

REPORT ON MEASURES TO COMBAT DISCRIMINATION

Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT

Lithuania

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State of affairs up to 8 January 2007

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.

Independence was restored to the Republic of Lithuania on 11 March 1990. Lithuania is a Unitarian republic. The Constitution was adopted by referendum on 25 October 1992 and entered into force on 2 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.

Article 30 of the Constitution states that, any person whose constitutional rights or freedoms are violated shall have the right to appeal to a court. The law shall establish the procedure for compensating material and moral damages inflicted on a person.

According to Article 6 of the Constitution, each individual may defend his or her rights on the basis of the Constitution. Rights which are violated can be defended on the basis of other national legal acts and ratified international treaties. Article 138(3) of the Constitution stipulates that international agreements which have been ratified by the Seimas (Parliament) form a constituent part of the country's legal system.

The Constitution of the Republic of Lithuania stipulates that in Lithuania the constitutional control is exercised by the Constitutional Court. The Law on the Constitutional Court passed on 3 February 1993 regulates the activities of the Constitutional Court². The Constitutional Court was formed and began its activities in 1993.

The Constitutional Court ensures the supremacy of the Constitution within the legal system as well as constitutional justice by deciding whether laws and other legal acts adopted by the Seimas are in conformity with the Constitution, and whether the acts adopted by the President or the Government of the Republic are in compliance with the Constitution and laws.

The right to file a petition with the Constitutional Court concerning the constitutionality of a legal act is vested in: (1) the Government, groups consisting of at least one fifth of all Seimas members, and the courts for cases concerning a law or other act adopted by the Seimas; (2)

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>

² Lietuvos Respublikos Konstitucinio Teismo įstatymas. Official Publication Valstybės žinios, 1993, No. 6-120.

groups consisting of at least one fifth of all Seimas members and the courts for cases concerning an act of the President of the Republic; and (3) groups consisting of at least one fifth of all Seimas members, the courts, and the President of the Republic for cases concerning governmental acts. The Constitutional Court passes rulings on these issues.

Politicians and lawyers do not argue that citizens should have the right to file petitions to the Constitutional Court. This idea is the object of discussion. Lithuania is the only Baltic state where the rights to lodge petitions with the Constitutional Court is not enjoyed by individuals.

The Parliament in the year 2005 passed a draft amendment to the Constitution concerning the possibility of extending the circle of subjects who have the right to appeal to Constitutional Court. In this draft amendment individuals will have a right to file an application in order to ascertain if their constitutional rights have been violated³. But until now the law is not passed.

The Law on Equal Opportunities for Women and Men⁴, the first law on non-discrimination, was passed by the Parliament on 1 December 1998 and came into force on 1 March 1999. This law covers gender discrimination and outlines the basic procedural rules for the investigation of discrimination cases. This Law created a system for investigating discrimination cases.

The Law on Equal Treatment⁵ was passed in November 2003 and came into force on 1 January 2005. This law regulates equality on the basis of age, sexual orientation, disability, race and ethnic origin, religion and belief. This Law covers the prohibition of discrimination on all grounds listed in Directives 2000/78/EC and 2000/43/EC. The Law on Equal Treatment establishes the duty of state institutions, educational institutions, and employers to observe equal rights, and that equal rights should be enforced in the protection of consumer rights; it defines violations of equal rights by employers, educational institutions, goods or service producers or providers, and discriminatory advertisements.

0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report. Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

The provisions of Directives 2000/78 and 2000/43 have mostly been successfully transferred into national legislation. However, there are still a number of areas where national law is in breach of the Directives.

The Republic of Lithuania has a duty to ensure that associations, organisations or other legal entities which have a legitimate interest in ensuring that the provisions of Directives are complied with, may engage either on behalf or in support of a complainant, with his or her approval in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive. These possibilities have not yet been fully granted to interested organisations or associations.

³ Konstitucijos 106 str. keitimo įstatymo projektas. The draft law registered on 2005 12 13, No.XP-980.

⁴ Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas. Official Publication Valstybės žinios, 1998, No. 112-3100.

⁵ Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003, No.114-5115.

In the cases of discrimination on the ground of gender (which is not covered by directives 2000/78 and 2000/43), the fact of discrimination is presumed. The person or institution under suspicion will have a duty to prove his innocence. However, the same rights have not yet been granted in regard to discrimination on other grounds (and not on the ground of sex, which is not covered by Directives). The shift of the burden of proof outlined in the Directives has not yet been fully transposed into Lithuania's national legislation yet. The person or institution under suspicion does not have a duty to prove his/its innocence in cases of discrimination on the grounds of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

The legislation lacks clarity regarding measures necessary to protect individuals from 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.

The Directives proclaim that Member States shall lay down rules on sanctions applicable to infringements of national provisions adopted pursuant to the Directives and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. In Lithuania there are no such rules on sanctions applicable to infringements of national provisions adopted pursuant to Directives 2000/78 and 2000/43. Only the person whose rights were violated on the ground of gender have a right to demand for a compensation.

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. Employers in Lithuania have an obligation to take appropriate measures where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. But still this obligation imposed by the Law on Equal Treatment is not detailed in other laws. There is no well-established system intended to compensate employers for the costs of providing reasonable accommodation for disabled people. It shall be provided in the Code of Labour.

The Code of Labour does not provide directly any sanctions for workplace discrimination. In theory, State Employment Inspectors may impose administrative sanctions on employers who discriminate against employees and thus violate the provisions of the Employment Code. Sanctions are imposed by the abstract provision in the Code of Administrative Offences ⁶. Only the Code of Administrative Offences provides sanctions. In practice, however, the issue of workplace discrimination is not addressed by State Employment Inspection officials. Only severe workplace discrimination would be punishable under the Criminal Code. Thus, this legal regulation of sanctions is not effective.

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

In relation to laws governing self-employment, the Directives have not been transposed yet. There are no anti-discrimination provisions in the laws regulating self-employment.

⁶ Article 41. Violation of Employment Laws and Normative Acts Regulating Health and Safety at Work
"A violation of employment laws and normative acts regulating health and safety and at work is punishable by a fine for employers or their authorised representatives to the amount of 500 to 5,000 Litass."

Lithuania, as a new Member State, did not choose to take advantage of the option to defer the implementation of the provisions of Directive 2000/78 on age and disability discrimination. In regard to the Directive's requirements vis-à-vis age discrimination, it must be mentioned that implementation in this field is satisfactory. The Law on Equal Treatment declares that national legislation must be harmonised with the requirements of Directives. However, there are still laws where discriminatory issues may appear.

The competent institutions are preparing the certain amendments of the Law on Equal Opportunities for Women and Men. If the Parliament of Lithuanian Republic will pass them, the biggest part of nonconformities with the directives mentioned above will be liquidate (for example, burden of proof, right for a compensation, provision concerning victimisation and so on).

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

- a. Name of the court
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c. Name of the parties
- d. Brief summary of the key points of law (no more than several sentences)

There is in fact very little case law regarding discrimination. The court proceedings in this field are very rare and no substantial information can be given regarding discrimination cases. Still it is important to mention few cases. In 2006 a criminal case concerning hate speech and other means used to incite hatred was referred to the Šiauliai City District Court. In this case seven persons are accused of the incitement of hatred against Jews on the grounds of Article 170 of the Criminal Code. The case concerns actions, committed during the Great Menora lighting ceremony of the Jewish religious community "Chassidie Chabad Lubavitch", by which the accused persons allegedly mocked, expressed contempt, incited hatred and discrimination against the group of people – the Jews – because of their nationality, language, religion, conviction and belief. The court hearing of this case took place on the 10 of November 2006. The decision of the court is not known yet.

In regard of international case-law concerning Lithuania, the case of *Danutė Balsytė-Lideikienė v. Lithuania* is pending before the European Court of Human Rights. On 5 of December in 2005 the European Court of Human Rights declared the application of Danutė Balsytė-Lideikienė against Lithuania admissible under Articles 6 and 10 of the Convention. The company of applicant published "Lietuvio kalendorius 2000" ("Lithuanian calendar 2000"), a yearly calendar with notes by the applicant and other persons describing various historic dates from the perspective of its authors. It was distributed in Lithuania and among Lithuanian immigrants living abroad. The experts concluded that "Lithuanian calendar 2000" contained anti-Semitic and anti-Polish assertions, and declarations of the superiority of Lithuanians vis-à-vis other ethnic groups. The Vilnius City Second District Court held that the applicant thereby intended to distribute the material promoting ethnic hostility in breach of Article 214¹² of the Code of Administrative Offences and imposed on the applicant an administrative penalty in the amount of 1,000 Lithuanian Litas (LTL) and ordered confiscation of all copies of "Lithuanian calendar 2000" seized in the bookstores. The applicant appealed, claiming in particular a violation of Article 10 of the Convention. The appeal was not recognised as reasonable.

On the 21 of 2005 The prosecutor's office of Republic of Lithuania sued V.Tomkus for publishing publications propagating national, racial and religious disagreement. The Vilnius city Second district court on 7 of July 2005 decided to impose a fine of 3000 litas. V.Tomkus appealed this decision to the Supreme administrative court of Lithuania. The appeal was successful, the Court has decided, that the publications did not instigated racial or religious hatred or mocked on race or religion.

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

b) Are constitutional anti-discrimination provisions directly applicable?

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

There is both a general and a ground-specific legal framework guaranteeing the principle of equal treatment or non-discrimination in Lithuania.

The general legal framework consists of Lithuania's obligations under international treaties, the Constitution, jurisprudence of the Constitutional Court and national legislation⁷.

The entire Constitution is directly applicable. Everybody has the right to appeal to a court or other competent institution for the protection of rights which have been violated under the Constitution. Still, it is rare that a complainant bases his demands directly on the relevant provisions of the Constitution.

The Republic of Lithuania has signed, or 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 2001⁸. The reservations mostly concern the employment of foreign workers, the right of elderly people to social security, and the right to be protected against poverty and social segregation.

Article 138(3) of the Constitution stipulates that international agreements that have been ratified by the Seimas form a constituent part of the legal system. The Law on International Agreements⁹ asserts that if an international agreement, which has been ratified and enforced by the Republic of Lithuania, establishes norms other than those established by the laws of the

⁷ English translations of selected legislation may be obtained through the search engine on the Lithuanian Parliament website at <http://www3.lrs.lt/DPAieska.html>

⁸ Lietuvos Respublikos įstatymas "Dėl 1996 metų Europos socialinės chartijos (pataisytos) ratifikavimo". Official Publication Valstybės žinios, 2001, No. 49-1699.

⁹ Lietuvos Respublikos Tarptautinių sutarčių įstatymas. Official Publication Valstybės žinios, 1999, No. 60-1948.

Republic of Lithuania or other legal acts existing or coming into force after the date of the entry into force of the international agreement, the provisions of the international agreement shall apply. Similar provisions concerning international treaties are contained in the Employment Code¹⁰.

The principle of non-discrimination is enshrined in Chapter 2 of the Constitution¹¹ under the heading "The Individual and the State".

Article 29 of the Constitution states:

*"A person 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."*¹²

As stated above, this wording may potentially limit positive action.

Article 25 of the Constitution stipulates:

*"Freedom to express convictions or impart information shall be incompatible with criminal actions such as the instigation of national, racial, religious or social hatred, violence or discrimination or the dissemination of slander or misinformation."*¹³

Constitutional provisions regarding the principle of non-discrimination have been commented upon in a ruling by the Constitutional Court which, according to Article 72 of the Law on the Constitutional Court of the Republic of Lithuania¹⁴ is binding on all governmental institutions, companies, and organisations, as well as officials and citizens. In its Ruling of 11 November 1998, "In compliance with Part 4 of Article 38 of the Republic of Lithuania's Law on Elections to the Seimas and with Part 4 of Article 36 of the Republic of Lithuania's Law on Elections to Local Government with the Constitution of the Republic of Lithuania"¹⁵, the Constitutional Court proclaimed:

*"The general principle of equality of persons is laid down in Article 29 of the Constitution: 'All persons shall be equal before the law, the courts and other State institutions and officers. A person may not have his 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.' The principle of equality of persons is defined as non-discrimination. ... Discrimination is, as a rule, understood to mean changing the situation of a person or a group of persons relative to other persons without any valid reason. ... The principle of equality of persons, which is established by Article 29 of the Constitution means, in essence, a prohibition of discrimination. Discrimination is most often understood as a restriction of the rights of an individual or granting certain privileges according to his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions."*¹⁶

¹⁰ Lietuvos Respublikos Darbo kodeksas. Official Publication Valstybės žinios, 2002, No. 64-2569.

¹¹ Lietuvos Respublikos Konstitucija. Official Publication Valstybės žinios, 1992, No. 33-1014.

¹² Lietuvos Respublikos Konstitucija. Official Publication Valstybės žinios, 1992, No. 33-1014.

¹³ Lietuvos Respublikos Konstitucija. Official Publication Valstybės žinios, 1992, No. 33-1014.

¹⁴ Lietuvos Respublikos Konstitucinio Teismo įstatymas. Official Publication Valstybės žinios, 1993, No. 6-120.

¹⁵ Dėl Lietuvos Respublikos Seimo rinkimų įstatymo 38 straipsnio 4 dalies ir Lietuvos Respublikos savivaldybių tarybų rinkimų įstatymo 36 straipsnio 4 dalies atitikimo Lietuvos Respublikos Konstitucijai. Official Publication Valstybės žinios, 1998, No. 100-2791.

¹⁶ Lietuvos Respublikos Konstitucija. Official Publication Valstybės žinios, 1992, No. 33-1014.

