because of gender and ethnic affiliation), this is called multiple discrimination.⁶¹ If a person was discriminated against on more than one ground at the same time, the resulting consequences usually more negative than when the person was discriminated on one ground only.⁶²

Women of some ethnic backgrounds could be subjected to certain stereotypes or prejudices. Thus, they could experience particular types of discrimination which is not experienced by men of the same ethnic background or women of other ethnic backgrounds.

Areas, where discrimination is prohibited

The EU directives prohibit discrimination in the following areas: **employment, education, healthcare and social care, as well as access to goods and services**. However, the existing EU regulations do not provide the same level of protection for all the grounds in all the areas. Discrimination on the ground of race or ethnicity is prohibited in employment, professional training, as well as in many other publically accessible areas unrelated to employment, such as social protection,

⁵⁹ Lisabonas līgums, ar ko groza līgumu par Eiropas Savienību un Eiropas Kopienas dibināšanas līgumu (2007/C 3066/01).

⁶⁰ Dupate K. "Latvijas tiesu prakse diskriminācijas aizlieguma pārkāpuma lietās darba tiesiskajās attiecībās", *Latvijas Republikas Tiesībsargs*, 2007., 5. lpp. Pieejams: http://www.tiesibsargs.lv/lat/petijumi_un_viedokli/petijumi/?doc=80

⁶¹ Multiplo diskrimināciju sīkāk iedala krusteniskajā un saliktajā diskriminācijā. Plašākai informācijai skatīt Timo Makkonen "Multiple, Compound and Intersectional Discrimination – Bringing the Experiences of the Most Disadvantaged to the Fore", Institute for Human Rights Research reports – No. 11, April 2002, pieejams <http://web.abo.fi/instut/imr/norfa/timo.pdf>

⁶² Dupate K. "Latvijas tiesu prakse diskriminācijas aizlieguma pārkāpuma lietās darba tiesiskajās attiecībās", *Latvijas Republikas Tiesībsargs*, 2007., 5. lpp. Pieejams: http://www.tiesibsargs.lv/lat/petijumi_un_viedokli/petijumi/?doc=80

healthcare, education, as well as access to goods and services, including housing.⁶³ In the above mentioned areas (except for education), gender discrimination is also prohibited.⁶⁴ Discrimination on the grounds of age, religion or persuasion, sexual orientation and disability is prohibited only in the area of employment and vocational training.⁶⁵ Therefore, in order to ensure equal level of protection for all grounds of discrimination, the EU drafts a new directive envisaging the implementation of the principle of equal treatment regardless of religion or persuasion, disability, age or sexual orientation. The new directive envisages prohibition of discrimination by both state and private actors in the following areas: social protection, including social security and healthcare, education as well as goods and services accessible to the public, including housing.

Types of discrimination

In order to characterise the content of discrimination, the notion of discrimination is complemented with adjectives, such as "direct" and "indirect".

Direct discrimination takes place where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the prohibited grounds of unequal treatment.

Employer in the job advertisement is looking for potential employees below 25 years of age.

The nightclub owner instructed the staff not to let into the club representatives of certain ethnicity. On the basis of stereotypes about the external look and behaviour or the representatives of this group, the staff of the club prevents from entering not only those persons, who actually belong to that group, but also those persons, who are perceived by the staff as belonging to this ethnicity.

Indirect discrimination is taking place when an apparently neutral provision, criterion or practice would put representatives of one group at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

⁶³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

⁶⁴ 2004. gada 13. decembra Direktīva 2004/113/EK, ar kuru īsteno principu, kas paredz vienlīdzīgu attieksmi pret vīriešiem un sievietēm attiecībā uz pieeju precēm un pakalpojumiem, preču piegādi un pakalpojumu sniegšanu; 2006. gada 5. jūlija Direktīva 2006/54/EK par tāda principa īstenošanu, kas paredz vienlīdzīgas iespējas un attieksmi pret vīriešiem un sievietēm nodarbinātības un profesijas jautājumos (pārstrādāta versija).

⁶⁵ 2000. gada 27. novembra Direktīva 2000/78/EK, ar kuru nosaka kopēju sistēmu vienlīdzīgai attieksmei pret nodarbinātību un profesiju.

Security company recruits physically fit individuals, who have the security guard certificate and are at least 186 cm tall.

Shop employees are prohibited from wearing headscarves when serving the clients.

Male employees are more often taking part in the practical work experience trips paid for by the employer.

