



REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2011

LITHUANIA

GEDIMINAS ANDRIUKAITIS

State of affairs up to 1st January 2012

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the website of the European network of legal experts in the non-discrimination field:
<http://www.non-discrimination.net/law/national-legislation/country-reports-measures-combat-discrimination>

This report has been drafted as part of a study into measures to combat discrimination in the EU Member States, funded by the European Community Programme for Employment and Social Solidarity – PROGRESS (2007-2013). The views expressed in this report do not necessarily reflect the views or the official position of the European Commission.



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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 among different levels of government.

The Republic of Lithuania is a unitary state. The *Lietuvos Respublikos Konstitucija* [Constitution of the Republic of Lithuania]¹ was adopted by referendum on 25 October 1992 and entered into force on 2 November 1992. Article 29 of the Constitution declares that ‘All persons shall be equal before the law, the courts, and other State institutions and officials. A person’s rights may not be restricted, nor may he be granted any privileges, on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views’. Although disability, age and sexual orientation are not explicitly mentioned in the text of the Constitution, this does not imply that rights may be restricted on the basis of disability, age or sexual orientation.

Lithuania is party to a number of international agreements which guarantee protection against discrimination on these grounds. Article 138(3) of the Constitution stipulates that international agreements which have been ratified by the *Seimas* [Parliament] form a constituent part of the legal system. The *Tarptautinių sutarčių įstatymas* [Law on International Agreements]² 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 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.

The Republic of Lithuania has signed, or has signed and ratified, a number of 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 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the Council of Europe Framework Convention for the Protection of National Minorities.

A major international instrument relevant to the field of employment is the 1996 European Social Charter (revised), ratified by the Lithuanian Parliament with some

¹ *Lietuvos Respublikos Konstitucija*. Official Gazette/Valstybės žinios, 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

² *Lietuvos Respublikos Tarptautinių sutarčių įstatymas* [Law on International Agreements]. Official Gazette/Valstybės žinios, 1999, No. 60-1948.



reservations in 2001.³ 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. On 27th of May, 2010 the Parliament ratified both the Convention on the Rights of Persons with Disabilities and its Optional Protocol without reservations.

The Constitution stipulates that constitutional review in Lithuania is exercised by the *Konstitucinis teismas* [Constitutional Court]. The Law on the Constitutional Court passed on 3 February 1993 regulates the activities of the Constitutional Court.⁴ 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 Parliament are in conformity with the Constitution and whether the acts adopted by the President or the Government of Lithuania 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) groups consisting of at least one fifth of all *Seimas* members and the courts for cases concerning an act of the President of Lithuania; and (3) groups consisting of at least one fifth of all *Seimas* members, the courts, and the President of Lithuania for cases concerning governmental acts. Lithuania is the only Baltic state where individuals do not yet enjoy the right to lodge petitions with the Constitutional Court. The Government planned to establish this right in 2009 by amending the relevant legislation as well as allocating the necessary financial resources. However, these plans have been postponed due to the economic downturn.

Equal opportunities and discrimination began to be addressed in 1998 when the *Moterų ir vyrų lygių galimybių įstatymas* [Law on Equal Opportunities of Women and Men]⁵ was passed. The law not only established the concept of discrimination on the ground of sex, it also created the Office of the Equal Opportunities Ombudsperson as well as establishing the procedural rules for the investigation of complaints to the Ombudsperson. The Ombudsperson's Office began functioning in 1999.

Additional equality grounds (sexual orientation, age, disability, race, ethnicity, origin, religion, beliefs or convictions) have been gradually added to the Ombudsman's competence since the entry into force of the *Lietuvos Respublikos Lygių galimybių*

³ *Lietuvos Respublikos įstatymas Dėl 1996 metų Europos socialinės chartijos (pataisytos) ratifikavimo* [Law on Ratification of European Social Charter]. *Official Gazette/Valstybės žinios*, 2001, No. 49-1699.

⁴ *Lietuvos Respublikos Konstitucinio Teismo įstatymas* [the Law on the Constitutional Court]. *Official Gazette/Valstybės žinios*, 1993, No. 6-120.

⁵ *Lithuania/Moterų ir vyrų lygių galimybių įstatymas*, *Official Gazette/Valstybės žinios*, 1998, No.112-3100. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=69453&p_query=&p_tr2=.