The general legal framework was significantly strengthened with the new Law on Equal Treatment, which was passed by 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 and this is specifically stated in its explanatory note. The Law defines direct and indirect discrimination. The grounds of discrimination are sexual orientation, age, disability, race and ethnic origin and religious beliefs. It introduces the possibility of positive action and prohibits harassment on the grounds listed. The law prohibits discrimination in the work place, education and provision of goods and services, but not in social protection and social advantages.

The Law on Equal Opportunities also establishes a system for collecting and investigating complaints on the grounds of sexual orientation, age, disability, race and ethnic origin and religious beliefs. The procedures for dealing with complaints are regulated by the procedural rules established in the Law on Equal Opportunities of Women and Men.

The principle of equal treatment regardless of religion or belief is embedded in the Constitution and the Law on Religious Communities and Associations¹⁷. Article 26 of the Constitution states:

“Freedom of thought, conscience and religion shall not be restricted.

Every person shall have the right to freely choose any religion or faith and, either individually or with others, in public or in private, to manifest his or her religion or faith in worship, observance, practice or teaching.

...

A person’s freedom to profess and propagate his or her religion or faith may be subject only to those limitations prescribed by law and only when such restrictions are necessary to protect the safety of society, public order, a person’s health or morals, or the fundamental rights and freedoms of others.”

The Law on National Minorities was passed in 1989¹⁸. This Law guarantees to all ethnic minorities residing in Lithuania the right to freely develop, and respect of every ethnic minority and language. According to Article 1:

“Any discrimination with regard to race, ethnicity or nationality, language or anything else related to ethnicity shall be prohibited and punished under the procedures provided by the laws of the Lithuania”

The draft law on the protection of rights and freedoms of national minorities and persons who belong to national minorities was adopted on 30 November 2005¹⁹.

17 Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas. Official Publication Valstybės žinios, 1995, No. 89-1985.

18 Tautinių mažumų įstatymas, Official Publication Valstybės žinios, 1989, No.XI-3412.

19 Tautinių mažumų įstatymo pakeitimo įstatymo projektas, 2005, No. Xp-518(2).

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

Article 2 of the Employment Code lists among the principles that regulate employment relations the "equality of subjects of employment law irrespective of their sex, sexual orientation, race, ethnic origin, language, social 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."

Equal guarantees for foreigners are enshrined in the Law on the Legal Status of Aliens in the Republic of Lithuania²⁰, Article 3 of which states that foreigners are equal before the law regardless of their race, sex, colour, language, religion, political or other convictions, national or social origin, the fact that they belong to a national minority, their property, place of birth or any other status.

The Law on Ethnic Minorities proclaims the principle of equal treatment regardless of racial or ethnic origin²¹. The Law states in its preamble:

"The Republic of Lithuania shall guarantee to all its citizens, regardless of their nationality, equal political, economic and social rights and freedoms and shall recognise its citizens' ethnic identity and the continuity of their culture and shall promote ethnic consciousness and the expression thereof."

Article 3 of the Law on Religious Communities and Associations stipulates:

"All persons, regardless of their religion, religious convictions or attitudes towards religion, are equal before the law. Direct or indirect modification of their rights and freedoms, or of the application of their privileges is prohibited."

The Law on the Social Integration of the Disabled²² establishes the principle of equal treatment on the ground of disability. Article 2 of the Law states:

"1. In the Republic of Lithuania the disabled regardless of the cause, character and degree of the manifestation of their disability shall be entitled to the same rights as other residents of the Republic of Lithuania. The State shall provide additional assistance and guarantees to disabled persons who cannot exercise their rights independently. ... 3. Disabled persons shall be protected from all types of exploitation, discrimination and abusive or insulting behaviour."

Lithuania has ratified the International Labour Organisation (ILO) Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons)²³.

²⁰ Lietuvos Respublikos įstatymas "Dėl užsieniečių teisinės padėties". Official Publication Valstybės žinios, 1998, No. 115-3236.

²¹ Lietuvos Respublikos Tautinių mažumų įstatymas. Official Publication Valstybės žinios, 1989, No. 34-485.

²² Lietuvos Respublikos Invalidų socialinės integracijos įstatymo pakeitimo ir papildymo įstatymas. Official Publication Valstybės žinios, 1998, No. 98-2706.

The Law on Equal Opportunities for Women and Men²⁴ was amended in 2002²⁵ to incorporate a non-discriminatory provision on age:

“It shall be prohibited to specify requirements in job advertisements or advertisements for educational opportunities, which give priority to one of the sexes, with the exception of the case referred to in Item 5, Paragraph 3 of Article 2, and also to request information from applicants about their family status, age (notwithstanding the exceptions provided for in the law), private life or family plans.”

The Law on Equal Treatment²⁶ which came into force on 1 January 2005 is a specific legal act providing for the principle of equal treatment on the grounds of sexual orientation, age, disability, race and ethnic origin and religious beliefs.

The level of protection relating to the different grounds of discrimination varies. While the grounds of racial or ethnic origin and religion or belief enjoy Constitutional protection, those of disability, age and sexual orientation do not. The legal framework covering disability is more elaborate than the provisions regarding age and sexual orientation. There have been no cases brought to court regarding the violation of the principle of non-discrimination.

As described above, national legislation also covers other grounds of discrimination, including language, origin, social status, convictions or opinions. Nationality (in the sense of citizenship) is not considered to be a valid entitlement to equal treatment. The Law on the Legal Status of Aliens determines the legal status of foreign nationals.

However, the Collegium of Civil Cases of the Supreme Court in its ruling of 24 May 1999 (case No. 3K-3-165/99) ruled on the application of the European Convention on the Protection of Human Rights and Fundamental Freedoms:

“... Whilst considering any question related to human rights, one has to keep in mind that the Republic of Lithuania has ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms and Protocols thereto. The provisions of the Convention are applicable not only to the citizens of the Republic of Lithuania, but also to foreigners who legally reside in Lithuania, because Article 1 of the Convention sets out guarantees for persons who are within the jurisdiction of the state-party to the Convention...”

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?

Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation

²³ Tarptautinės darbo organizacijos konvencija Nr.159 "Dėl (invalidų) profesinės reabilitacijos ir užimtumo". Official Publication Valstybės žinios, 1996, No. 30-741.

²⁴ Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas. Official Publication Valstybės žinios, 1998, No. 112-3100.

²⁵ Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymo 1, 2, 3, 8, 12, 24 straipsnių pakeitimo ir papildymo bei įstatymo papildymo 5⁽¹⁾ ir 7⁽¹⁾ straipsniais įstatymas. m. birželio 18 d. Nr. IX-956. Official Publication Valstybės žinios, 1998, No. 112-3100.

²⁶ Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003, No. 114-5115.

which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion')?

c) Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?

d) Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination.

There are no laws which provide definitions of racial or ethnic origin, religion or belief, age and sexual orientation. The Law on Equal Treatment does not clarify the grounds of discrimination and gives only definitions of equal opportunities, the violation of equal opportunities, direct and indirect discrimination and harassment. This Law also does not define religion or beliefs.

The definitions of racial or ethnic origin are not set out in any sources of law. As was mentioned above, case law in the field of discrimination is very rare. No commentaries or law books have been written on this issue. A person who is not Lithuanian is recognised to be a representative of national minority. No information about attempts to define racial or ethnic origin during the parliamentary discussions is available.

Disability is described in the Law on the Social Integration of Disabled Persons²⁷. This definition may be used in the equality issues too. There is no need for another definition in the Law on Equal Treatment.

"Disability is a long-term worsening reduction of the state of health on the basis of a disorder of the physical structure and functions, and diminution of participation in public life and of possibilities for activity".

This definition substantially fulfils the definition given by the European Court of Justice in case C-13/05, Chacón Navas. Still it can be noticed that European Court of justice stresses not only physical, but also and mental or psychological impairments. These aspects are not covered by definition in Lithuanian Law on the Social Integration of Disabled Persons. But on the other hand the Lithuanian definition is broader than that of ECJ which is only referred to impairments impacting on professional life.

The law on Religious Communities and Associations of the Republic of Lithuania has defined the right of freedom of religion:²⁸

"Lithuania does not have a state religion. Every individual within the Republic of Lithuania shall have the right to choose freely any religion or faith, and to also change his or her choice individually or with others, to profess it privately or publicly, to perform religious rites, to practise his or her faith and to provide instruction therein.

²⁷ Invalidų socialinės integracijos įstatymas. Official Publication Valstybės žinios, 1991, No. 36-969.

²⁸ Religinų bendruomenių ir bendrijų įstatymas. Official Publication Valstybės žinios, 1995, No. 89-1985.

No one may force another person, nor him or herself be forced, to choose or to profess any faith or religion.

The human freedom to profess or propagate religion or faith may not be limited by any other means than by law alone and only when the security of society, public order, people's health and morality, as well as other fundamental rights and freedoms of individuals must be guaranteed.

Parents and guardians shall not be restricted in providing for the religious and moral upbringing of their children and charges in accordance with their own convictions.

A crime or failure to implement laws may not be excused by the religion or faith practised by an individual.

Believers shall have the right to freely join religious communities and associations and also to establish religious organisations.

Every individual may, on the basis of his or her religious convictions, choose an alternative (labour) service in lieu of the obligatory military service."

The Labour Code²⁹ defines age as a protected ground in employment relationships. The Code states that:

"A person shall acquire full legal capacity in labour relations and has the ability to acquire labour rights and undertake labour duties when he or she reaches the age of 16 years. Exceptions shall be established by this Code and other labour laws."

There are no legal rules or plans for the adoption of rules in the field of anti-discrimination which deal with situations of multiple discrimination. No information about case law in this field is available too. Still the certain debates on this issue are heard in the field of Roma people discrimination. For example on 21 of June of 2006 Human Rights Monitoring Institute and the Center for Ethnic Studies hosted a round table discussion on "Discrimination in Lithuania: Evaluation by International Institutions"³⁰. During the discussion the issues of multiple discrimination of Roma people also were touched. The most common issues regarding to multiple discriminations are nationality and gender or age and gender.

2.1.2 Assumed and associated discrimination

a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.

b) Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?

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

²⁹ Darbo kodeksas. Official Publication Valstybės žinios, 2002, Nr.64-2569, Valstybės žinios, 2002, No.71

³⁰ <http://www.hrmi.lt/en/news.php?strid=1408&id=3933>

2.2 Direct discrimination (Article 2(2)(a))

a) How is direct discrimination defined in national law?

b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).

c) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

The Law on Equal Treatment³¹ provides a definition of direct discrimination on the grounds of age, sexual orientation, disability, race or ethnic origin and religion or beliefs. This law entered in force on 1 January 2005.

“Article 2. Definitions

3. 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, one 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...”

The definitions in the Directives concentrate on the actual, past or probable future difference of treatment in a comparable situation (“one person is treated less favourably than another is, has been or would be treated in a comparable situation”). The definitions contained in the Law on Equal Treatment are in conformity with the definitions in the Directives and those provided in relation to particular grounds: person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs. Restriction on grounds of age appears in a number of laws. These laws have not been reviewed, therefore their provisions related to age may prove to be discriminatory.

According the Law on Education³² one of the main principle of Lithuanian educational system is equal rights of persons despite of their gender, race, nationality, language, social status, religion and convictions. Still there are no definition of direct discrimination in the Law on Education³³. The same problem occurs analysing the provisions of Law on Public Service³⁴ or the Law on the State Defence Service³⁵. The State has an obligation to ensure an all-embracing system for prohibiting discrimination. In order to achieve this goal, it is essential to redefine discrimination in all laws.

The Law on Equal Treatment permits the justification of direct discrimination. In order to justify direct discrimination, the exception must be defined directly in the Law on Equal Treatment. The list of circumstances when the direct discrimination can be justified is given in Article 2, Part 3:

“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, one person is treated less favourably than another is, has been or would be treated in an comparable situation, except for the following cases provided for by the laws:

1) restrictions on grounds of age;

³¹ Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003 Nr.114-5115.

³² Švietimo įstatymas. Official Publication Valstybės žinios, 2003 Nr. 63-2853.

³³ Švietimo įstatymas. Official Publication Valstybės žinios, 2003 Nr. 63-2853.

³⁴ Valstybės tarnybos įstatymas. Official Publication Valstybės žinios, 2002 Nr. 45-1709.

³⁵ Krašto apsaugos tarnybos įstatymas. Official Publication Valstybės žinios, 1996 Nr. 101-2302.

- 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 the spheres of healthcare, safety at work, employment, and the labour market 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 hinder the violation of equal treatment on the basis of age, sexual orientation, disability, racial ethnic, religion or beliefs;
- 7) when owing to the character of specific types of professional activity or conditions of implementation thereof, a certain human characteristic is the usual and decisive professional requirement, and this aim is lawful and the requirement is appropriate”³⁶

The definition of direct discrimination which is provided by the Law on Equal Treatment foresees the exception in the field of age. The restrictions of the equal rights in this field may be not treated as discriminatory if it is allowed by laws. In fact no definition of age discrimination is proposed by the laws of Republic of Lithuania. Certainly, in such situation the author can not take a decision on the criteria for the comparison.

2.2.1 Situation Testing

- a) Does national law permit the use of ‘situational testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.
- b) Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?
- c) Outline important case-law within the national legal system on this issue.
- d) Outline how situation-testing is used in practice and by whom (e.g. NGOs)

There are no prohibitions on the use of situational testing 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 parties’ 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.

There is no information available with regard to the case law on this issue. In such situation it is difficult to decide whether is there any reluctance to use situational testing as evidence, or not. It may be noticed that evolution in other countries do not influence Lithuanian national law, because no provisions concerning the situational testing were adopted or planned to adopt during the year 2006.

There is no information available with regard to the use of situational testing by NGOs.