Particular type of discrimination is **harassment** - unwanted conduct related to any of the prohibited grounds of discrimination, taking place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Dark-skinned man often finds at his table bananas or "Go to Africa!" notes.

Harassment can also be of sexual nature, i.e. – any unwanted conduct of sexual nature (verbal, non-verbal, physical).

Woman can complain about discrimination on the ground of gender if she is harassed by the unwanted continuous jokes about the women, ambiguous compliments and "accidental" touches made by her colleagues.

Instruction or call to discriminate is a type of discrimination whereby another person is instructed to discriminate someone on any of the prohibited discrimination grounds.

Employer provided information about a vacancy to the State Employment Agency, indicating preferable gender, age or ethnicity of prospective candidates.

Enterprise director dislikes one of the employees and therefore asks the sector manager to discriminate against that employee.

Prohibition of victimisation means prohibition of any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

Justified unequal treatment

In some cases, it is permissible to determine requirements based on the above mentioned grounds (religion, gender, age); however, in such cases these requirements should be objective and determined in the legislation. The EU directives and Latvian legislation envisage that unequal (differential) treatment, based on the prohibited ground, may be allowed if the difference of treatment is justified by legitimate objective and the measures are proportionate.

One has to be at least 30 years old to become a lawyer. This requirement is justified by the need to reach certain maturity before judging the court cases.

Differential treatment on the grounds of age and disability in the military forces cannot be considered discrimination.

In some cases, **adjustment of the working conditions** is necessary in order ensure that the employee with disability has the same opportunities to perform the job as the employees without disability. Latvian Labour Law envisages that in order to facilitate the implementation of the principle of equal treatment for persons with disability, the employer is obliged, according to circumstances and as far as it does not represent a disproportionate burden, to take the necessary measures, for adjusting working conditions, improve the opportunities of people with disabilities to begin employment relations, to fulfil job requirements, to be promoted or provided with vocational training. Such measures could include: changing the work space and adjusting it to the needs of the employees, changing the length of the work day or the location of the workplace, upgrade of equipment or purchase of additional equipment (additional lighting, elevators, leisure room etc), re-assignment of work duties, additional training and other. Thus, if the best candidate to a certain vacancy is a person with disability, the employer should evaluate his/her opportunities to adjust the working conditions and environment to the needs of this candidate. If these changes do not represent an excessive burden (for example, the costs in relation to the financial resources of the employer, or possible changes to the work schedule would not substantially influence the production process), and yet the employer is still failing to take measures to accommodate the work conditions and environment, in that case such lack of accommodation is discrimination.

Burden of proof

In many instances when people suspect they were subjected to discrimination these suspicions may be based on facts, yet the proof that the discrimination indeed happened, is not available.

Therefore, in order to help people to defend their rights, a **reverse burden of proof** is applied to the cases of discrimination. Latvian Labour Law stipulates that "if in the event of dispute, the employee indicates circumstances that could be the basis for that employee's direct or indirect discrimination on the ground of gender, the employer must prove that the difference in treatment is based on objective factors which are not related to gender, or to prove that belonging to the particular gender is an objective and reasonable condition to undertake the work." The same burden of proof procedures are applicable to the cases of possible discrimination on other prohibited grounds.

Shifting the burden of proof consists of two parts. First, the plaintiff must point out the facts on the basis of which it can be reasonable to conclude that there is a direct or indirect discrimination; however, there is no need to fully prove the existence of discrimination. Second, if the plaintiff has satisfied this obligation, it is the defendant's responsibility to prove that there was no discrimination. The plaintiff must point to a fairly reliable facts that may indicate the possibility of discrimination, and in that case,

the burden of proof falls on the defendant, who should not only point at the facts which may indicate that there was no discrimination, but also has to prove these facts.⁶⁶

⁶⁶ Ilvija Pūce “Pienākums pierādīt” (18.12.2008.), <http://www.politika.lv/temas/cilvektiesibas/14922/>

Guidelines for Teachers

The training course "Lisbon Treaty: Empowerment of European Citizens" is designed for high school students who are taking deeper interest in studying the political and social sciences. It is recommended to implement the training course in close connection to the school programme – namely, it is desirable to offer this course after high school students have mastered the history program materials on the Second World War, as well as on the post-war developments in Europe and the World; this way, the participants of the course could easily understand context of the establishment of the European Union. The course is also suitable for a wider audience. It is recommended within the framework of the course to combine presentation of new information (lectures) with discussions and games / exercises so that the participants would not only learn something new, but also discuss new topics and express their opinion.