įstatymas [Law on Equal Treatment]⁶ in 2005. Thus since then, national anti-discrimination law has consisted of two major laws – the Law on Equal Opportunities, which prohibits discrimination on the ground of gender as well as establishing the functions, competence and procedural rules of the Equal Opportunities Ombudsperson, and the Law on Equal Treatment, which added additional equality grounds and additional concepts as well as further expanding the competence of the Ombudsperson on Equal Opportunities.⁷

However, the most important legal enactment is the Law on Equal Treatment, since it was designed particularly with the purpose of transposing the requirements of the EU Anti-discrimination Directives 2000/43/EC (Racial Equality Directive) and 2000/78/EC (Employment Equality Directive) into national legislation. The law protects persons from discrimination on the grounds of gender, sexual orientation, age, disability, race, ethnicity, origin, religion, beliefs or convictions, language and social status in the fields of employment, access to goods and services, and education. Although the law does not explicitly mention housing, social advantages and social protection, it does not exclude these fields either. It can be interpreted as encompassing these fields, but there has been no case law on these issues yet.

0.2 Overview/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.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

⁶ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official Gazette/Valstybės žinios, 2003, No.114-5115. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.

⁷ The existing system of two laws on different equality grounds has been criticised by legal experts. A discussion is taking place about whether the laws should be combined into a single law on equal opportunities.



Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

The Law on Equal Treatment was designed to ensure the implementation of the EU Anti-discrimination Directives in national legislation. The law was passed on 18 November 2003 and came into force on 1 January 2005. Initially it covered age, sexual orientation, disability, race, ethnicity, religion and beliefs. It was criticised by NGOs for being not in line with the Directives in various respects. The latest amendments (particularly of June 2008) have formally eliminated significant weaknesses in implementation and also expanded the list of protected grounds, adding social status, language and convictions. The current Law in most cases repeats the wording of the Directives, without going into details of particular provisions. However, in the opinion of the author of this report, the transposition is still insufficient in the following respects:

- The existing Law on Equal Treatment does not explicitly state that social protection, social security and healthcare fall under its scope. The generally defined duty to implement equal opportunities, as outlined in the Law on Equal Treatment, can be interpreted in such a way that it must also be applied in the fields of social security and healthcare, even though these fields are not mentioned among those where the principle of non-discrimination is applied. Although this particular issue has not been addressed in court yet, recent case law has proved that generally defined provisions can be difficult to enforce in practice.
- The Equal Opportunities Ombudsperson – the national equality body – covers all grounds of discrimination listed in Directives 2000/43/EC and 2000/78/EC and other grounds of discrimination. However, providing independent assistance to victims of discrimination in pursuing their complaints of discrimination does not fall within the competence of the Ombudsperson.
- The right for associations to engage in legal proceedings was only recently included in the Law on Equal Treatment. However, it cannot be considered effective in practice due to gaps in other procedural legislation. In addition, the latest available case law on the matter has interpreted the right of associations to apply to the Equal Opportunities Ombudsperson narrowly. In spite of the fact that in the past associations applied to the Ombudsperson in cases where their rights were not directly affected by particular actions or omissions, a court ruled that only persons whose rights have been directly affected by particular decisions have a right to appeal.
- The duty to provide reasonable accommodation is present only in the Law on Equal Treatment. However, the wording lacks precision and is somewhat 'softer' than that of the Directive. In spite of the fact, that Lithuania has also ratified United Nations Convention on the Rights of Persons with Disabilities, failure to provide reasonable accommodation could not be considered discrimination.
- In relation to laws on self-employment, it is not precisely clear from the Law on Equal Treatment whether the Directives have been adequately transposed. The