2.3 Indirect discrimination (Article 2(2)(b))

- a) How is indirect discrimination defined in national law?
- b) What test must be satisfied to justify indirect discrimination?
- c) Is this compatible with the Directives?
- d) In relation to age discrimination, does the law specify how a comparison is to be made?

³⁶ Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003 Nr.114-5115.

Definitions of indirect discrimination for the grounds covered by the Racial Equality and Employment Equality Directives are provided in the Law on Equal Treatment. The Law came into force on 1 January 2005. It introduces the definition of indirect discrimination for all the grounds (race, ethnicity, age, disability, sexual orientation and religious belief):

“Indirect discrimination shall be taken to occur where an action or inaction, legal norm or value criterion, apparently neutral provision or practice are formally equal, but in implementing or adopting them an actual restriction of the enjoyment of rights or the provision of privileges, priority or advantage for persons of a certain age, sexual orientation, disability, racial or ethnic origin, religion or beliefs can, do or might emerge.”

Definition of the indirect discrimination in Lithuanian national law does not lay down possibilities to justify indirect discrimination. No exception is fixed in the law on equal Treatment. On this aspect definition provided by national law is not compatible with the directives. However the national law definition will be changed. The competent institutions (the Ombudsman of Equal Opportunities and Ministry of Social Affairs and Labour) are already coordinating the amendments of the Law on Equal Treatment. The changing of the definition of indirect discrimination also is foreseen.

There is no definition of indirect discrimination contained in the Law on Education³⁷, the Law on Public Service³⁸ or the Law on State Defence Service³⁹. Amendments to these laws should be made in order to preserve a unified system for protection against discrimination.

The Law on Equal Treatment where are no special circumstances justifying the indirect discrimination listed.

2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.*
- b) *Is the use of such evidence commonly used? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*
- c) *Please illustrate the most important case law in this area.*
- d) *Are there national rules which permit data collection? Please answer in respect of all 5 grounds.*

There are no prohibitions on the use of statistical evidence in national law. The Code of Civil procedure⁴⁰ and the Law on Administrative Procedure⁴¹ do not provide an exhaustive list of types of evidence which can be presented to a court or other competent institution in order to prove someone's position. It can be concluded that no special conditions for using statistical evidence to establish indirect discrimination are required, although the lack of case law in the field of discrimination means we are not able to state whether use of this evidence has been advantageous or not. There is no information which could prove the reluctance of the using statistical data as evidence in court. It may be noticed that evolution in other countries does

³⁷ Švietimo įstatymas. Official Publication Valstybės žinios, 2003 Nr. 63-2853.

³⁸ Valstybės tarnybos įstatymas. Official Publication Valstybės žinios, 2002 Nr. 45-1709.

³⁹ Krašto apsaugos tarnybos įstatymas. Official Publication Valstybės žinios, 1996 Nr. 101-2302.

⁴⁰ Civilinio proceso kodeksas. Official publication, Vastybės žinios, 2002 No. 36-1340.

⁴¹ Administracinių bylų teisenos įstatymas. Official publication, Valstybės žinios, 1999, No. 13-308

not influence Lithuanian national law, because there is no provision concerning the using of statistical data as an evidence was adopted or planned to adopt during the year 2006.

There are no special national laws permitting data collection in cases of discrimination. The first part of Article 177 of the Code of Civil Procedure declares:

“1. Evidence in a civil case – [means] any factual data, which can be used by a court to state that there is evidence, which supports the demands and rebuttals of the parties, and facts which help to resolve the case correctly, or prove that were no such circumstances.”

According to the first part of Article 57 of the Law on Administrative Procedure, evidence in an administrative case means all factual data accepted by the court.

According to the Law on the Legal Protection of Personal Data⁴², all information concerning the certain physiological, psychological, economical, cultural or social features of a person is recognised as personal data. In general, the collection of personal data must proceed under the very strict requirements outlined by Article 5 of the Law on the Legal Protection of Personal Data. In order to collect data legally, the most important requirement is the consent of the person concerned. Other requirements are also necessary. In employment, the collection of data by employers in respect of certain features of employees would be legal only if employer does not consider the requirement of law mentioned above. However, the law does not specifically stipulate the physiological, psychological, economical, cultural or social features of the person concerned. It can be concluded that ethnic data can be considered as a cultural or social feature. During the last national census (2001), residents were asked questions relating to their ethnic origin, religion. The organisers of the national census were obliged to observe strict requirements of personal data confidentiality.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

b) Is harassment prohibited as a form of discrimination?

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

A definition of harassment compatible with the definitions outlined in the Directives (covering all five grounds of discrimination) is provided in the Law on Equal Treatment:

*“**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 a person strives to violate or violates the dignity of another and strives to create or creates an intimidating, hostile and degrading or offensive environment.”*

Specific forms of harassment on a number of grounds are also punishable under the Criminal Code and the Code of Administrative Violations.

⁴² Asmens duomenų teisinės apsaugos įstatymas. Official publication, Valstybės žinios, 2003, No. 15-597)

The new Criminal Code⁴³ which came into effect on 1 May 2003 provides a definition of unlawful conduct comparable to unlawful harassment:

“Article 169. Discrimination on the basis of nationality, race, sex, origin or religion
A person who has committed acts aimed at a certain group or members thereof on account of their nationality, race, sex, origin or religion with a view to interfering with their right to participate as equals of other persons in political, economic, social, cultural or employment activity or to restrict the human rights or freedoms of such a group or its members, shall be punished with (a) community service work (b) a fine (c) detention or (d) imprisonment for up to 3 years.”

A similar definition was in force under the previous Criminal Code.

The provisions of the Criminal Code are applicable *inter alia* to harassment in the workplace and the provision of services; however, they have not yet been applied in practice. There is no case law available on the issue.

The Law of 18 November 1997 on the Supplementation of the Code of Administrative Violations by Articles 214(12), 214(13), the Abolition of Article 214(1) and Amendment of Articles 224, 259(1), and 320⁴⁴ introduced definitions of unlawful conduct related to public advocacy of national, racial or religious discord:

“Article 214(12). The production, storage or distribution of information products that advocate national, racial or religious discord

The production or storage with a purpose of distribution of printed, visual, audio or other products which advocate national, racial or religious discord incurs a fine from 1,000 to 10,000 Litas (i.e. from € 289.61 to €2,896.10) either with confiscation of such products being produced, stored or distributed and of the means essentially used for production of such products, or without confiscation of the means of production.

Article 214(13). The establishment of an organisation that advocates national, racial or religious discord or participation in activities of such an organisation incurs a fine of between 3,000 and 10,000 Litas (i.e. from € 868.83 to €2,896.10).

The same conduct perpetrated by a person who has previously been punished by an administrative penalty for the offences set out in Part 1 of this Article, incurs a fine from 10,000 to 20,000 Litas (i.e. from € 2,896.10 to €5,792.23).”

Codes of Practice are not applied in the Lithuanian legal system. Thus, no Codes of Practice on harassment exist and none are forthcoming.

There are no definitions of harassment contained in the Law on Education⁴⁵, the Law on Public Service⁴⁶ or the Law on State Defence Service⁴⁷.

⁴³ Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Official Publication Valstybės žinios, 2000, No. 89-2741.

⁴⁴ Lietuvos Respublikos Administracinių teisės pažeidimų kodekso papildymo 214(12), 214(13) straipsniais, 214(1) straipsnio pripažinimo netekusiu galios ir 224, 259(1), 320 straipsnių pakeitimo įstatymas. Official Publication Valstybės žinios, 1997, No. 108-2735.

⁴⁵ Švietimo įstatymas. Official Publication „Valstybės žinios“, 2003 Nr. 63-2853.

⁴⁶ Valstybės tarnybos įstatymas. Official Publication „Valstybės žinios“, 2002 No. 45-1709.

⁴⁷ Krašto apsaugos tarnybos įstatymas. Official Publication „Valstybės žinios“, 1996 No. 101-2302.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

There is a specific prohibition of giving instructions to discriminate in the Law on Equal Treatment. It is defined as direct discrimination by the existing regulation. The competent institutions are preparing the latest amendments of the Law on Equal Treatment. By these amendments it is envisaged to change the definition of instruction to discriminate by equating this process to discrimination. Discrimination would then be intended to be defined as direct, indirect discrimination, instruction to discriminate or harassment on the grounds of age, sexual orientation, disability, race or ethnic origin, religion or convictions.

Criminal legislation contains provisions that would encompass „giving instructions to discriminate” on a number of grounds; however, these provisions have never been applied in practice in this context.

The new Criminal Code provides a definition of incitement that does not specifically include the grounds of sexual orientation, age and disability:

“Article 170. Incitement against national, racial, ethnic, religious or other groups of residents

1. 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.

2. A person who publicly advocates violence or physical harsh treatment of a group of residents or an individual 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 or (b) detention or (c) imprisonment up to 3 years.”⁴⁸

A similar definition was in force under the previous Criminal Code. It is essential to mention that new Criminal Code established the liability of legal persons for the crimes listed in Article 170.

In addition, Article 24 of the Criminal Code extends the notion of criminal offenders from perpetrators to include organisers, instigators and assistants. In theory this would enable the application of Article 169 of the Criminal Code, quoted above, if there were criminal cases related to instructions to discriminate.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. does national law define what would be a “disproportionate burden” for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?

⁴⁸ Baudžiamasis kodeksas. Official publication Valstybės žinios, 2000, No. 89-2741.

- b) Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?
- c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?
- d) Does national law require buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

The Law on Equal Treatment obliges the employer to take appropriate measures to provide conditions for the disabled to obtain work, to work, to pursue a career or to study. This Law proclaims these obligations but other laws do not detail the content of it. It must be particularly stressed that the concepts of studying or career have not been explored in detail yet.

“Article 5. Duty of Employer to Implement Equal Treatment at Work and in Public Service

When applying the principle of equal treatment, the employer, regardless of the person’s age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, must:

....

- 9) *take appropriate measures to provide conditions for the disabled to obtain work, to work, to pursue a career or to study, provided that the employer would not be disproportionately burdened with duties as a result.”*

Theoretically an individual through litigation can enforce this duty, but there is no available information about cases where this provision was applied.

These duties of the employer should be elaborated in legal regulations in order to avoid varying interpretations. There is an inescapable necessity to apply this provision in specific cases, but before this happens, the meaning of appropriate measures or disproportionate burden should be revealed and explained.

According to the Law on Equal Treatment the employer is obliged to take appropriate measures to provide conditions for the disabled to obtain work, to work, to a career or to study, provided that the duties of the employer would not be disproportionately burdened as a result.

Disabled persons are entitled to “additional support” in the employment market according to Article 92 of the Employment Code.

The system of giving additional support for employers employing disabled people is created on the basis of the Law on Support of Unemployed People⁴⁹. Disabled people are included on the list of unemployed people who have the right to additional support. According to the rules for providing additional support to unemployed people in the labour market, the employer can receive special subsidies if he creates additional workplaces for disabled people. This law does not assist employers who retain an employee who has become disabled while in post. In this case the general rules provided in the Employment Code must be applied.

The duty to provide reasonable accommodation is not directly established in Lithuanian law and it is not provided clear mechanism for enforcement for reasonable accommodation.

⁴⁹ Bedarbių rėmimo įstatymas. Official Publication Valstybės žinios, 1996, No. 18-457.

Article 6 of the Law on Building declares that while planning, reconstructing or reconditioning buildings or constructing buildings it is necessary to accommodate them for specific needs of persons with disabilities. More specific requirements are presented by the Law on the Social Integration of the Disabled:

“Article 12. The requirements for the planning, building and reconstructing of cities, settlements, public buildings and housing

1. When planning, building ,and reconstructing the streets of cities or settlements, squares, parks, parking places, communications, public buildings, housing, sports and cultural buildings and other buildings, it is necessary to make accommodations for the specific needs of persons with disabilities. These requirements are defined by the Government of the Republic of Lithuania.

2. The buildings listed below, which were built, reconstructed or expanded, can be authorised for use only if requirements relating to the accommodation of persons with disabilities have been respected.

3. The government and the heads of local administrative authorities ensure respect for the requirements listed below.”

The Lithuanian government has a State programme for the social integration of disabled people⁵⁰.

There has been no court cases related to reasonable accommodation.

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for disabled workers?

b) Would such activities be considered to constitute employment under national law?

National legislation has already created a system for encouraging employers to employ the persons with disabilities. It has been already mentioned that disabled people are included in the list of unemployed persons who have a right to additional support. According to the rules relating to unemployed people who are entitled to additional support in the labour market, the employer may receive special subsidies if he creates additional workplaces for disabled people. However it should be noted that these subsidies are still too low.

The latest amendments to the Law on Social Enterprises passed in 2005 have created incentives for employers to employ people with disabilities⁵¹. This Law also creates the basis for establishing social enterprises of disabled people. One of the goals of the amendments was to provide social enterprises of disabled people with a specific status. A social enterprise of disabled persons is a specific type of social enterprise. In order to register this type of social enterprise, it is necessary to correspond with certain criteria listed in the Law on Social Enterprises which states that not less than 50 percent of the average annual number of employees recorded in the register of employees must belong to target groups of disabled

⁵⁰ Nacionalinė žmonių su negalia socialinės integracijos 2003-2012 metų programa, 2002.

⁵¹ Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas. Official Publication Valstybės žinios, 2005, No. 85-3137.

people, meaning I and II category disabled people or people with a working capacity of 30 to 55 percent⁵².

A social enterprise of disabled persons has the same rights and duties as any other social enterprise, but it can receive additional financial support from the State⁵³. The law provides for financial support by the State to social enterprises in order to compensate for additional expenses related to employees pertaining to the target group (specific groups who are supported by State, including people with disabilities) and lower productivity, limited efficiency, etc⁵⁴. In Lithuania there are 21 social enterprises, seven of which are social enterprises of disabled people.

