



Executive Summary

Lithuania country report on measures to combat discrimination

by Edita Ziobiene

1. Introduction

Independence was restored in the Republic of Lithuania on 11 March 1990. Lithuania is a Unitarian republic. The national composition of the society is fairly homogeneous. According to the 2001 official census, the figures are as follows: Lithuanians 83.45%, Polish 6.74%, Russians –6.31%, Belarusian's 1.23% and Ukrainians –0.65%. There are 121 nationalities, but only 29 of them have more than 100 people. Lithuanian citizens make up 99% of inhabitants.

Lithuania is divided into 10 counties. In the area of protection of human rights, Lithuania has achieved significant progress at the national level: it has adopted the relevant laws, established new institutions (such as the Ombudsman of Equal Opportunities, Inspectorate of Data Protection and etc.), and is implementing its international obligations.

The Constitution was adopted by referendum on the 25 October 1992 and entered into force on 2 of November 1992. Article 29¹ of the Constitution declares that all people are equal before the law, the courts and other state institutions and officers. A person's rights may not be restricted in any way and s/he may not be granted any privileges on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions. Disability, age and sexual orientation are not mentioned in the text of the Constitution, but this does not imply that rights may be restricted on the basis of disability, age or sexual orientation. There has been no judicial or official pronouncement on this. This type of discrimination is prohibited by the international treaties to which Lithuania is a party, as well as by other national legislation. The provision on privileges potentially limits the possibility for positive action. Article 29 of the Constitution provides an exhaustive list of grounds. There is no discussion among decision-makers regarding an extension of the constitutional basis.

The policies relating to the banning of discrimination are implemented by the Ministry of Social Affairs and Labour. The governmental Department of National Minorities and Lithuanians Living Abroad deals with the programmes of national minorities (for example, Roma integration programme). The Government maintains a dialogue with non-governmental organisations representing national minorities through the Council of National Communities, which holds regular meetings to discuss the issues faced by national minorities in Lithuania. In recent years, it has become a tradition that the Council regularly meets with the President of the Republic of Lithuania to exchange views on the situation of national minorities in the country.

In the field of the integration of the Roma, it should also be mentioned that the Shortened Strategic Plan of Activities of the Department of National Minorities and Lithuanians Living Abroad, which provides specific measures for supporting the integration of the Roma into Lithuanian society will be implemented. At the municipality level, Vilnius City Municipality

¹ English translations of selected legislation may be obtained through the search engine on the Lithuanian Parliament website at <http://www3.lrs.lt/DPaieska.html>

formulated a programme on the development of the Roma community in Vilnius and territories situated next to the Tabor. The main goals of this document are to prevent the use and distribution of drugs, and to reduce the segregation of the Roma.

NGOs and social partners are very actively engaging in dialogue with the authorities, but these dialogues tend to be of a formal nature.

2. Main legislation

The Constitution was adopted by referendum on the 25 October 1992 and entered into force on 2 of November 1992.

The Republic of Lithuania has signed and ratified various international human rights treaties including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms and the Framework Convention of the Council of Europe for the Protection of National Minorities. A major international instrument relevant to the field of employment is the 1996 European Social Charter (revised), which was ratified by the Lithuanian Parliament with some reservations in 2001.

The principle of non-discrimination is enshrined in Chapter 2 of the Constitution of the Republic of Lithuania under the heading 'The Individual and the State'. An individual may not have his or her rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions.

Equality for employees is guaranteed by the Employment Code, irrespective of their sex, sexual orientation, race, national origin (national origin refers to ethnic origin as well), language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, membership of a political party or public organisation and factors unrelated to the employee's professional qualities.

The general legal framework was significantly strengthened by the new Law on Equal Treatment, which was passed by the Parliament in November 2003 and entered into force in January 2005. One of the objectives of the law is to fulfil the requirements of the Racial Equality and Employment Equality Directives, which is specifically stated in its explanatory note. This law defines direct and indirect discrimination on grounds of sexual orientation, age, disability, race and ethnic origin and religious beliefs. It also introduces the possibility of positive action and prohibits harassment on the grounds mentioned earlier. The law prohibits discrimination in the workplace, education and provision of goods and services.

3. Main principles and definitions

The Law on Equal Treatment provides definitions of discrimination and harassment.