- laws on particular professions should be expanded to include relevant anti-discrimination provisions. Case law on self-employment remains non-existent.
- The system of sanctions must be significantly strengthened to make them effective, proportionate and dissuasive. The quasi-judicial function of the Ombudsperson does not benefit victims of discrimination.
 - The Equal Opportunities Ombudsperson, when applying administrative sanctions, issues them to the executive body of a legal person (director, etc.) but not its employees. According to the Ombudsperson, the current wording of the Law on Equal Treatment does not suggest that it could be enforced against a broad spectrum of parties. Neither tenants, nor customers or employees could be held liable.
 - The Law on Equal Treatment has provided an exception concerning recruitment and employment by employers with an ethos based on religion or belief since June 2008. The first version of the Law did not contain this exception, so there is no case law or interpretation on the matter. There is also no information available about whether such practices existed before the adoption of the Directive in the country, which organisations used them and to what extent. It remains unclear which organisations can take advantage of this exception. The wording of the national provision is very broad and can be interpreted widely, for instance, in favour of discriminating against homosexuals (as was suggested during discussions in Parliament during the adoption of these provisions). Such vague provisions of national legislation are hardly compatible with the goals of the Directive.
 - According to the Ombudsperson, social security and social protection do not fall under the scope of the national anti-discrimination law while healthcare does, since the wording of the Law on Equal Treatment on goods and services is broad enough to include health services

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:

Name of the court

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

Brief summary of the key points of law and of the actual facts (no more than several sentences).

→ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives.



Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

Name of the court: *Vilniaus miesto 2-sis apylinkės teismas* [2nd District Court of Vilnius];

Date of decision: 30 June 2008

Name of the parties: S. Marcinkevič v. UAB Disona

Reference number: 2-1189-545/2008

Brief Summary: This is a landmark case where direct discrimination was established for the first time in court. This case of discrimination against a Roma woman was brought to court at the end of 2007. A Vilnius-based human rights advocacy NGO assisted Roma women by using situation testing to prove that discrimination did actually occur in the recruitment of women by a café. A Lithuanian woman of a similar age as the complainant was sent to the cafe a few hours after the Roma woman was told that the position was no longer vacant. The Lithuanian woman was immediately accepted. The results of the situation testing were approved by a bailiff and later used in court to successfully challenge discriminatory behaviour.

The NGO took part in the proceedings as a third party in support of the victim, but an attorney was nonetheless required, who directly represented the victim in legal proceedings. The Equal Opportunities Ombudsperson took part in the proceedings as an expert, providing its finding on the case. Eventually the court ruled in favour of the applicant establishing direct discrimination and in accordance with the Labour Code awarded her compensation of 2864.98 litas (approximately 830 euros). So far this remains the only case of compensation for a victim of discrimination and a financial penalty for the perpetrator.

No other cases of discrimination against the Roma have been brought to court in the last year. Lack of education and lack of awareness may hinder Lithuanian Roma from seeking justice in the courts. In addition, in recent years the most active members of community have left the country to find employment abroad, so the small Roma community has become even smaller.

Name of the court: *Vilniaus apygardos administracinis teismas* [Vilnius District Administrative Court]

Date of decision: 13 May 2009

Name of the parties: *Lietuvos Gėjų Lyga* [Lithuanian Gay League] v. *Lygių galimybių kontrolieriaus tarnyba* [Equal Opportunities Ombudsperson].

Reference number: Administrative case No. I-876-437/2009 (first instance). Appealed to the *Lietuvos vyriausiosios administracinės teisėms* [Supreme Administrative Court of Lithuania] (decision pending).

Brief summary: In August 2008, during an LGBT event 'For Diversity. Against Discrimination' a campaign truck was not given permission to stop at the central square of the city and organise an event by the former mayor of Vilnius, who publicly stated that while he remained in office 'there will be no advertisements of sexual minorities'. Vilnius Municipal Council had amended the Regulations on Waste



Disposal and Cleanliness a month in advance by adding broad provisions to prevent any event that might be opposed by a part of society. An LGBT organisation (LGL) filed a complaint to the Equal Opportunities Ombudsperson, who refused to investigate the matter. The organisation challenged its decision in an administrative court.

The court approved the reasoning of the Ombudsperson that public statements of officials do not fall under the scope of the Law on Equal Treatment, without going into detail on the concept of instructions to discriminate.

Although the applicant was asking the Ombudsperson to evaluate the actions of the municipality in the light of Article 5 of the Law on Equal Treatment (generally defined duty to implement equal opportunities) and was not questioning the legality of the decision not to issue a permit for the event, the court approved the reasoning of the Ombudsperson that the LGL did not have standing to file a complaint since the municipality's decision not to issue a permission did not affect the rights of the organisation directly.

The decision of the court was upheld in the final instance by the *Lietuvos vyriausiosios administracinės teismas* [Supreme Administrative Court of Lithuania] on 19 April, 2010.