Amendments to the Law on Profit Tax and the Law on Public Procurement were adopted together with the Law on Social Enterprises. According to the Supplement to the Law on Profit Tax, the profit of social enterprises is taxed at a rate of 0 per cent, if these enterprises meet specific requirements. The Law on Public Procurement simplifies purchases from companies which employ disabled people. The latest version of the Law on Public Procurement⁵⁵ gives a right to the organisation to reserve a right to take a part in public purchase only for social companies of disabled people.

The privileges of social companies are intended to further the professional integration of disabled people. Working in such a company is considered to be equivalent to employment under national legislation.

3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

There are no differences between Lithuanian nationals and other persons in cases of discrimination. Anyone may lodge a complaint of discrimination with the Equal Opportunities Ombudsman and everyone is entitled to a court hearing in cases of discrimination.

The purpose of the Law on Equal Treatment is to ensure the application of human rights provisions laid down in the Constitution and to prohibit any direct or indirect discrimination based on age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

⁵² Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas. Official Publication Valstybės žinios, 2005, No. 85-3137.

⁵³ Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas. Official Publication Valstybės žinios, 2005, No. 85-3137.

⁵⁴ Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas. . Official Publication Valstybės žinios, 2005, No. 85-3137.

⁵⁵ Viešųjų pirkimų įstatymas. Official Publication Valstybės žinios, 2005, No.X-471.

The Law on Equal Treatment and the Criminal Code establish protection and define liability. Only natural persons are granted protection against discrimination.

Natural and legal persons are liable if they perpetrate discrimination. Natural persons can have administrative and criminal responsibility. Legal persons bear administrative liability (obligation to pay a fine in a case of violation of the Law on Equal Treatment).

The competent institutions are preparing the latest amendments of the Law on Equal Treatment. By these amendments it is envisaged to grant protection against discrimination not only for natural, but also for legal persons as it is foreseen in the Directive 2000/43.

As was mentioned previously, the provisions of Directives 2000/78 and 2000/43 concerning sanctions for a breach of national law are not clearly and fully transposed into national legislation yet.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

The Law on Equal Treatment does not provide a description of the employer or the service provider, but looking at the practice of the Equal Opportunities Ombudsman, it is clear that the employer is treated according to the Labour Code. By 1 January 2005, the Equal Opportunities Ombudsman had only investigated cases of gender discrimination. During 2005 there were several cases of discrimination on other grounds at work.

Analysing the practices of the Equal Opportunities Ombudsman, it is clear that employers are not held liable for the actions of employees. Liability for discrimination is personal. Only the person who has committed the discriminatory actions in question is liable under the law. The liability for the actions of the third parties is not applied too. The Equal Opportunities Ombudsman imposes sanctions on the manager of the legal person or authorised person who committed the discriminatory acts. Employers or service providers (e.g. landlords, schools, and hospitals) are not held liable for the actions of their employees. If an employee commits an act of discrimination (e.g. harasses another worker) the employer cannot be held liable for the employee's actions. Service providers cannot be held liable for the actions of third parties (tenants, clients, and customers). Trade unions and other trade/professional associations cannot be held liable for the actions of their members.

Article 16 of the Labour Code defines **Employer**:

"1. An employer may be an enterprise, agency, organisation or any other organisational structure irrespective of the form of ownership, legal form, type and nature of activities, which has labour capacity according to Article 14 of this Code.

*2. An employer may also be any natural person. The legal capacity of the employer shall be regulated by the Civil Code"*⁵⁶.

⁵⁶ Darbo kodeksas. Official Publication Valstybės žinios, 2002, Nr.64-2569, Valstybės žinios, 2002, No.71.

The Law on Consumer Protection defines **manufacturers, sellers and service providers**:

“Manufacturer - legal or natural person who has registered his/her business in accordance with the procedure established by law and produces goods for sale;

Seller - legal or natural person who has registered his/her business in accordance with the procedure established by law and sells goods to the consumer;

Service provider - legal or natural person who has registered his/her business in accordance with the procedure established by law and carries out works for the consumer under contract”⁵⁷.

Manufacturers, sellers and service providers are required to ban discrimination under the Law on Equal Treatment. In order to ensure equal treatment, the salesperson, manufacturer of goods or service provider must:

- 1) create equal conditions for all consumers, regardless of their age, sexual orientation, disability, racial or ethnic origin, religion or belief to obtain the same products, goods and services, including the provision of housing and applying equal terms of payment and guarantees for the same products, goods and services and those of equal value;
- 2) when providing information on products, goods and services or advertising them, ensure that there is no humiliation, insult, restriction of rights or granting of privileges based upon age, sexual orientation, disability, racial or ethnic origin, religion or beliefs and no formation of public opinion about the superiority or inferiority of a person due to the latter grounds.

3.2 Material Scope

Under the overall general and ground-specific legal framework consisting of constitutional, civil, administrative and employment legislation, as described above, 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. However, some laws, for example various laws on self-employment, still do not directly include a prohibition of discrimination on the grounds covered by Directives.

A similar situation exists as regards criminal law. Article 169 of the Criminal Code forbids any interference with the right to participate on equal terms in political, economic, social, cultural, employment or other activity or to restrict human rights or freedoms. Therefore, it may be argued that discrimination in general terms is prohibited in all the fields of application listed in the Directives. As a general principle, criminal law is applied to all persons having committed a crime on the territory of the Republic of Lithuania, the diplomatic corps constituting an exception to the rule. Consequently, there is no distinction between the private and the public sector in this regard.

The legislative provisions on non-discrimination are abstract and therefore difficult to apply in practice. As a general rule, the fields in question could be made more specific through decisions and explanations from the Supreme Court. According to Article 1 of the Statutes of the Supreme Court⁵⁸, the Supreme Court formulates a uniform body of jurisprudence when applying the law. However, no decisions or explanations related to any of the grounds of discrimination were found in the records of the Court. Neither are there any in the records of the lower courts. This could partly be explained by the lack of specific legislation, the inaction of victims, limited occurrence of discriminatory acts and the general public mistrust

⁵⁷ Vartotojų teisių gynimo įstatymas. Official Publication Valstybės žinios, 1994, No. 94-1833

⁵⁸ Lietuvos Aukščiausiojo Teismo statutas. Official Publication Valstybės žinios, 1995, No. 36-887.

of courts and legal institutions as effective instruments for redress in the event of rights being violated.

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

National legislation on the prohibition of discrimination covers both public and private employment, military service and holding statutory office. According to the Law on Equal Treatment and the Law on Equal Opportunities for Women and Men⁵⁹:

“When implementing equal treatment the employer, regardless of the person’s age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, must:

- 1) apply equal recruitment criteria and employment conditions when employing or recruiting to the public service except in the cases set forth in Sub-paragraphs 1, 2, 3, 4 and 5 of Paragraph 3 of Article 2 of this Law (definition of direct and indirect discrimination);*
- 2) provide equal conditions for work and public service, opportunities to improve qualifications, seek more advanced vocational training, be retrained, acquire practical work experience and grant equal benefits;*
- 3) use equal criteria in evaluating work and the performance of public officers;*
- 4) apply evaluation criteria of dismissal from work and from public service;*
- 5) provide equal pay for equal work or work of equal value;*
- 6) take measures to prevent harassment of an employee or a public servant;*
- 7) take measures to prevent sexual harassment of an employee or public servant;*
- 8) take measures to prevent persecution of an employee or public servant who has filed a discrimination complaint to protect him or herself from hostile behaviour and negative consequences;*
- 9) take appropriate measures to provide conditions for the disabled to obtain work, to work, to pursue a career or to study, provided that the employer would not be disproportionately burdened as a result.”*

As regards public employment, the national legislation applicable to the state administrative service and special occupations such as judges, state attorneys and others only partly implements the Directives. Definitions of discrimination are missing.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

Is the public sector dealt with differently to the private sector?

In relation to selection criteria, an employer cannot issue discriminatory advertisements. In advertisements for jobs, the civil service or educational opportunities, it is prohibited to specify requirements giving priority to persons of a certain age, a certain sexual orientation, healthy persons, persons of a certain race or ethnic origin and persons professing a certain religion or certain beliefs.

⁵⁹ Lietuvos Respublikos Moterų ir vyrų lygių galimybių įstatymas. Official Publication Valstybės žinios, 1998, No. 112-3100.

National legislation does not cover access to self-employment yet. The laws on various types of self-employment do not include a direct prohibition of discrimination on any grounds covered by the Directives.

Self-employment activities are governed by the laws relating to specific professions, such as the Attorney Law⁶⁰, Law on the Health Protection System⁶¹, Book-keeping Law⁶², Audit Law⁶³, Dentist Law⁶⁴ etc., which do not contain non-discrimination clauses, definitions of discrimination or any regulations on protection against discrimination.

The public sector is not dealt with differently to the private sector. The main provisions of national law concerning non-discrimination in the field of employment, self-employment, recruitment conditions and promotions are established in the Law on Equal Treatment. These provisions should be also transferred into specialised laws.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

a) Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

b) In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 ?

According to the Law on Equal Treatment, the actions of an employer shall be deemed discriminatory if he/she applies to one employee less (or more) favourable terms of employment or payment for work than to another.

Employment contracts must be based on the conditions required by law. According to Article 95 of the Labour Code, in every employment contract, the parties must agree on the essential conditions of the contract: the employee's place of work (enterprise, establishment, organisation, structural subdivision, etc.) and job functions, i.e. work of a certain profession, speciality, qualification or specific duties. In respect of certain types of employment contracts, labour laws and collective agreements may also provide for other essential conditions, which shall be agreed by the parties in concluding such an employment contract (agreement on the terms of the contract, the nature of seasonal work, etc.). In every employment contract, the parties shall agree on the conditions of remuneration for work (system of remuneration for work, level of wages, payment procedure, etc.). Other conditions of an employment contract may be established by agreement between the parties unless labour laws, other regulatory acts or the collective agreement prohibit doing so (probation period of up to three months, combination of professions (for example teacher of geography and music) liability, etc.). The employment contract cannot contain illegal provisions. Discriminatory terms of contract should be evaluated as a breach of the provisions of the Law on Equal Treatment.

If there is no collective agreement guaranteeing access to training and discrimination takes place, a person can lodge a complaint with the Equal Opportunities Ombudsman. So the fact that the labour laws do not include special prohibitions of discriminatory conditions of contract, does not negate the requirement to avoid provisions that may discriminate against a person under the Law on Equal Treatment.

⁶⁰ Advokatūros įstatymas. Official Publication Valstybės žinios, 2004, Nr. 50-1632.

⁶¹ Sveikatos sistemos įstatymas. Official Publication Valstybės žinios, 1994, No. 63-1231.

⁶² Būhalterinės apskaitos įstatymas. Official Publication Valstybės žinios, 2001, No. 99-3515.

⁶³ Audito įstatymas. Official Publication Valstybės žinios, 2004, No. 63-2242.

⁶⁴ Stomatologinės priežiūros (pagalbos) įstatymas. Official Publication Valstybės žinios, 2004, No. 4-36.

In the Law on Equal Treatment the social security is not mentioned as the field where discrimination is prohibited. The special laws concerning social security grant the rights to pensions for every person who lives in the state and who has paid the taxes for certain period. These laws should be amended with special provisions prohibiting discrimination in this field. In the Lithuanian legal system there is no regulation of occupational pensions.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national Anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities ?

Vocational training is organised by the employer or state or educational institutions. As a rule, the following shall be specified in a collective agreement concluded on the national, sectoral or local level: conditions of training, training for specialisation, in-service training and retraining. The main difference between these categories of study is that vocational training takes place on the initiative of an employer or on the own initiative of the employee if the training is closely connected with his direct work. Education differs from vocational training because its goal is not determined by the employer or the need for specific knowledge in a person’s everyday work.

According to the Law on Equal Treatment, all educational institutions must ensure equal rights for everybody regardless of age, gender, sexual orientation, disability, race or ethnicity, religion or beliefs.

The Law on Equal Treatment do not mention directly vocational training outside the employment relationship. This national anti-discrimination law provides only the obligation of employer to 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. It can be concluded that vocational training consists of the training inside and outside the employment relationship.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

The Law on Associations governs the establishment and existence of workers and employers’ organisations⁶⁵. Their own statutes govern membership and involvement in these organisations. The Law does not contain a non-discrimination clause. Such clauses may be contained in the organisations’ statutes, but the Law does not require this.

Participation by workers in an organisation is regulated by the Labour Code. Members of trade unions or other workers’ organisations are granted special protection in the event of the restructuring of the organisations for which they work. They should be notified about

⁶⁵ Asociacijų įstatymas. Official Publication Valstybės žinios 2004, No. 24-745.

decisions by the employer to restructure the organisation. Details are regulated by collective agreements.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

The existing Law on Equal Treatment do not prohibit directly the discrimination in the field of social security and healthcare. This lack of anti-discriminatory clauses do not meet the requirements of directives. The competent institutions are preparing the latest amendments of the Law on Equal Treatment. By these amendments it is envisaged to solidify the obligation of public institutions to ensure the equal opportunities in the fields of social security and healthcare.

Social protection is based on the Law on State Social Security Insurance. Every employee has social security protection and receives basic health care free of charge. National law does not mention religion, belief, race or ethnicity, age, disability and sexual orientation in terms of social protection. In relation to age, children of less than 18 years are granted social protection and health care free of charge. Parents or guardians receive a state allowance for children up to the age of three. In case of disability, the State covers social security and health care. Social protection, social security and health care are governed by a number of special laws that cover areas such as social benefits⁶⁶, pension insurance⁶⁷, health insurance and health care⁶⁸, but these laws lack non-discrimination provisions.