The target audience - high school students with deeper interest in studying political and social sciences; wider audience.

Approximate duration of the training seminar: 4-7 hours

Practical exercises

The goal of the practical exercises is to encourage the activity, exchange of opinions, and discussions among the high school students participating in the training, as well as stimulate the participants to think about the new information and substantiate their opinion, to work in small groups, to negotiate a common opinion of the group as well as to present this opinion to the whole audience of participants. During the practical exercises, the participants will use both their background knowledge and the new information provided at the seminar.

Part 1: European integration and Lisbon Treaty

Practical exercise

European Citizens' Initiative – Your Initiative!

The trainers conducting the seminar are offered two "windows of opportunity" to conduct this exercise: 1) after the end of the presentation / lecture, 2) to integrate the exercise into the presentation, so that as soon as the participants learned about the essence of the European Citizens' Initiative, they could immediately discuss the newly acquired information; in that case it is recommended that the following information could be left for presenting after the completion of the exercise and discussion: topical initiatives currently open for signatures and closed/obsolete or refused initiatives⁶⁷, procedural questions, such as the prerequisites for collecting the signatures, further steps and options in the case if the 1 million signatures was collected etc.

Aims of the exercise:

- to improve the knowledge of the participants about the opportunities to realise their rights in the EU;
- to draw attention of the participants to the competences of the EU, decision-making mechanisms, rights and opportunities of the citizens;
- to think about what topical issues / problems could be solved at the EU level;
- to develop the participants' skills to formulate and substantiate their point of view, as well as to listen and understand the views of others.

Group size: 5-30

Exercise duration: 15-60 minutes, depending on the size of the group and their level of activity

Resources:

- white sheet of paper for every small group;
- writing utensils.

Instructions:

Divide the participants into several small groups, 5-7 persons in each

The task of each group: to invent, discuss and agree to one common proposal which could become European Citizens' Initiative according to the competences of the European Commission. In order to help the participants, it is recommended that during the exercise, a slide with brief description of the EU exclusive areas of competences and the shared EU / EU member states areas of competences could remain on the projector screen.

⁶⁷ Initiatives currently open for signatures: <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing>, refused requests for registration <http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered>

During the work in small groups, the participants express their ideas for possible European Citizens' Initiative. Within each group, participants discuss the ideas, arrive at a common "small group" proposal through these discussions and write down the main points:

- area where improvements are necessary, or a problem, which the members of the group want to solve;
- the proposed solution / citizens' initiative;
- does the proposed initiative fit into the competences of the European Union?
- how exactly would this initiative facilitate the resolution of the problem / improve situation in the area?

The duration of work in small groups is 5-10 minutes; after that, each group (or representative of each group) present the results of this work to the whole audience of the participants.

The trainer could encourage other participants to discuss the results of work of every individual group, including by drawing attention of the whole group to the following questions:

- to what extent do you think this is a topical problem?
- do you think this proposal / citizens' initiative could solve the problem?
- is this a problem to be solved at the EU level or it would be better if the member states decide it?
- can the civil society (non-profit / non-governmental organisations, grassroots activists) solve this problem without interference from the EU or EU member states?
- is this proposal within the competences of the EU?
- is this issue regulated at the EU level, national level or there is no regulation?

Time for presenting and discussing the results of every group is approximately 5-10 minutes.

Part 2: Importance of Human Rights – Charter Exercises

Planning of a new state⁶⁸

Aims of the exercise: to develop the ability of participants to formulate the most important human rights to be respected in the society. To stimulate the discussion among the students about the rights that cannot be denied and why.

Group size: at least three participants (no fewer than three groups)

Time: 45 minutes to 1 hour, depending on the size of the groups

Resources:

- white sheet of paper for every small group;
- writing utensils;
- blackboard.

Instructions:

Imagine, a new planet was discovered and that planet has everything needed to sustain life. No one has ever lived on that planet; there is no law, no history. The whole class is moving to that planet. A small group of students is appointed to develop a list of rights for everybody in this new country. It is not known yet who will take what position, so everything is decided on an equal footing. Working in small groups (no less than three people in each), students give a name to the new state, and make a list of ten rights that must be respected by everyone in this new country. Further, each group presents its list of rights and then the whole class is forming its "common list" (the rights are written on the board) consisting of all those rights.

Discuss with the class this big list - for example, what would happen if one of these rights was excluded from the list? Are there any important rights that were left out of the list?