Name of the court: *Lietuvos vyriausiosios administracinės teismas* [Supreme Administrative Court of Lithuania]

Date of decision: 19 April 2010

Name of the parties: *Lietuvos Gėjų Lyga* [Lithuanian Gay League] v. *Lygių galimybių kontrolieriaus tarnyba* [Equal Opportunities Ombudsperson].

Reference number: Administrative case No. A⁶⁶²-665/2010

Brief summary: The Court of appeal upheld the decision of *Vilniaus apygardos administracinės teismas* [Vilnius District Administrative Court] of May 13th, 2009 (see below).

The Supreme Administrative Court stated, that the mayor of the city cannot be considered as 'municipal institution or agency' within the meaning of the Law on Equal Treatment, thus mayors' oral statements do not fall under the scope of the national anti-discrimination law. In addition, the Court also upheld the reasoning of lower court, that only persons, whose right were directly affected by particular actions or inactions of state or municipal institutions or agencies have a right to complain to Equal Opportunities Ombudsperson.

The decisions of Supreme Administrative Court are final and not subject to appeal. The Supreme Administrative Court is responsible for developing uniform practice of administrative courts in interpretation and application of statutes and other legal acts.



Name of the court *Vilniaus antrasis apylinkės teismas* [2nd District court of Vilnius]

Date of decision 31 March 2011

Name of the parties Vilnius College v. A.Z.

Reference number: Civil case No.2-101-294/2011

Brief summary: The victim in case of alleged discrimination on the grounds of sexual orientation and social status receives non-pecuniary damages.

In June, 2009, Vilnius College held a competition for a vacant position of a sociology lecturer. The applicant (A.Z.) claimed that during the selection procedure he was discriminated on the grounds of sexual orientation and social status by the selection commission of Vilnius College. The applicant claimed, that the selection commission did not take into account his qualification, which was higher than another candidates'. In addition, during the interview the applicant claimed to have experienced irrelevant comments about his personality (he does not hide his homosexual orientation) and his field of research (the applicant had a list of publications on homophobia).

The court dismissed the claim with regard to discrimination on the ground of sexual orientation, because, according to the court, there was no sufficient evidence that commission members were aware of the applicant's sexual orientation. Belonging to particular group does not *per se* constitute discrimination, according to the court. However, the court stated, that the applicant was discriminated on the ground of social status, because another candidate, who participated in the competition, had not only been employed by the College at the moment of the competition, but as a member of the College's Sociology and Law Department also took part in the first stage of the selection procedure (recommendation of candidates).

The court ruled that A.Z. experienced both direct and indirect discrimination on the ground of social status and ordered Vilnius College to compensate the applicant 26 940 Lt (7802 EUR) for suffered non-pecuniary damages, as well as ordered the College to hold another competition for the same post, where all candidates, including A.Z., could participate on equal basis.

It is important to notice that the court awarded the applicant a relatively large sum of non-pecuniary damages, not common in situations, where physical harm was not caused to the victim. In addition, the amount of non-pecuniary damages was calculated not by evaluating the actual harm, suffered by the applicant, but more by linking it to the loss of income (yearly salary of the position, the applicant was applying for). It must be mentioned, that in many respects the ruling lacked consistency and was later overruled by the court of appeal (see below).

Name of the court: *Vilniaus apygardos teismas* [Vilnius Regional court]

Date of decision: 11 November 2011

Name of the parties: Vilnius College v. A.Z.

Reference number: Civil case No. 2A-2140-464/2011



Brief summary: Court of appeal overrules the decision of 2nd District court of Vilnius or March 31, 2011 in a case of alleged discrimination on the grounds of sexual orientation and social status.

Vilnius Regional Court overruled previously mentioned decision of 2nd District court of Vilnius in case of A.Z. v. Vilnius College. The court claimed that the court of first instance misapplied the law and made mistakes in evaluating factual circumstances. The court once again highlighted, that belonging to particular group does not *per se* constitute discrimination. There was also no evidence, that the applicant was discriminated on the ground of social status.

It is important, though, that the court of appeal confirmed that the rule of the shift of the burden of prove should be applied in discrimination cases. Another important finding of this ruling concerned the Equal Opportunities Ombudsperson, which was an institution, who issues a finding in a case in support of the applicant A.Z. The court of appeal stated, that findings of Equal Opportunities Ombudsperson do not have a higher probative value and can be challenged by other evidence.