In relation to religion or belief, age, disability and sexual orientation, national law does not seek to rely on the exception in Article 3(3), Directive 2000/78. The national social security system is based on equality of all despite religion or belief, age, disability and sexual orientation.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

National law does not regulate social advantages in detail in anti-discrimination legislation. This area is poorly regulated by law generally and there are no examples of action by the Equal Opportunities Ombudsman, because the Law on Equal Treatment has only been in force since 1 January 2005. Of course reduced rate bus tickets, childbirth grants, funeral grants and etc. are often provided. However, this does not seem to be unlawful or

⁶⁶ Šalpos socialinių pensijų įstatymas. Official Publication Valstybės žinios 1994, No. 96-1873.

⁶⁷ Valstybinių pensijų įstatymas. Official Publication Valstybės žinios 1994, No. 101-2018. Valstybinio socialinio draudimo pensijų įstatymas. Official Publication Valstybės žinios 1994, No. 59-1153.

⁶⁸ Sveikatos sistemos įstatymas. Official Publication Valstybės žinios 1994, No. 63-1231.

discriminatory, because social advantages are granted to all members of certain social groups (for example students, single mothers and etc.) regardless of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

This covers all aspects of education, including all types of schools. Please also consider cases of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

According to the Law on Equal Treatment, the actions of educational, scientific and academic institutions shall be deemed as violating equal treatment if, due to a person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs:

- 1) different requirements and conditions are applied in admission to learn or study or in drawing up, drafting, approving and selecting curricula and assessing knowledge;
- 2) different opportunities are provided for choosing subjects to be studied;
- 3) different criteria are used when study grants are awarded and loans for studies are provided;
- 4) a pupil or student of an educational institution, scientific or academic institution, who has filed a complaint of discrimination, is persecuted and no measures are taken to protect the pupil or student from hostile behaviour, humiliation, disregard of his or her honour and dignity or from negative consequences which may arise in this regard.

All types of schools should apply non-discriminatory provisions.

Special education can be organised, but this is not seen as discriminatory. The purpose of special education is to assist an individual with special needs in his or her development, to help him or her learn according to his or her abilities, to attain a level of education and acquire qualifications and to overcome social exclusion. Special education is provided in line with all compulsory and universally available programmes of education. If necessary, such programmes are amended and adjusted, special education curricula are developed and additional assistance is provided. Special education is supplied by all schools that provide compulsory and universally available education, other (licensed) education providers and (in certain cases) special education schools. Completion of formal education programmes may, for the purposes of special education, take longer than the established period. A learner who is unable to follow a continuous course of study may complete the programmes in discrete modules. Individuals with special needs who study according to programmes that meet national standards for attainment of a particular level of education may be awarded such a level and/or a qualification. In certain cases a qualification may be acquired without having attained a particular level of education. The Law on Special Education regulates special education⁶⁹.

In relation to the issues surrounding the education of the Roma, it should be noted that their general level of social integration is unsatisfactory. Despite various measures applied by the State in order to increase their level of integration, society continues to have a negative opinion of the Roma community. This leads to discriminatory actions in all fields of life. Negative stereotypes of the Roma also persist in schools.

According to a survey conducted by the Human Rights Monitoring Centre, the majority of Roma children do not attend schools at all. Youth who do not attend school do not have

⁶⁹ Specialiojo ugdymo įstatymas. Official publication Valstybės žinios, 1998, No. 115-3228

opportunities to proceed to higher education and have reduced opportunities in the face of competition in the employment market. The reasons for this vary from a lack of financial resources and the negative opinion of society to a lack of motivation. Despite this, no complaints concerning discrimination on the ground of race and ethnicity in the field of education were filed with the Office of Equal Opportunities or courts.

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

National law does not make any distinction between goods and services available to the public and those available privately. The Law on Equal Treatment regulates this situation. When implementing equal treatment, the salesperson, manufacturer of goods or service provider must:

“1) create equal conditions for all consumers, regardless of their age, sexual orientation, disability, racial or ethnic origin, religion or belief to obtain the same products, goods and services, including the provision of housing and applying equal terms of payment and guarantees for the same products, goods and services and those of equal value.

2) when providing information on products, goods and services or advertising them ensure that there will be no humiliation, insult, restriction of rights or granting of privileges based on age, sexual orientation, disability, racial or ethnic origin, religion or beliefs and no formation of public opinion about the superiority or inferiority of a person due to the latter grounds.”⁷⁰

Discrimination on the grounds of racial or ethnic origin is forbidden in the provision of goods and services.

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions?

There are no specific anti-discrimination provisions in national housing legislation. Housing is regulated at municipal level. The Law on Consumer Protection does not apply to housing. The Law on Equal Treatment does not covers discrimination in the field of housing.

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

Article 2 of the Labour Code, quoted above, proclaims the equality of subjects of employment law irrespective of “factors unrelated to the employee’s professional qualities”.

⁷⁰ Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003 No.114-5115.

The 2002 amendment of the Law on Equal Opportunities for Women and Men, quoted above, states that it is prohibited for employers *”to request information from job seekers about their ... age (notwithstanding the exceptions provided for by law) ...”*. The reference to the exceptions provided by law is general; it is not clear to which specific legal provisions it applies.

In its ruling of 11 November 1998 quoted above, the Constitutional Court expressed a general opinion on the issue of exceptions. According to the Constitutional Court, differentiated legal regulation applying to certain groups of persons, distinguished by the same criteria, and in which the regulation aims to achieve positive and socially meaningful goals, is not regarded as discrimination. In addition, special requirements or certain conditions relating to a group which are linked to the specificities of a particular employment position do not constitute discriminatory restrictions: for example, the laws that set out certain requirements in respect to the education, qualifications, health or work experience of citizens who enter the civil service. It may be assumed from this that the Constitutional Court would be prepared to allow certain exceptions to the principle of equal treatment.

The Law on Equal Treatment provides a list of exceptions:

- “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 the spheres of healthcare, 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;*
- 6) special temporary measures applied when striving to ensure equality and hinder the 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 implementation thereof, a certain human characteristic is the usual and decisive professional requirement, and this aim is lawful and the requirement is appropriate.”⁷¹*

4.2 Employers with an ethos based on religion or belief

- a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*
- b) Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?*

There are no particular provisions with regard to organisations with a religious or belief-based ethos.

There are no specific provisions or case law relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

⁷¹ Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003 No.114-5115.

The Law on Equal Treatment is applied to all the employment relationships ruled by Employment Code and Law on the Civil Service. The relationship between a certain religion and its priests is not considered to be an employment relationship because employment laws are not applicable.

4.3 Armed forces and other specific occupations

- a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*
b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

National law does not provide for an exception for the armed forces in relation to age or disability discrimination.

Despite the fact that there are no specific exceptions in the regulations relating to the armed forces in relation to age or disability discrimination, national law still provides some special requirements for persons joining the armed forces which cannot be considered as discrimination. First of all Lithuanian nationality is a requirement for joining the armed forces and the police. Certain health conditions are also required to serve in these forces

4.4 Nationality discrimination

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).

- a) How does national law treat nationality discrimination?*
b) Are there exceptions in anti-discrimination law that seek to rely on Art 3(2)?

According to the Law on Equal Treatment, the requirement for a person to be of Lithuanian nationality is not treated as discrimination. Lithuanian nationality is required to join the civil service, intelligence services, police and armed forces.

The Law on Citizenship does not define nationality (citizenship) discrimination. The definition of nationality can be given only by a systematic analysis of the provisions of the Law on Equal Treatment which defines discrimination generally.

The Law on Equal Treatment⁷² provides certain exceptions that seek to rely on Article 3(2) of both Directives. Direct discrimination shall not be taken to occur in regard to the requirement for knowledge of the State language, prohibition from taking part in political activities, and different rights applied on the basis of citizenship if such an exceptions have been provided by the laws. These exceptions are outlined in Article 2, Part 3 of the Law on Equal Treatment.

4.5 Work-related family benefits

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note this question is

⁷² Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003 No.114-5115.

focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

(a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

(b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

The question of family-related benefits is not very common in the national context. In practise such benefits are very rare. However, such benefits are not directly prohibited either to married employees, or to those with opposite-sex partners.

Family-related benefits are restricted to married, opposite-sex couples. Legally recognised partnerships exist for opposite-sex couples as well. There are no work-related benefits in relation to dependent persons.

Private employers may choose to provide extra benefits to workers. A collective agreement or individual employment contract can govern these benefits (e.g. extra paid holidays for workers when they get married).

According to the Law on State Social Insurance⁷³ every parent, regardless of his gender or marital status, is obliged to receive parental leave.

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

Article 279 of the Labour Code contains a general statement on the guarantees of health and safety at work for working disabled persons:

“Health and safety at work for working disabled persons shall be guaranteed by this Code and other laws as well as other legal acts regulating health and safety at work.”

The Labour Code does not regulate other grounds. The State Labour Inspectorate assesses whether the employment of a disabled person will result in a risk to health and safety. An employer can exclude a disabled person on the grounds that the work will pose a risk to the disabled person’s own health or safety (but not the health or safety of others). A disabled individual can decide for themselves that they wish to accept such a risk. In this situation the employer will be excluded from liability should the disabled individual suffer harm.

73 Valstybinio socialinio draudimo įstatymas. Official publication Valstybės žinios, 1991, No. 17-447.

4.7 Exceptions related to discrimination on the ground of age

4.7.1 Direct discrimination

- a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*
- b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*
- c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?*

Direct discrimination on the ground of age for jobs usually takes place at the level of job advertisements. Often an advertisement will state that applicants under 35 are required. This mostly applies to advertisements for jobs that are usually applied for by women. This is seen as discrimination on the ground of gender as well as a breach of the prohibition of requesting information on age. These practices violate both Directive 2000/78 and the Law on Equal Opportunities for Women and Men.

The Law on Equal Treatment⁷⁴ provides certain exceptions relating to direct discrimination on the ground of age. There are no other specific legal provisions that allow different treatment on the grounds of age to be objectively and reasonably justified.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

The Labour Code regulates special conditions for younger and older employees.

“Younger employees” are defined as those under the age of 18. These workers cannot work at night, they have a right to choose their vacation time and are entitled to 30 days holiday (the normal entitlement is 28 days).

“Older workers” are workers who have five years or less to work until their retirement. These workers must be notified four months in advance of any organisational restructuring, for example, merging two departments (other employees are notified two months in advance).

According to the Labour Code, persons with family care responsibilities are ensured protection if the child is under seven years or, in the case of a disabled child, under 16 years.

These provisions cannot be treated as vocational integration.

Article 92 Part 2 of the Labour Code presents a list of people with additional guarantees in the labour market:

⁷⁴ Lygių galimybių įstatymas. Official Publication Valstybės žinios, 2003 No.114-5115.

- “2) persons in the 16-25 age group for whom this is their first employment;
 ...
 4) persons who have no more than five years until their entitlement to an old age pension;
 5) a single parent caring for a child under eight years of age;
 ...”⁷⁵

Special laws establish conditions for additional guarantees to be provided to facilitate access to employment and the application procedure.

Shorter working hours (less than 40 hours per week) are set for persons under 18 years of age, in accordance with the provisions of the Law on Labour Protection⁷⁶.

According to the Labour Code, overtime work and work at night cannot be assigned to persons of less than 18 years of age.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

There is no obvious evidence of age discrimination in access to training opportunities. There is no data or research available on the subject. However, training opportunities that require the knowledge of Western European languages tend to benefit younger employees.

Article 92 Part 2 of the Employment Code presents a list of people with additional guarantees in the labour market.

“The following persons shall be provided with additional guarantees in the labour market:

- 1) persons with a disability;
- 2) persons in the 16-25 age group for whom this is their first employment;

- 4) persons who have no more than five years until their entitlement to old age pension;
- 5) a single parent caring for a child under eight years of age;
 ...”⁷⁷

The Employment Code sets the general minimum age for persons entering into labour contracts at workers as 16 years of age. Children younger than 16 are forbidden to work, except in relation to artistic, cultural, advertisement or sporting activities under the conditions established by the Employment Code. Such activity must be proportionate to the child's age, not dangerous, must not endanger his/her education, school attendance or attendance of educational programmes and must not be harmful for his/her health, psychological or moral development.

For specific professions, the age of competency differs, with the minimum age often set at 18 and usually dependent on some material condition relating to carrying out the work in

⁷⁵ Darbo kodeksas. Official Publication Valstybės žinios, 2002, No.71.

⁷⁶ Darbuotojų saugos ir sveikatos įstatymas. Official Publication Valstybės žinios, 2003, No.70-3170

⁷⁷ Darbo kodeksas. Official Publication, Valstybės žinios, 2002, No.71.

question. The general minimum age for self-employment is 18, but in specific cases it can differ according to special requirements for various types of self-employment, for example requirements for training or experience necessary for proper performance of the activity.

There are maximum age limits for some professions; for example the Law on Courts establishes 65 as the maximum age for judges (the minimum age is established by this Law as 25 years)⁷⁸. A judge's function is terminated *ex lege* on the day when s/he reaches 65. Similarly, a prosecutor's post is terminated on his/her 65th birthday.

Work in public administration is terminated at the age of 62.5. The same applies to medical doctors under the Law on the Health Protection System.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

b) Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?

d) Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?

For these above questions, please indicate whether the ages are different for women and men.'

The national law provides a state pension age, at which individuals must begin to collect their state pensions. According to the Law on State Social Insurance Pensions⁷⁹, people who attain the necessary age and who have worked for a certain number of years have the right to draw a pension. Until 1995, women had the option of retiring five years earlier than men. After the amendments to the Law on State Social Insurance Pensions in 1995, the pension age was

⁷⁸ Teismų įstatymas. Official Publication Valstybės žinios 2002, No. 17-649.