Direct discrimination shall be taken to occur when, on the basis of a person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, a person is treated less favourably than another is, has been or would be treated in a comparable situation, except for the following cases provided for by law:

- 1) restrictions on grounds of age;
- 2) requirement to know the State language;



- 3) prohibition from taking part in political activities;
- 4) different rights applied on the basis of citizenship;
- 5) special measures applied in healthcare, safety at work, employment and the labour market sphere while striving to create and apply conditions and opportunities guaranteeing and promoting the integration of the disabled into the labour environment;
- 6) special temporary measures applied while striving to ensure equality and bar the way to violation of equal treatment on the basis of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs;
- 7) *when owing to the character of specific types of professional activity or conditions of the implementation thereof, a certain human characteristic is the usual and decisive professional requirement, and this aim is lawful and the requirement is appropriate.*

Indirect discrimination shall be taken to occur where, in the implementation or adaptation of an action or inaction, legal norm or value criterion, visibly neutral provision or practice, which are formally equal, an actual restriction of the exercise of rights or the providing of privileges, priority or advantage for persons of a particular age, sexual orientation, disability, racial or ethnic origin, religion or beliefs can, do, or might emerge.

Harassment shall be deemed to be undesirable conduct (discrimination), when, on the basis of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, an individual or entity strives to violate or does violate the dignity of a person and endeavours to create or does create an intimidating, hostile and degrading or offensive environment.

Instruction to discriminate is treated as direct discrimination according to the Law on Equal Treatment.

The Law is applicable for employers of public and private sector (including associations), also in the sphere of education and services.

There is no prohibition of discrimination based on assumed characteristics or on association with persons with particular characteristics.

Exemptions and exceptions as contained in the Directives exist in labour law, although there are no provisions that clearly fall under the category of genuine and determining occupational requirements. Article 2 of the Labour Code proclaims the equality of subjects of employment law irrespective of "*factors unrelated to the employee's professional qualities*". The Law on Equal Treatment provides such exceptions as requirement to know the State language, prohibition from taking part in political activities; special measures applied in the spheres of health care, safety at work, employment and in the labour market when striving to create and apply conditions and opportunities guaranteeing and promoting the integration of the disabled into the labour environment and etc.

There is no express duty on employers to provide reasonable accommodation for disabled workers.

A definition of victimisation as contained in Article 9 of the Directive does not exist in national law, except for in equal opportunities legislation, as described below.

The Law on Equal Opportunities for Women and Men contains provisions aimed at protecting people who submit complaints involving a violation of the principle of equal treatment. It defines persecution of an employee who has filed a complaint because of discrimination by an employer as a discriminatory act and states that the employer must take appropriate measures to prevent persecution of an employee who has lodged a complaint on grounds of discrimination.

4. Material scope

Under the overall general and ground-specific legal framework consisting of constitutional, civil, administrative and employment legislation, racial and ethnic discrimination is prohibited in all the fields of application, without distinction between the public and the private sectors. The same applies to discrimination on the grounds of religion or belief, disability, age or sexual orientation.

A similar situation exists as regards criminal law. The Criminal Code forbids any interference with the right to participate on equal terms in political, economic, social, cultural, employment or other activity and the restriction of human rights or freedoms.

When implementing equal treatment, the employer, regardless of the person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, must apply equal recruitment criteria and employment conditions when employing or recruiting to the public service; provide equal working and public service conditions, opportunities to improve qualifications, seek more advanced vocational training, be retrained, acquire practical work experience and grant equal benefits; use equal criteria in evaluating the work and performance of public officers; apply evaluation criteria for dismissal from work and from public service; provide equal pay for equal work or work of equal value; take measures to prevent harassment of an employee or a public servant; take measures to prevent sexual harassment of an employee or public servant; take measures to prevent persecution of an employee or public servant who filed a complaint on discrimination to protect him from hostile behaviour and negative consequences; and take appropriate measures to provide conditions for the disabled to obtain work, to work, to pursue a career or to study, provided that the duties of the employer would not be disproportionately burdened as a result.

5. Enforcing the law

The legislation of the Republic of Lithuania guarantees equal rights for anyone to defend his/her rights and lawful interests in court. There are no existing special judicial, administrative or conciliation procedures for cases of discrimination under Lithuanian law. In cases of discrimination, victims must rely on the general procedures established by the Constitution and laws. Civil and public service are included in the remedial procedures.

Neither Code of Civil Procedure, nor other laws provide the right for associations, organisations or other legal entities to support or assist the complainant. NGOs are still waiting for transposition of the provisions of EU Directives. As a result, NGOs cannot support the complaint or, engage in judicial proceedings on behalf of victims.

There are no prohibitions on the use of situational testing or statistical evidence in national law, although no laws specifically mention it as a possibility. During civil procedure, evidence is understood to be all possible types of information which can prove or disprove each party's case. The same concept is applied in administrative procedure. A court undoubtedly



may accept such evidence, but it would not be treated as evidence of higher probative power.

The settling of work-related disputes, including those related to discrimination, falls under the jurisdiction of the Employment Disputes Commissions and the courts.

Employment Disputes Commissions are instituted as the primary mandatory body for employment dispute resolution. The responsibility for the establishment of an Employment Disputes Commission in an enterprise, agency or organisation rests with the employer. The Commission is comprised of an equal unspecified number of representatives of employees and of the employer. The employees' representatives are elected at an employees' meeting. The representatives of the employer are appointed on the employer's orders. The Commission is formed for a term of up to two years.