Missing Journalist⁶⁹

Aims of the exercise: to encourage the students to recognise fundamental rights violations in concrete situation; to enhance students' ability to formulate their own opinion regarding the rights violation and to compose a formal letter.

Group size: the whole class

Time: 30 minutes to 1 hour

⁶⁸ Азбука преподавания прав человека. Практическая деятельность в начальной и средней школе. ООН, Женева, 2003:

www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.hrea.org%2Fru%2Ferc%2FLibrary%2Fabc_ru.pdf&external=

⁶⁹ Ibid.

Resources:

- white sheet of paper for every student;
- writing utensils for every student;
- copies of the Charter of Fundamental Rights (if possible – one per participant, or one per two; the trainer could in advance ask the participants the student to bring a one copy each themselves).

Instructions:

When presenting the exercise to the students, use the second-person pronoun "you are a journalist (each student). In your newspaper, you published an article, which angered some senior state official. On the following day, unidentified people broke into your house and drove you away. You are beaten up and left alone in some room. You do not know where you are. You spent in this room a few months."

Further, tell that this journalist is denied several fundamental rights. Using the Charter of Fundamental Rights, the class must identify which articles were violated.

Ask all students to write an individual letter each, addressed to the Minister of Justice, pointing out these violations and the relevant articles of the Charter. Ask the students to guess which fundamental rights have been violated and why.

Optional: you can ask one or more students (voluntarily) to read out their letters, or you (the trainer) can read out the best in your opinion letters at the next session yourself (with the consent of the authors). Also, after writing the letters and their presentations, discuss violations of which articles of the Charter did the school students found and, if necessary, specify which articles are really violated.

Hint: possible violations of Articles 3, 4, 6, 7, 47 and Article 48 of the Charter

Real Rights⁷⁰

Aims of the exercise: to develop the students' ability to see the real human rights violations, as well as to understand what is the content of the rights of the Charter.

Group size: two persons

Time: 20-40 minutes

Resources:

- a copy of the table for every group;
- writing utensils for every participant.

Instructions:

Make a two-column table, listing in the left column the rights envisioned by the Charter and leave the right column blank. Hand out one copy of the table to each

⁷⁰ Understanding human rights. Australian Human Rights Commission, 2010, 14.lpp. available: http://humanrights.gov.au/education/understanding_human_rights/rightsED_understanding_human_rights.pdf

group (two persons in each). The task of the students is to complete the blank part of the table, describing what can represent real violation of each of the listed rights of the Charter.

After the entire class has completed the table, discuss, what kind of examples of violations did the students describe for each of the rights.

Example of the Table:

Rights envisioned by the Charter	Real violations of these rights
Freedom of movement	Creating a closed ghetto with restricted entrance / exit
The right to respect for private and family life, home and communications	The Police has broken into a home to conduct a search without a warrant / need
Freedom of thought, conscience and religion	Dismissal (or refusal to hire) due to the fact that a woman wears a burqa (a customary piece of clothing for many Muslim women, which hides part of the face)

Part 3: Freedom of movement - migration

Practical exercise

Aims of the exercise – to evaluate the obstacles and challenges facing people who are fleeing from their country of residence or moving to another country, as well as to evaluate the contribution immigrants could make to the economy, culture and society of the recipient country.

Time – 40 minutes

Instructions: divide the students into small groups, and give each group a description of a foreigner, who arrived to your country. Ask the students to think about what they know about the situation of the given group in this country. After that ask every participant (or group) to answer the following questions:

1. What difficulties and challenges do you face in this country?
2. What contribution can You make to the economy, culture and society of this country?

One representative of each group presents the results of the work of the group. The trainer can ask participants of the group and the others to comment on the results.

Description of the migrants

1. You are a teenager. As a result of a military conflict which is taking place in your country, your parents and relatives were killed. Together with your neighbours you arrived to Latvia and asked for asylum.
2. You are a well educated high-tech specialist from India, invited to work by a big Latvian high-tech company.
3. You live in Ukraine and are currently out of work. Your relatives live in Latvia and therefore you decided to come to Latvia in search of work.
4. You are young dark-skinned Moslem from France, who married a citizen of Latvia and moved to Latvia.