⁷⁹ Valstybinių socialinio draudimo pensijų įstatymas. Official publication Valstybės žinios, 2005, No. 71-2555.

gradually raised both for men and women. The current pension age in Lithuania is 60 years for women and 62 years and 6 months for men.

In order to obtain a right to a state pension, it is not enough to attain pension age. According to Article 22 of the Law on State Social Insurance Pensions:

“A person shall be entitled to draw a state social insurance old age pension if s/he meets the following requirements:

- 1) reaches the pension age established by this Law;*
- 2) has worked for the minimum state social pension insurance period established for a pension”⁸⁰*

The state old age pension consists of general and additional parts. The general part is equal for all insured persons who have already worked for the obligatory period. The additional part of pension is closely connected with the earlier earnings of insured person.

Old age pension is paid monthly until death.

Workers of pensionable age receive a full pension if they have attained the age of 65. Younger people can receive a full pension if they have already worked obligatory state social pension insurance period and if they do not earn the equivalent of more than 1.5 times the minimal monthly wage. A retired person who earns more is entitled to receive only the general part of the state pension.

The entitlement to a pension is regulated by the Law on State Social Insurance Pensions⁸¹. This differs in public administration, where the retirement age is set by the Law on Public Administration⁸² and is 62.5 years of age for both women and men.

Compulsory retirement is not permitted with exceptions in relation to certain professions: for instance, there are compulsory age limits for judges who retire by law at the age of 65. However, protection against discrimination on the grounds of age in the employment market is tied to the entitlement to receive a state pension. Rights to protection from unfair dismissal are lost upon reaching pensionable age. Article 129 of the Employment Code states that a legitimate reason to terminate employment cannot be age, except for cases whereby an employee is already entitled to the full pension or is in receipt thereof.

It is not permitted to fix a retirement age in employment contracts. Since the law establishes the retirement age, it cannot be imposed or otherwise influenced by employers.

In order to reduce the deficit of the State Social Insurance Fund and promote youth employment, the Parliament adopted amendments to the Law on State Social Insurance Pensions, which reduced pensions for some older working people. The Constitutional Court in its ruling of 25 November 2002⁸³ “On the compliance of Paragraph 2 of Article 69 of the Republic of Lithuania Law on the Diplomatic Service, Item 9 of Paragraph 1 of Article 4 (wording of 16 March 2000) of the Republic of Lithuania Law on State Social Insurance and Item 5 of Paragraph 1 of Article 2 (wording of 16 December 1999) and Article 23 (wordings of 21 December 1994, 21 December 2000 and 8 May 2001) of the Republic of Lithuania Law

⁸⁰ Valstybinių socialinio draudimo pensijų įstatymas. Official publication Valstybės žinios, 2005, No. 71-2555.

⁸¹ Valstybinių socialinio draudimo pensijų įstatymas. Official Publication Valstybės žinios, 1994, No. 59-1153.

⁸² Valstybės tarnybos įstatymas. Official Publication Valstybės žinios 1999, No. 66-2130.

on State Social Insurance Pensions with the Constitution of the Republic of Lithuania”⁸³ concluded that these measures were contrary to the provisions of the Constitution on the protection of property rights, the right to freely choose an occupation or business as well as the constitutional principle of respect for the rule of law.

National law provides specific regulations for early retirement. The Law on the Early Payment of State Social Insurance Pensions⁸⁴ regulates conditions for the earlier payment of state old age pensions. The conditions to obtain the right to earlier payment of state pensions are listed in the Article 3 of the Law. In summary, a person can receive a pension earlier if he has only five years to work before retirement; he has already gained 30 years of state social insurance contributions and is officially registered as unemployed. Such a person also should not have the right to other state benefits. This early pension is proportionally less (depending on the period remaining until the age of general retirement) than the state social insurance pension.

The laws protecting employment rights are applicable to all workers irrespective of age. No rights can be lost on attaining pensionable age. Article 92 of the Labour Code provides that for persons who have not more than five years until reaching pension age may be provided additional guarantees. Article 135 of the Labour Code provides that in the event of reduction in the number of employees on economic or technological grounds or due to the restructuring of the workplace, the right of priority to retain the job shall be enjoyed by those employees who will be entitled to the old age pension in not more than three years.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

There is no apparent tendency for redundancies to be decided on the grounds of age.

According to the Employment Code, the priority to remain working is granted to persons who have only three years remaining before they reach pension age. According to the Law on Support for the Unemployed, an employer must inform the labour exchange offices in the case of group redundancies. However, the labour exchange does not keep statistics on redundancies according to age.

The Employment Code grants additional support in the labour market is granted to people who have only five years remaining before they reach pension age. As was mentioned above, people who only have three years left until pensionable age also have a priority to remain working if employees are laid off.

⁸³ Dėl Lietuvos Respublikos diplomatinės tarnybos įstatymo 69 straipsnio 2 dalies, Lietuvos Respublikos valstybinio socialinio draudimo įstatymo 4 straipsnio (2000 m. kovo 16 d. redakcija) 1 dalies 9 punkto ir Lietuvos Respublikos valstybinių socialinio draudimo pensijų įstatymo 2 straipsnio (1999 m. gruodžio 16 d. redakcija) 1 dalies 5 punkto bei 23 straipsnio (1994 m. gruodžio 21 d., 2000 m. gruodžio 21 d., 2001 m. gegužės 8 d. redakcijos) atitikties Lietuvos Respublikos Konstitucijai. Official Publication Valstybės žinios, 2002, No. 113-5057.

⁸⁴ Valstybinių socialinio draudimo pensijų išankstinio mokėjimo įstatymas. Official publication Valstybės žinios, 2003, No. 114-5116.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

There are no such exceptions. No information about a public debate on whether these various age limits are compliant with the requirements of the Directive is available.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

The Constitution prohibits discrimination on the grounds of language, but the requirements for knowledge of the state language set out by certain laws cannot be recognised as discriminatory. Besides the grounds listed in the anti-discrimination laws, the Labour Code prohibits discrimination on the grounds of language, citizenship, and membership of political parties or other organisations. There are various exceptions to these provisions, outlined in various laws. For example a candidate for the Presidency of the Republic cannot be a member of a political party.

Certain exceptions also exist in the field of employment. For example, those serving in the armed forces or police cannot be members of political party. However, in the field of private employment, there are no specific exceptions..

5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case-law or relevant legal/political discussions on this topic.

b) Do measures of positive action exist in your country? Which are the most important?

Refer to measures taken in respect of all 5 grounds; in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma.

Article 92 of the Labour Code provides that additional guarantees must be established to facilitate access to the employment market for certain vulnerable groups, including persons with a disability, persons who have no more than five years until their entitlement to an old age pension and graduates of vocational schools and schools of advanced and higher education who are commencing a career in their area of specialism.

Currently, support related to the employment of the above-mentioned groups is regulated by the procedure approved by the Order of the Minister of Social Security and Employment, entitled the “Procedure for supporting the employment of persons entitled to additional support in the employment market” and the “Procedure on employment in jobs supported by the Employment Fund”⁸⁵. The “Procedure for supporting the employment of persons entitled to additional support in the employment market” makes provision for special Employment

⁸⁵ Dėl Darbo rinkoje papildomai remiamų bedarbių užimtumo rėmimo tvarkos ir Įdarbinimo į užimtumo fondo remiamus darbus tvarkos patvirtinimo. Official Publication Valstybės žinios, 2002, No. 15-591.

Plans to be produced for such persons upon their registration at an employment exchange. In cases where they are not employed within three months of the date of registration, measures are taken to provide/adapt jobs for these persons. Jobs may be established/adapted in any organisation or enterprise that demonstrates continuous activity. Various incentives for employers are provided, including temporary subsidies for creating jobs. Employment quotas are established only for the employment of disabled persons.

Additional guarantees for the employment of the disabled are also regulated by the Law on the Social Integration of the Disabled. The Law puts in place a system of mandatory quotas in employment and provides incentives for the employers to comply. This Law also creates a new scheme for managing the social integration of disabled people. According to the amended law on the Social Integration of the Disabled, the main institutions promoting the social integration of disabled are the Government of the Republic of Lithuania, Ministries, the Department of Disabled People's Affairs under the Ministry of Social Security and Labour, municipalities and associations of people with disabilities.

There are also positive action measures in place for the Roma. The Shortened Strategic Plan of Activities of the Department of National Minorities and Lithuanians Living Abroad was adopted in 2005. According to this document, specific measures for supporting the integration of the Roma into Lithuanian society will be implemented. At municipality level, Vilnius City Municipality formulated a programme on the development of the Roma community in Vilnius and territories situated next to the Tabor⁸⁶. The main goals of this document are to prevent the use and distribution of drugs, and to reduce the segregation of the Roma⁸⁷. As part of this programme, Vilnius City Municipality affirms that it will offer flats to Roma who want to move to other parts of Vilnius. But this part of programme was not implemented in 2006. During 2006 the Municipality provided special educational programmes for the Roma, concentrating especially on Lithuanian and English languages, professional education (a metal- worker, florist, correspondent, social worker) and computer literacy..⁸⁸ The Municipality affirms that in this programme were involved about 200 Roma people, but the results of the programme are not accessible for society and the author.

6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*
- b) Are these binding or non-binding?*
- c) Can a person bring a case after the employment relationship has ended?*

In relation to each, please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents

⁸⁶ Vilniaus romų bendruomenės ir šalia taboro esančių teritorijų priežiūros ir saugumo užtikrinimo bei romų segregacijos mažinimo programa, Vilnius City Municipality, 2005.

⁸⁷ Vilniaus romų bendruomenės ir šalia taboro esančių teritorijų priežiūros ir saugumo užtikrinimo bei romų segregacijos mažinimo programa, Vilnius city municipality, 2005.

⁸⁸ Vilnius Romanies will learn languages, computer literacy and trade.

http://www.vilnius.lt/new/en/vadovybe.php?open=4&root=2&sub_cat1=146&id=172

to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

National legislation guarantees the equal right to all people to defend their rights and lawful interests in court. There are no existing special judicial, administrative or conciliation procedures for cases of discrimination. In cases of discrimination, victims must rely on the general procedures established by the Constitution and legislation. The civil and public services are included in the remedial procedures as well.

According to Article 30 of the Constitution, "Any person whose constitutional rights or freedoms are violated shall have the right to appeal to court." This principle is echoed in other relevant laws, including the Law on Courts⁸⁹ and the Law on Administrative Proceedings⁹⁰.

The settling of work-related disputes, including those related to discrimination, falls under the jurisdiction of the Employment Disputes Commissions and the courts, as regulated by Article 286 of the Labour Code.

Employment Disputes Commissions are the primary bodies mandated to deal with employment dispute resolution. The responsibility for the establishment of an Employment Disputes Commission in a company, agency or organisation rests with the employer. The Commission is comprised of an equal unspecified number of representatives of the employees and the employer. An employees' meeting elects the employees' representatives. The employer appoints the representatives of the employer. The Commission is formed for a term of up to two years. The role of the Committee Chair is performed by representatives of the employees and the employer in rotation at every meeting. People who believe that their rights have been infringed by individual administrative actions and actions (or omissions) of civil servants and municipality employees in the sphere of public administration, including social protection, social advantages, education and access to and supply of goods and services available to the public, have the right to file a complaint with an Administrative Disputes Commission under the Law on Administrative Disputes Commissions⁹¹ or with the Administrative Courts under the Law on Administrative Proceedings.

There are rules requiring that courts/buildings be physically accessible. Where necessary, information must be provided in Braille. The same rule applies to sign language interpreting. The law does not provide regulations for special procedures for dealing with individuals with learning disabilities.

In practice, the issue of unequal access to justice by different social groups exists. Although a few legal aid clinics (mostly staffed by law students) are in operation, an effective system of state legal aid needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights.

The decisions of the Equal Opportunities Ombudsman in cases of discrimination on grounds of sex, age, sexual orientation, disability, racial or ethnic origin, religion or beliefs include the right to refer the material of the complaints to pre-trial investigative bodies; and to address institutions with a recommendation to discontinue the violations of the Law on Equal

⁸⁹ Lietuvos Respublikos Teismų įstatymo pakeitimo įstatymas. Official Publication Valstybės žinios, 2002, No. 17-649.

⁹⁰ Lietuvos Respublikos Administracinių bylų teisenos įstatymo pakeitimo įstatymas. Official Publication Valstybės žinios, 2000, No. 85-2566.

⁹¹ Lietuvos Respublikos Administracinių ginčų komisijų įstatymas. Official Publication Valstybės žinios, 1999, No. 13-310.

Opportunities for Women and Men and the Law on Equal Treatment. The Ombudsman has been granted the right to investigate administrative cases and impose administrative sanctions for violations of the Law on Equal Opportunities of Women and Men, which is one of the most important and effective tools of gender equality policy. The recommendations of the Equal Opportunities Ombudsman are of a binding nature, and persons obstructing the Ombudsman in the exercise of his duties are held liable under the law and face administrative sanctions. Public institutions as well as private companies have duly implemented the majority of the decisions of the Ombudsman so far⁹².

On 9 November 2004, the Parliament passed a Law amending the Law on Equal Opportunities of Women and Men. These amendments introduced a new Article 24. According to this provision, a person who has suffered from discrimination on the ground of gender or sexual harassment has a right to recover monetary compensation and moral damages under the Civil Code. The same right granted to a person who has suffered discrimination on any of the other grounds. The compensation is recovered in line with the general rules of the Civil Code.

Excepting these differences associated with the right to monetary compensation, no specific procedure is applied during the discriminatory cases hearings.