Name of the court: *Lietuvos vyriausiosios administracinės teismas* [Supreme Administrative Court of Lithuania]

Date of decision: 2 November 2011

Name of the parties: Normative administrative case concerning the inquiry of Vilnius District Administrative Court.

Reference number: Administrative Case no. I-662-11/2011

Brief summary: The order of the Ministry of the Interior, which set physical standard (height requirement) for applicants, willing to enter service of Interior system, was declared unconstitutional.

Vilnius District Administrative Court was hearing a case where applicant challenged the validity of the order of the Ministry of the Interior, which states, that men under 160 cm of height and women under 155 cm of height are not suitable to apply to military schools or other schooling institutions of the interior systems as well as are not suitable to serve in any institutions of the interior system. The applicant applied to a post of a psychologist at the Šiauliai interrogation isolator and was denied due to her height (she was less than 155 cm height). Vilnius District Administrative Court inquired Supreme Administrative Court of Lithuania whether such order of the Ministry is in conformity with Article 29 of the Constitution (general equality clause) and Article 5 of the Law on Equal Treatment (general duty of state and municipal institutions to ensure equality of persons).

In its ruling of 2nd November, 2011, Supreme Administrative Court of Lithuania stated, that the order of the Ministry of Interior contradicted the Constitutional principle of equality of persons. According to the court, it is legitimate to set particular physical standards to particular professions of the Interior system, however, such regulation must be proportionate and justified. The set standard of height (160 cm for men and 155 cm for women), applied to each person, not taking into account the



variety of available positions, as well as purely administrative functions, of the Interior, is not proportionate and contradicted both Constitutional equality clause (Article 29) as well as Article 33 (the right to enter on equal terms in the State service of the Republic of Lithuania). Since the order was declared unconstitutional, it was not discusses whether it also contradicted the Law on Equal Treatment. The concept of indirect discrimination was not addressed either.

During reporting period no other case-law, concerning the scope of the anti-discrimination directives and relevant national legislation can be identified (including cases concerning Roma).



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?*

The principle of equality of persons is embodied in Chapter 2 of the *Lietuvos Respublikos Konstitucija* [Constitution of the Republic of Lithuania]⁸ under the heading 'The Individual and the State'. Article 29 of the Constitution states that 'All persons shall be equal before the law, the courts, and other State institutions and officials. A person's rights may not be restricted, nor may he be granted any privileges, on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views'.⁹ The wording of the Article thus covers religion as well as political views; however, it does not explicitly mention age or sexual orientation.

Other constitutional clauses relating to equality and non-discrimination are the following: Article 25 deals with freedom of expression and prohibits the instigation of national, racial, religious or social hatred, violence or discrimination or the dissemination of slander or misinformation. Article 26 proclaims freedom of thought, conscience and religion.

Constitutional provisions regarding the principle of non-discrimination have been commented upon in a ruling by the Constitutional Court which, under Article 72 of the Law on the Constitutional Court,¹⁰ 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*, with Part 4 of Article 36 of the Republic of Lithuania's Law on Elections to Local Government and with the Constitution of the Republic of Lithuania',¹¹ the Constitutional Court stated:

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 officials.'

⁸ The Constitution was adopted by referendum on 25 October 1992 and entered into force on 2 November 1992.

⁹ *Lietuvos Respublikos Konstitucija*. Official Gazette/*Valstybės žinios*, 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

¹⁰ *Lietuvos Respublikos Konstitucinio Teismo įstatymas* [Law on the Constitutional Court]. Official Gazette/*Valstybės žinios*, 1993, No. 6-120.

¹¹ *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 Gazette/*Valstybės žinios*, 1998, No. 100-2791.



A person's rights may not be restricted, nor may he be granted any privileges, on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.'

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 a granting of certain privileges according to his or her sex, race, nationality, language, origin, social status, religion, convictions or views.'

The material scope of constitutional provisions thus differs from that of the Directives. The Constitution does not explicitly mention age, disability or sexual orientation, but includes nationality, language, social status, convictions or beliefs. However, as the Constitutional Court has stated in many of its rulings the Constitution is an integral enactment which cannot be interpreted literally. Thus although there is a lack of constitutional jurisprudence interpreting the principle of equality, it cannot be supposed that the aforementioned grounds are not covered by the Constitution. It must be added that the Court has scarcely interpreted the constitutional grounds of non-discrimination. For example, the author of this report knows of no case law that elaborates on 'convictions'. However, in the opinion of the author of this report as well as of some academics, this should refer to a person's political views.

b) Are constitutional anti-discrimination provisions directly applicable?