Valuable resources for teachers working with the issues of migration and refugees

Manual for teachers "Ne Tikai Skaitļi". Toolkit for training on migration and asylum in Europe (in Latvian). www.unhcr.org/numbers-toolkit/Manuals/NJN-FINAL-LV.pdf

British Red Cross, The Positive Images toolkit for educators: and "informative material" about migration and development. The material includes activities and videos to facilitating discussions among the young people. www.redcross.org.uk/What-we-do/Teaching-resources/Teaching-packages/Positive-Images

Video "This is my Story. Or Ours?", developed within the framework of the international project AMITIE - Awareness on Migration, development and human rights through local partnerships. www.youtube.com/watch?v=DbGrVnVHPbo

Part 4: Discrimination prohibition

Challenge your stereotypes!

Train "A LA CARTE"⁷¹

Aims

To challenge the stereotypes and prejudices of the participants about other people and various minorities, and about the associations and the feelings evoked by the text.

To reflect on the participants' perceptions of different minorities. To raise awareness of the participants about the limits of tolerance. To confront the participants' values and stereotypes.

Group size: at least 5, maximum 40.

Time: 90 minutes - 2 hours.

Resources:

- Exercise sheet,
- Paper sheet, one per participant,
- A pencil for each participant,
- Blackboard.

Instructions:

1. Give to each participant a list of people, who would like to travel with the train.
2. Briefly describe the game scenario and ask the participants to read the descriptions of these people.
3. Ask each person individually to choose the three people they would most like to travel with and the three they would least like to travel with.
4. Once everybody has made their individual choices, ask them to form into groups.
5. Share and compare their individual choices.
6. Compare if there are similarities in their choices.
7. Come up with a common list (the three pluses and the three minuses) by consensus (no voting!)
8. This is followed by a plenary, with each group presenting their three most preferred choices and three least preferred choices. Every group has one vote. The votes are counted.
9. This is followed by a discussion, based on the choices made by the groups. Comparing the different results is a good way to introduce the discussion. You may continue by asking questions such as:
 - a) How realistic are the situations presented?

⁷¹ All different – All equal. Education pack. – Council of Europe. Secretariat of ECRI. European Youth centre. Strasbourg, 1995, p.78– 80. <http://eycb.coe.int/edupack/pdf/31.pdf>

- b) Has anyone in the group experienced a similar situation in real life?
- c) What were the major factors that determined your individual decisions?
- d) If the groups did not manage to reach common conclusions, why was this?
- e) What was the most difficult?
- f) What factors prevented you coming to a consensus?
- g) Which stereotypes does the list of passengers evoke?
- h) Are the stereotypes in the descriptions given or in our minds and imagination?
- i) Where do we get these stereotypes from?
- j) How would you feel to be in a situation in which nobody would want to share a train compartment with you?

Tips for the facilitator

The list of potential passengers given to the participants should be long enough thus making it difficult for the groups to come up with a common list, consequently you may require more time for discussions and common decisions – both individually and in groups. On average, there could be 10-14 passengers on the list, and, if possible, adapt it to the local or country situation. It would be very good if among the participants there are some people mentioned in the list, this could be an "invisible image", for example, a homosexual person, person with special needs, someone infected with HIV etc.

In many cases it will be difficult for the groups to find a common resolution. Do not worry if the group arrives to a false consensus. It could be worth finding out why it is so difficult to come to a consensus.

It is the most important to be tolerant towards the opinions of each participant, and not to be aggressive against the dissenting views. If the answer is threatening it would be better to ask how the participant arrived to this conclusion, instead of studying his/her personal views. Both the participants and the trainer are in a difficult position, because it is very easy to turn this game into a battlefield, but the main task is to make every participant to be aware of their own stereotypes and prejudices.

It is important to discuss the descriptions of the people: how real are these and how do we judge about the people on the basis of one sentence. It is important to recognise that oftentimes we are evaluating people on the basis of a short description, which we receive from the Media, television, as well as a conversation with a colleague.

The Scenario (Example)

We are boarding the train "Arrow Europe", which will last approximately one week. You are travelling in a compartment which also has three vacant places for other passengers. Which three people you would like to travel with and three people you don't want to travel with?

1. An Afghani refugee, who lives in Latvia
2. A rich Swiss banker
3. A Swedish disc-jockey who seems to have plenty of money

4. A South American woman selling leather products
5. A young artist who is HIV positive
6. A Roma university graduate
7. A blind accordion player from Hungary
8. A woman from Moldova, who has no visa and has a 1-year old child in her arms
9. A football player from Maastricht
10. A British feminist
11. A Greek student who does not want to go home
12. A French farmer with 10 kilos of French cheese
13. A Swedish youngster under the influence of alcohol
14. A German prostitute from Berlin
15. A nun from Spain
16. A woman of African origin
17. A homosexual man from Estonia