According to Article 27 of the Employment Code, the general time limit for a person to bring a case is three years after the discriminatory act has occurred. This term is not applied to the requirements of defence of honour and dignity of the employee. A person can bring a case after the employment relationship has ended. A person can apply to the Employment Disputes Commission within three months from the day when he found out or ought to have found out about the violation of his rights. If the dispute is relating to an employment contract, Article 297 should be applied:

“Article 297. Disputes relating to the Employment Contract

1. An employee who disagrees with a change in working conditions, suspension from work on the employer's initiative, or dismissal from work shall be entitled to apply to court within one month from the day of receipt of the appropriate notice (document). If it is established that the working conditions were changed, the employee was suspended from work without a valid reason or in breach of laws, the violated rights of the employee must be restored and he must recover the average work pay for the entire period of involuntary idle time or the difference in the work pay for the time period the employee was employed in a lower paid job.

2. The employee and the employer may appeal to court against the orders of officers or bodies who are granted under law the right to suspend people from work.

3. If an employee is dismissed without a valid reason or in violation of the procedure established by law, the court shall reinstate him in his previous job and award him the average wage for the entire period of involuntary idle time from the day of dismissal from work until the day of execution of the court decision.

4. If the court establishes that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, it will pass a decision to recognise the termination of the employment contract as unlawful and award him severance pay of the amount specified in Article 140(1) of this Code as well as the average wage for the period of

⁹² Equal Opportunities for Men and Women. Monitoring law and practice in new member states and accession countries of the European Union //2005.

involuntary idle time from the day of dismissal from work until the effective date of the court decision. In this case the employment contract shall be considered terminated from the effective date of the court decision.”⁹³

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

a) in support of a complainant

b) on behalf of one or more complaints (please indicate if class actions are possible)

The possibility for associations, organisations or other legal entities to engage in any judicial and/or administrative procedure on behalf of the complainant is provided for in laws regulating civil and administrative procedure, as well as the procedure for settling employment disputes. The labour unions can represent their members in cases related to the employment relationship. General provisions on representation are included in the Employment Code⁹⁴ and the Civil Procedure Code⁹⁵.

From the wording of Article 56(3) of the Civil Procedure Code, it may be assumed that non-governmental organisations are allowed to participate in civil procedures under Article 56(2).

The Law on Administrative Proceedings⁹⁶ stipulates that a broad range of entities may act as representatives and parties to a case, still according to article 49 the person can be represented only by advocates and their assistances.

The new Criminal Procedure Code⁹⁷, in force since 1 May 2003, limits the representation of natural persons to qualified lawyers.

The authorisation of associations to provide representation in court or administrative proceedings does not extend to representing victims in discrimination cases. With regard to the transposition of Directives 200/78/EC and 2000/43/EC, it should be noted that the State has not granted non-governmental organisations the right to represent victims of discrimination in court or administrative procedures.

Despite the fact that the circle of representatives in criminal, civil or administrative procedures is not wide, legal aid in Lithuania is available to everyone. The new version of the Law on the State Guaranteed Legal Aid was adopted on 8 February 2005 and entered into effect on 1 May 2005. Primary legal aid has hence become accessible to everybody⁹⁸. This is a key step in prohibiting discrimination as a person who has no legal knowledge and does not have the financial resources to hire a lawyer can now obtain legal advice.

Primary legal aid is the provision of legal information, legal advice and drafting of legal documents to be submitted to state and municipal institutions. Such legal aid includes advice

⁹³ Darbo kodeksas. Official Publication, Valstybės žinios, 2002, No.71.

⁹⁴ Darbo kodeksas. Official Publication, Valstybės žinios, 2002, No.71.

⁹⁵ Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Official Publication Valstybės žinios, 2002, No. 36-1340.

⁹⁶ Administracinių bylų teisenos įstatymas. Official Publication Valstybės žinios, 1999, Nr. 13-308

⁹⁷ Baudžiamojo proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Official Publication Valstybės žinios, 2002, No. 37-1341.

⁹⁸ Valstybės garantuojamos teisinės pagalbos įstatymo pakeitimo įstatymas, Official publication, Valstybės žinios, 2005, No. 18-572.

on extrajudicial dispute settlement, participation in amicable dispute resolution procedures and drafting of amicable settlement agreements. However, a person using this kind of legal aid cannot expect his interests to be represented in court⁹⁹.

Legal aid is presently available to all citizens of the Republic of Lithuania, citizens of other states of the European Union as well as other natural persons legally residing in the Republic of Lithuania and other states of the European Union as well as other persons indicated by international agreements of the Republic of Lithuania.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

The law amending the Law on Equal Opportunities of Women and Men¹⁰⁰ instituted substantial changes in the procedure in discrimination cases. Article 2 of the Law describes the concept of the burden of proof in cases of gender discrimination. From the moment the new amendments entered into effect, discrimination has been presumed when complaints are being examined in various institutions or courts. The person or institution under suspicion has a duty to prove their innocence.

The Law on Equal Treatment does not permit a shift of the burden of proof from the complainant to the respondent in the cases of discrimination on the grounds of age, sexual orientation, disability, racial or ethnic origin, religion and beliefs.

There are no other specific provisions for shifting or easing the burden of proof in cases of discrimination.

The competent institutions are preparing the latest amendments of the Law on Equal Treatment. The concept of the burden of proof will be changed. New amendments are placing the obligation to prove his/her innocence on the person who is suspected in discrimination cases on the grounds of age, sexual orientation, disability, race or ethnic origin, religion or convictions. Should the amendments be coming into force, Lithuanian national law will be in compliance with the anti-discrimination directives regarding the burden of proof. According to the proposed amendments the person who is suspected with violation of equal opportunities will not have an obligation to prove that the plaintiff has a characteristic which was the ground of discrimination. The new concept of the burden of proof is planned to be used in civil and administrative procedure, not in criminal procedure.

The procedure for settling individual employment disputes through an Employment Disputes Commission is regulated by the Employment Code¹⁰¹. 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.

⁹⁹ Valstybės garantuojamos teisinės pagalbos įstatymo pakeitimo įstatymas, oficiali publikacija, Valstybės žinios, 2005, No. 18-572.

¹⁰⁰ Moterų ir Vyrų lygių galimybių įstatymo 1 straipsnio papildymo, įstatymo papildymo 2¹ straipsniu ir priedu įstatymas, Oficiali publikacija, Valstybės žinios, 2005, No. 115-4280.

¹⁰¹ Darbo kodeksas. Oficiali Publikacija, Valstybės žinios, 2002, No.71.

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)¹⁰².

Civil and administrative judicial proceedings are adversarial procedures, which assume the equal distribution of the burden of proof on both sides of the dispute. The provisions of the Civil Procedure Code and the Law on Administrative Proceedings are similar.

In criminal cases, the principle of equality of parties applies. The prosecution and the defence have equal rights to submit proof and to participate in its examination.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, or person that help the victim of discrimination to present a complaint)

A definition of victimisation as contained in Article 9 of the Directive is not transposed into 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.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

c) Is there any information available concerning:

- the average amount of compensation available to victims

- the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?

As indicated above under the section on harassment, the Criminal Code contains provisions prohibiting discrimination on the basis of race, nationality and other personal characteristics. In order to prevent violations of the law, a range of penalties are available, including imprisonment, fines and deprivation of the right to perform certain duties or jobs or to engage in certain activities.

The Employment Code does not provide any sanctions for workplace discrimination, except in the case of gender discrimination. The Code establishes responsibility for actions which directly violate people's constitutional rights. The latter wording of the provision is rather vague and it may be difficult to implement. Only severe workplace discrimination would be punishable under the Criminal Code. Thus, this legal regulation of sanctions is not effective.

¹⁰² Administracinių ginčų komisijų įstatymas. Official Publication Valstybės žinios, 1999, Nr. 13-310.

The Employment Disputes Commissions can award compensation to an individual in a case of discrimination which is prohibited under the Employment Code. Compensation equivalent to up to two annual salaries is paid to an individual, if s/he proves that s/he cannot continue to work in the same position as a result of a discriminatory act.

Point 2 of Article 3(2) of the Law on Public Service cites fairness amongst the guiding ethical principles of the civil service: “A civil servant must serve all people equally, regardless of their nationality, race, sex, language, origin, social status, religious convictions or political opinions, be fair in considering requests and not misuse the powers and authority bestowed on him or her.” Article 29 of the Law lists the possible sanctions for misconduct, which are a warning, a reprimand, a severe reprimand and dismissal from the service.

It is considered that, following the example of gender discrimination (Article 41(6) of the Code of Administrative Violations), the infringement of the principle of equal treatment on the basis of racial or ethnic origin, religion or belief, disability, age or sexual orientation could be specifically prohibited by the Code of Administrative Violations. A draft law amending the Code was submitted to the Seimas in November 2002. The law was passed on November 2003 together with the Law on Equal Treatment.

Most sanctions for discriminatory behaviour are contained in the Criminal Code, which makes their application difficult.

The Law on Equal Treatment does not stipulate sanctions. The Administrative Violations Code establishes responsibility for violation of the Equal Treatment Law. A fine of up to 4,000 litas can be imposed.

7. SPECIALISED BODIES

Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin?*
- b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*
- c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*
- d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?*
- e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*
- f) Is the work undertaken independently?*

The protection of society from various forms of discrimination can be implemented only if a clear institutional structure is created. Each natural and legal person has the right to file complaints with the Equal Opportunities Ombudsman about the violation of equal rights.

On 18 November 2003, the Law on Equal Treatment was adopted and entered into effect on 1 January 2005. After the Law on Equal Treatment entered into effect, the Office of the Equal Opportunities Ombudsman became the most important organisation working in the field of discrimination in Lithuania. The Equal Opportunities Ombudsman currently investigates complaints relating to gender-based discrimination and sexual harassment under the Law on Equal Opportunities and those relating to discrimination and harassment based on age, ethnic origin, race, sexual orientation, religion, beliefs and disability under the Law on Equal Treatment. The Ombudsman is appointed for a term of four years by the Parliament upon the proposal of the Parliamentary Speaker. The Ombudsman supervises the work of the Office of Equal Opportunities. The officers of this organisation are civil servants and are selected through public competition. More than 10 officials are working in the Office of Equal Opportunities. This institution is fully financed by the State. This organisation is accountable to the Seimas and investigates complaints relating to discrimination on all grounds covered by Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000. The Ombudsman for Equal Opportunities investigates complaints relating to direct or indirect discrimination, harassment and sexual harassment. The Ombudsman may also initiate investigations at his/her discretion. Upon completion of the investigation, the Ombudsman may take a decision: 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 it; 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 offence committed; or to temporarily suspend the investigation if the person who submitted the complaint or the person whose actions are investigated is ill or absent. At the request of the Ombudsman, state institutions, enterprises and other organisations must make available to him/her information, documents and material necessary for the Ombudsman to carry out his/her functions. While the complaint is being investigated, the Ombudsman has the right to request that the person whose activities are under investigation provide an explanation.

Each year, the Ombudsman submits to Parliament an annual report on the activities of the Office of the Ombudsman for Equal Opportunities 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 submits recommendations to State institutions for the revision of legal acts and policy priorities for the implementation of equal rights.

Since the Law on Equal Treatment came into force on 1 January 2005, the Equal Opportunities Ombudsman will now fulfil all the tasks listed in Article 13 of the Racial Equality Directive. These comprise providing independent assistance to victims of discrimination in pursuing their complaints about discrimination; conducting independent surveys concerning discrimination; and publishing independent reports and making recommendations on any issue relating to such discrimination, in both the public and the private sectors.

The Equal Opportunities Ombudsman exists at state level and is able to address multiple discrimination. The grounds covered are age, sexual orientation, disability, race or ethnic origin, religion or beliefs.

The Office of the Equal Opportunities Ombudsman also works to inform and educate society about various forms of discrimination and is an active partner of a huge number of other governmental and non-governmental organisations in Lithuania and abroad.

During the year 2005 The Equal Opportunities Ombudsman has received 30 complaints on the ground of age, 18 complaints on the ground of ethnic origin (none of them related to the Roma people), 27 complaints on the ground of gender, 13 complaints on the ground of disability, two complaints on the ground of religion, two complaints on the ground of sexual orientation, three complaints on the ground of offensive advertisements, and three complaints on the ground of sexual harassment. The Ombudsman during the year 2005 has not investigated 38 complaints, which were not covered by the Office's remit. From January 2006 The Equal Opportunities Ombudsman has received 23 complaints on the ground of age, 19 complaints on the ground of ethnic origin, 26 complaints on the ground of gender, 11 complaints on the ground of disability, 7 complaints on the ground of religion, 2 complaints on the ground of sexual orientation, and 2 complaints on the ground of sexual harassment. The Ombudsman during the year 2006 has not investigated 45 complaints, which were not covered by the Office's remit.

Responsibility for national policy on developing and implementing harmonious relations between various national groups lies with the Department of National Minorities and Lithuanians Living Abroad, a governmental department.

The Department's policies are aimed at ensuring that the national minorities of Lithuania can preserve their identity; stimulating their participation in the public, political and cultural life of the country; fostering their civic awareness and tolerance; contributing to mutual understanding and trust among people of different nationalities; strengthening respect for the culture, customs, traditions and religion of the different national groups in Lithuania; and eliminating causes of discord on the basis of national origin.

In pursuit of its tasks, the Department maintains relations, co-operates with and supports various organisations representing national communities, artistic groups and schools by developing and implementing cultural, educational and integration programmes for national minorities. On the basis of its experience, the Department makes proposals to the Government on the development and improvement of relevant legislation. In Vilnius, the Department maintains a House of National Communities, the premises of which can be used by various organisations of national communities for their cultural and educational activities.