The *Lietuvos Respublikos Konstitucinis Teismas* [Constitutional Court of the Republic of Lithuania] has stated on many occasions that constitutional provisions are directly applicable and each individual may defend his or her rights on the basis of the Constitution.¹² Any person whose constitutional rights or freedoms have been violated has the right to appeal to a court. Thus not only anti-discrimination provisions but the entire Constitution is directly applicable. Nevertheless, cases where complainants base their demands directly and solely on the relevant provisions of the Constitution are rare in practice.

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

The constitutional equality clause is embodied in the chapter 'The individual and the State'. The jurisprudence of the Constitutional Court on Article 29 of the Constitution is rather limited.

¹² 'The Constitution shall be an integral and directly applicable act. Anyone may defend his rights by invoking the Constitution' (Article 6 of the Constitution).



It has always been interpreted as applying to the relationship between the individual and the State and never as governing the relationship between individuals. It is hence doubtful if it could be enforced against private persons.



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.

The general principle of equality of persons embodied in the Constitution is repeated in a number of laws, for example the *Darbo Kodeksas* [Labour Code] and the *Civilinis kodeksas* [Civil Code]. Some laws only state the principle of equality as such, while others provide a wide-ranging list of non-discrimination grounds. Article 2 of the *Darbo kodeksas* [Labour Code]¹³ lists the following grounds of equality of persons involved in employment relationships: gender, sexual orientation, race, ethnicity, language, origin, citizenship, social status, belief,¹⁴ marital and family status, age, views and convictions, membership of political parties and non-governmental organisations, and any other characteristics that are not connected to work-related characteristics.

Article 169 of the *Baudžiamasis Kodeksas* [Criminal Code] prohibits severe discriminatory behaviour on the basis of various grounds: 'A person who has committed acts aimed at a certain group or members thereof on account of their ethnic background, race, sex, sexual orientation, origin or religion, social status, views or convictions, 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'.¹⁵

In addition, Article 170 of the Criminal Code prohibits incitement of discrimination against certain groups of residents: 'A person who, by making public statements orally, in writing or by using the public media, ridicules, expresses contempt for, urges hatred towards or encourages discrimination against a group of residents or against a specific person, on account of his or her sex, sexual orientation, race, nationality, language, ethnicity, social status, faith, religion or beliefs, shall be punished with (a) a fine, (b) detention or (c) imprisonment for up to 3 years'.¹⁶

¹³ Lithuania/*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas*. *Darbo Kodeksas*. Official Gazette Valstybės žinios, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264.

¹⁴ The term 'belief' should be understood as covering religion as such.

¹⁵ Lithuania/*Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas*. *Baudžiamasis Kodeksas*. Official Gazette Valstybės žinios, 2000, Nr. 89-2741. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141.

¹⁶ Lithuania/*Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas*. *Baudžiamasis Kodeksas*. Official Gazette Valstybės žinios, 2000, Nr. 89-2741. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141.



Until recently the concept of hate crimes was not taken into account by the national legal system. However, in June 2009 amendments to the Criminal Code came into force, expanding the list of aggravating circumstances of crime by including motivation based on xenophobia or hatred towards persons of a particular group (on various grounds).¹⁷ Although the Criminal Code does not provide a definition of hate crimes, the General Prosecution Service has issued recommendations regarding pre-trial investigations of such crimes, considering all crimes that are motivated by hate towards persons of a particular group as hate crimes (in addition to Articles 169 and 170 of the Criminal Code previously mentioned).¹⁸ The concept of hate crimes has thus been introduced into national law.