Persons who believe that their rights have been infringed by individual administrative acts and acts (or omissions) of civil servants and municipal employees in the sphere of public administration, including social protection, social advantages, education, as well as access to and supply of goods and services which are available to the public, have the right to file a complaint with an Administrative Disputes Commission or Administrative Courts.

There are rules requiring that courts/buildings be physically accessible. If it is necessary, information must be provided in braille. The same rule is applied to sign language interpreting.

The procedure for settling individual employment disputes through an Employment Disputes Commission is regulated by the Employment Code. It is the claimant's duty to provide proof in support of the claim. However, a significant role is also foreseen for the clerk of the Employment Disputes Commission.

The Law on Administrative Disputes Commissions does not set any requirements for a complaint. The burden of proof lies with the relevant administrative entity (the respondent).

Civil and administrative judicial proceedings are adversarial procedures, which assume the equal distribution of the burden of proof between both sides of the dispute.

The State Employment Inspectors may impose administrative sanctions on employers who discriminate against employees. A violation of employment laws and normative acts regulating safety and hygiene at work is punishable by a fine for employers or their authorised representatives to the amount of 500 to 5,000 Litas (i.e. from 145 to 1,449 Euro). In practice, however, the issue of workplace discrimination is not addressed by State Employment Inspection officials.

Employment Disputes Commissions can award an individual with compensation in a case of discrimination which is prohibited under the Employment Code. This compensation of up to 12 months salary is paid to an individual, if he/she proves that he/she cannot continue to work in the same position after a discriminatory act has taken place.

If a civil servant commits an act of discrimination, the law lists the possible sanctions for this misconduct which are: a warning, a reprimand, a severe reprimand or dismissal from the service.

The Criminal Code establishes responsibility in the case of incitement against national, racial, ethnic, religious or other groups of residents. A person who, by making public statements orally, in writing or by using the public media, ridicules, expresses contempt of, urges hatred towards or encourages discrimination against a group of residents or against a specific person, on account of the fact that they belong to a specific national, racial, ethnic, religious or other group, shall be punished with (a) a fine, (b) detention or (c) imprisonment for up to 2 years. A person who publicly advocates violence or physical harsh treatment of a group of residents or an individual on account of the fact that they belong to a specific national, racial, ethnic, religious or other group, shall be punished with (a) a fine or (b) detention or (c) imprisonment of up to 3 years.

Article 41⁽⁶⁾ of the Code of Administrative Offences provides that violation of the Law of Equal Treatment by public servants, employers and their agents shall incur a fine of between LTL 100 to LTL 2 000 (29 to 580 euros). It is doubtful whether these sanctions are effective, proportionate and dissuasive.

6. Equality bodies

The Institution of Ombudsman for Equal Opportunities is established by Law. The law guarantees their independence. Each year, the Ombudsman submits to the Parliament an annual report on the activities of the Office of the Equal Opportunities Ombudsman in the preceding calendar year. The report is considered by the Parliament and is subsequently published. In addition, the Ombudsman reports on the implementation of the Law on Equal Opportunities for Women and Men and the Law on Equal Treatment, as well as submitting recommendations to State institutions for the revision of legal acts and the priorities in the policy of the implementation of equal rights.

On 1 April 1999 the Law on Equal Opportunities for Men and Women entered into force and established the institution of the Ombudsman of Equal Opportunities. Until 1 January 2005 the Ombudsman was investigating cases of discrimination based only on gender.

The Law on Equal Treatment, which entered into force on 1 January 2005, has expanded the limits of competence of the Ombudsman for Equal Opportunities. The grounds covered are: age, sexual orientation, disability, race or ethnic origin, religion or beliefs and gender.

The Ombudsman for Equal Opportunities investigates complaints relating to direct and indirect discrimination and harassment. The Ombudsman may also initiate investigations at his/her discretion. Upon completion of an investigation, the Ombudsman may take a decision as follows: to refer the material to investigative bodies if indications of an offence have been established; to address an appropriate person or institution with a recommendation to discontinue the actions violating equal opportunities or to repeal a legal act relating to same; to hear cases of administrative offences and impose administrative sanctions; to dismiss the complaint if the violations mentioned in it have not been corroborated; to discontinue the investigation if the complainant withdraws the complaint or if objective evidence about an alleged offence is lacking; to issue a warning about the committed offence; and to temporarily suspend the investigation if the person who submitted the complaint or the person whose actions are investigated is ill or absent.

The decision of the Ombudsman for Equal Opportunities is legally binding.

But the Ombudsman for Equal Opportunities has no right to support the complaints, engage in judicial proceedings on behalf of victims.



The Ombudsman, in close cooperation with nongovernmental organisations, produces excellent results in the area of raising awareness and dissemination of information on equal rights issues.