The Department may accept and consider complaints within the field of its competence. However, it is not authorised to impose administrative sanctions. In order to better protect the rights of victims of discrimination through non-judicial procedures, issues concerning discrimination on the basis of ethnic and racial origin have been added to the mandate of the Ombudsman for Equal Opportunities.

The Government has set up a Council for Disabled People's Affairs. According to the Regulations of the Council¹⁰³, it is a collegial institution accountable to the Government, and co-ordinates the medical, professional and social rehabilitation and integration of the disabled.

8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Following the successful work of the Ombudsman for Equal Opportunities for Women and Men, including its wide public outreach, the Parliament considered a Bill on Equal Treatment which added a number of additional grounds to the mandate of the Ombudsman, namely racial or ethnic origin, religion or belief, disability, age and sexual orientation. The law was drafted with the support of a United Nations Development Programme project, carried out from April to December 2002. The project included an extensive public awareness campaign and a series of public consultations in order to arrive at an optimal strategy for expanding the institutional coverage of protection against discrimination. As part of the preparation for the legislative changes, a number of training events for public servants were held. The law was passed on November 2003 and has been in force since 1 January 2005. Since this date, the Equal Opportunities Ombudsman has received 124 complaints. Between January and November 2005, the Ombudsman received 29 complaints on the ground of age, 14 complaints on the ground of ethnic, 25 complaints on the ground of gender, 12 complaints on the ground of disability, one complaint on the ground of religion, two complaints on the ground of sexual orientation, three complaints on the ground of offensive advertisements, and three complaints on the ground of sexual harassment. This institution is also quite active in collecting information and starting investigations on its own initiative. For example, it was strongly recommended for several offensive advertisements not to be published.

Announcing the opportunity to lodge complaints regarding discriminatory acts and to make use of State legal aid is not enough to ensure that people who have a right and a need for such actions are able to make use of these possibilities. Everyone must be well informed about such possibilities. All recently adopted major legislation is widely discussed in the mass media, including TV, radio and the press, which is the most popular and generally trusted means of obtaining information. All existing legislation, as well as the drafts, is available free of charge to anyone with access to the internet.

There have been no widely known cases of mistreatment by public officials on the grounds of racial or ethnic origin, religion or belief, disability or age. There had been several publicised instances of mistreatment by police officials on the ground of sexual orientation, which highlighted the need for effective preventive action.

⁷⁵ Dėl Lietuvos invalidų reikalų tarybos prie Lietuvos Respublikos Vyriausybės nuostatų patvirtinimo. Government Resolution No. 420 of 29 April 1997. Official Publication Valstybės žinios, 1997, No. 40-973.

There are approximately 200 non-governmental organisations representing national minorities in Lithuania. They bring together representatives of 19 different ethnic communities. The Government maintains dialogue with non-governmental organisations representing national minorities through the Council of National Communities, which is part of the structure of the Government Department of National Minorities and Lithuanians Living Abroad, where 17 national communities are represented. The Council of National Communities holds regular meetings to discuss the issues faced by national minorities in Lithuania. In recent years, it has become established that the Council regularly meets with the President of the Republic to exchange views on the situation of national minorities in the country.

A number of NGOs represent the interests of vulnerable groups. They actively engage in dialogue with the authorities to protect their rights. For example, the Lithuanian Gay League contributed significantly to the development of a baseline study on human rights in Lithuania, led by the Parliamentary Committee on Human Rights.

The Government has set up a Council for Disabled People's Affairs. According to the Regulations of the Council¹⁰⁴, it is a collegial institution accountable to the Government, and co-ordinates the medical, professional and social rehabilitation and integration of the disabled. The Council is composed of national non-governmental disability organisations and representatives of state institutions on a parity basis, and functions in accordance with the Law on the Social Integration of the Disabled. The Government upon the proposal of the Minister of Social Security and Employment approves the composition of the Council.

In 1995, the Government of the Republic of Lithuania, together with trade union representatives and employers, signed an agreement on tripartite partnership with a view to more effective co-ordination of the interests of the parties in solving social, economic and labour-related problems and promoting social cohesion. Based on this agreement, a Tripartite Council was established, with the participation of the secretariat of the Ministry of Social Security and Employment. Articles 44 and 45 of the new Employment Code regulate the operational regulations of the Tripartite Council.

Despite the progress made, in its 2002 Regular Report on Lithuania's Progress towards Accession¹⁰⁵ the European Commission noted that "steps should be taken to actively promote further sound developments in social dialogue". There are no notable collective agreements that contain anti-discrimination provisions. The Tripartite Council has never referred to issues of discrimination.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

⁷⁵ Dėl Lietuvos invalidų reikalų tarybos prie Lietuvos Respublikos Vyriausybės nuostatų patvirtinimo. Government Resolution No. 420 of 29 April 1997. Official Publication Valstybės žinios, 1997, No. 40-973.

¹⁰⁵ http://europa.eu.int/comm/enlargement/report2002/lt_en.pdf

b) Are any laws, regulations or rules contrary to the principle of equality still in force?

As noted above, the principle of non-discrimination is enshrined in the Constitution. According to the Constitution, the Constitutional Court ensures constitutional legality by deciding whether laws and other legal acts adopted by the Seimas are in compliance with the Constitution and whether the acts adopted by the President or the Government of the Republic correspond to the Constitution and laws.

A person may contest provisions in agreements, contracts or rules relating to professional activity, workers and employers which, in his or her opinion, are contrary to the principle of equal treatment using non-judicial or judicial procedure. S/he may base his or her position on the Constitution and the relevant international treaties, which Lithuania has an obligation to follow.

Such provisions may be contested before the courts. Article 36 of the Employment Code states:

“3. By way of exception, only the courts shall have the prerogative to protect employment rights under the law in the following ways:

1) By recognising as invalid acts adopted by state institutions, municipalities or individual officers if the said acts are contrary to the law;

2) By not applying an act adopted by a state institution, municipality or individual officer, if that act is contrary to the law.”

An individual can also file a complaint to the Equal Opportunities Ombudsman. The Ombudsman does not have the right to impose sanctions on people or organisations whose actions are contrary to the provisions of Directives, such as those defined in Article 17 of Directive 2000/78 and Article 15 of Directive 2000/43, although the decisions of the Equal Opportunities Ombudsman can be binding. Moreover, when the system for investigating complaints based on any ground of discrimination was created, the Office of the Equal Opportunities Ombudsman obtained a solid standing in society. The breach of anti-discrimination law by a private or public institution or individual is considered to be very harmful to their reputation.

The main Law regulating the various fields of everyday life has been already adapted in line with the new level of equality of persons provided by Directives 2000/78 and 2000/43. However, there are still some provisions of laws, regulations and rules contrary to the principle of equality still in force. For example, religious communities that do not meet the registration criteria are still disadvantaged in that they cannot register as legal persons. The Law on Religious Communities and Associations¹⁰⁶ makes a distinction between traditional and non-traditional religious communities. On the basis of historical and cultural criteria, the State recognises nine traditional religions. Institutions responsible for the implementation of Directives 2000/78 and 2000/43 work in the field of discriminatory legislation alongside non-governmental organisations and put forward proposals for amendments to discriminatory laws.

¹⁰⁶ Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas. Official Publication Valstybės žinios, 1995, No. 89-1985

9. OVERVIEW

Since the new Law on Equal Treatment has been in force, tasks listed in Article 13 of the Racial Equality Directive have been fulfilled by, namely: providing independent assistance to victims of discrimination in pursuing their complaints of discrimination; conducting independent surveys concerning discrimination; and publishing independent reports and making recommendations on any issue relating to such discrimination, in both the public and the private sectors.

During 2005 many important legal acts partially concerning the prohibitions of discrimination in Lithuania were passed. In connection with the rights of national minorities, the draft strategy for the development of national (ethnic) relationships policy¹⁰⁷ should be mentioned. The main goals of this strategy are to create a harmonious environment for the material and spiritual welfare of national (ethnic) minorities. The Shortened Strategic Plan of Activities of the Department for National Minorities and Lithuanians Living Abroad (validated by the government on 24 January 2005¹⁰⁸) includes measures of support to encourage the integration of national minorities into Lithuanian society. Some specific measures are connected with the fight against national (ethnic) discrimination.

In the field of the professional integration of the Roma, a few developments should be also mentioned. The Human Rights Monitoring Institute with the support of the Embassy of the Netherlands conducted a review on the status of the Roma¹⁰⁹. The results of the survey showed that their status as regards employment and work is unsatisfactory. Negative stereotypes of the Roma block their professional integration. According to the Shortened Strategic Plan of Activities of the Department of National Minorities and Lithuanians Living Abroad, specific measures for supporting the integration of the Roma into Lithuanian society will be implemented. At municipality level, Vilnius City Municipality formulated a programme on the development of the Roma community in Vilnius and territories situated next to the Tabor¹¹⁰. The main goals of this document are to prevent the use and distribution of drugs, and to reduce the segregation of the Roma.

On 15 April 2005 the representatives of journalists' and publishers' organisations validated a new edition of the Lithuanian Journalists' and Publishers' Code of Ethics¹¹¹. Article 54 of the Code declares the prohibition for the journalist or publisher to mock a person's surname, race, nationality, ethnicity, his religious beliefs, age, sex, sexual orientation, disability or physical defect even if that person is delinquent. It is also prohibited to humiliate a person because of the mentioned features.

When examining non-discrimination on the ground of gender, it should be noted that the Public Programme on the Equal Opportunities of Men and Women for the years 2005-2009 was confirmed by the Prime Minister and the Minister for Social Security and Labour¹¹².

107 Tautinių (etninių) santykių politikos plėtros iki 2015 metų strategijos projektas, 2005.

108 Tautinių mažumų ir išeivijos departamento prie Lietuvos Respublikos Vyriausybės sutrumpintas veiklos planas, www.tmid.lt

109 Romų diskriminacija užimtumo srityje, Žmogaus teisių stebėjimo institutas, 2005.

110 Vilniaus romų bendruomenės ir šalia taboro esančių teritorijų priežiūros ir saugumo užtikrinimo bei romų segregacijos mažinimo programa, Vilnius City Municipality, 2005.

111 Lietuvos žurnalistų ir leidėjų etikos kodeksas, <http://www3.lrs.lt/docs2/FDQOUEDEY.PDF>

112 Vyriausybės nutarimas Nr. 1042 Dėl Valstybinės moterų ir vyrų lygių galimybių 2005-2009 metų programos patvirtinimo“. Official Publication Valstybės žinios, 2005, No. 116-4202

10. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

The Ministry of Social Security and Labour and the Office of the Equal Opportunities Ombudsman are responsible for dealing with issues regarding anti-discrimination on the grounds covered by this report.

Annex

- 1. Table of key national anti-discrimination legislation**
- 2. Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Lithuania

Date: December 2006

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list not more than 10 anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the WebPages address.	Please give month / year			e.g. public employment, private employment, access to goods or services	e.g. prohibition of direct and indirect discrimination or creation of a specialised body
Constitution of Republic of Lithuania http://www3.lrs.lt/DPaieska.html	November 1992	Sex, race, nationality, language, origin, convictions, opinions	Civil/Administrative/Criminal Law	Securing human rights in all spheres of life	Prohibition of unequal treatment and guarantee of fundamental human rights
Law on Equal Opportunities for Women and Men http://www3.lrs.lt/DPaieska.html	March 1999	Gender, age	Administrative law	Public employment, private employment, access to goods or services	Prohibition of direct and indirect discrimination and creation of a specialised body
Law on Equal Treatment http://www3.lrs.lt/DPaieska.html	January 2005	Age, sexual orientation, disability, ethnic origin,	Administrative law	Public employment, private employment,	Prohibition of direct and indirect discrimination

		religious belief		access to goods or services	
Employment Code http://www3.lrs.lt/DPaieska.html	June 2002	Gender, sexual orientation, race, nationality, language, ethnic origin, citizenship, social status, religion, marital status, age, convictions or opinions, membership of political parties or other organisations	Civil law	Employment	Regulation of labour relations connected with the exercise and protection of labour rights and performance of duties
Law on National Minorities http://www3.lrs.lt/DPaieska.html	January 1991	Nationality, ethnic origin	Administrative law	Public and private employment, culture, education, etc.	Prohibition of discrimination on the ground of nationality or ethnic origin
Law on the Social Integration of Disabled http://www3.lrs.lt/DPaieska.html	January 1991	Disability	Administrative law	Public and private employment, culture, education, etc.	Prohibition of discrimination on the ground of disability
Law on Religious Communities and Associations http://www3.lrs.lt/DPaieska.html	October 1995	Religion and beliefs	Administrative law	Public and private employment, culture, education, etc.	Prohibition of discrimination on the ground of religion or beliefs

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ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Lithuania

Date: 08-01-07

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)		yes	No derogations	Accepted	
Protocol 12, ECHR	no	no	No derogations		
Revised European Social Charter		yes	No derogations	Ratified collective complaint protocol?	
International Covenant on Civil and Political Rights		yes	No derogations	Accepted	
Framework Convention for the Protection of National Minorities		yes	No derogations		
International Convention on Economic, Social and Cultural Rights		yes	No derogations	Accepted	
Convention on the Elimination of All Forms of Racial Discrimination		yes	No derogations	Accepted	
Convention on the Elimination of Discrimination Against Women		yes	No derogations	Accepted	
ILO Convention No. 111 on Discrimination		yes	No derogations	Accepted	
Convention on the Rights of the Child		yes	No derogations	Accepted	

According to the Article 138 of the Constitution all ratified international treaties are part of national law system. The conformity of international treaty with the Constitution is considered by the Constitutional Court.