The *Visuomenės informavimo pakeitimo įstatymas* [Law on the Provision of Information to the Public] prohibits the publishing of information which ‘instigates war or hatred, ridicule, or scorn, or instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, sexual orientation, race, nationality, language, origins, social status, religion, beliefs or convictions’ (Article 19).¹⁹

However, the most important legal enactment on discrimination implementing the EU anti-discrimination legislation is the *Lietuvos Respublikos Lygių galimybių įstatymas* [Law on Equal Treatment].²⁰

The law came into force on 1 January 2005 and was designed particularly to ensure the implementation of the EU Antidiscrimination Directives in national legislation. Lithuania’s deadline for implementing both EU Anti-discrimination Directives passed in 2005. The law has been criticised since its adoption by human rights NGOs for not being in line with the requirements of EU law. The latest amendments (particularly those of June 2008) eliminated weaknesses in transposition to a significant degree.²¹

In addition, the latest amendments also added language, social status and convictions as additional grounds of protection. The rationale behind this was to repeat these grounds, which are explicitly mentioned in the Constitution.

¹⁷ Lithuania / *Lietuvos Respublikos Baudžiamojo kodekso 60, 129, 135 ir 138 straipsnių papildymo ĮSTATYMAS*, 2009 m. birželio 16 d. Nr. XI-303, Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=347281.

¹⁸ Lithuania / *Generalinės prokuratūros Metodinės rekomendacijos dėl nusikaltimų veikų, padarytų rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumų*, 2009-12-23 Nr.12.14-40. Available in Lithuanian at:

<http://www.prokuraturos.lt/nbspnbspNusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx>

¹⁹ Lithuania/*Lietuvos Respublikos Visuomenės informavimo pakeitimo įstatymas*. Official Gazette *Valstybės žinios*, 2006, Nr. 82-3254. Text in English available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=286382.

²⁰ Lithuania/*Lietuvos Respublikos Lygių galimybių įstatymas*. Official Gazette *Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.

²¹ *Lietuvos Respublikos Lygių galimybių įstatymas*. Official Gazette *Valstybės žinios*, 2003, No.114-5115.http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.



From June 2008 the Law on Equal Treatment has hence covered the following grounds: gender, sexual orientation, age, disability, race, ethnicity, origin, religion, beliefs or convictions, language and social status. In its latest reports the Equal Opportunity Ombudsperson recommends further expansion of the list of protected grounds to include family status and place of residence (by expanding the definition of “social status”, provided in the Law on Equal Treatment).²²

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

The national law on discrimination does not provide definitions of racial or ethnic origin, religion or belief, age, disability and sexual orientation. The Law on Equal Treatment does not provide definitions of the grounds of discrimination with the exception of social status alone, which is described as: ‘the educational background and level of qualification obtained by a natural person, as well as his or her ownership of property, income, dependence on state assistance as described by other laws as well as other factors relating to a person’s financial (economic) situation’. The Law on Equal Treatment gives definitions only of equal opportunities, the violation of equal opportunities, direct and indirect discrimination and harassment.

Definitions of racial or ethnic origin are not set out in any source of law, either civil or criminal. The low level of case law in this field leaves much room for interpretation. No information on attempts to define racial or ethnic origin during parliamentary discussions is available.

The right to freedom of religion is described in the *Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas* [Law on Religious Communities and Associations].²³ However, this law also does not provide definitions of religion, beliefs or convictions, which leaves room for misinterpretation. In practice these grounds of discrimination are often confused. Unfortunately, such gaps in the definition of equality grounds and other non-discrimination concepts remain not only in laws regulating discrimination issues, but also in other national laws.

²² The Equal Opportunities Ombudsperson annual report for 2011. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>.

²³ Lithuania/*Religinių bendruomenių ir bendrijų įstatymas* [Law on Religious Communities and Associations]. *Official Gazette/Valstybės žinios*, 1995, No. 89-1985. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=289917.



The Labour Code only defines age as a protected ground in employment relationship. 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 s/he reaches the age of 16 years. Exceptions may be established by this Code and other labour laws.'

- 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' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

National anti-discrimination law does not contain definition of "disability". The only available legal definition of disability is provided in *Neįgalųjų socialinės integracijos įstatymas* [the Law on the Social Integration of the Disabled]:²⁴ 'Disability is a long-term worsening reduction of the state of health, diminution of participation in public life and possibilities for activity, resulting from disorder of persons bodily functions and/or detrimental environmental factors'. The definition does not explicitly mention mental or psychological impairments, although in practice these are adequately addressed. Although mentioning environmental factors adds an element of social model of disability, this is not elaborated upon in more detail either in the law, or in other legal enactments. The definition places emphasis on a person's state of health (notwithstanding the fact whether it is stable or changing) that limits a person's activity as well as his or her ability to fully participate in public life. Such definition goes beyond the definition given by the European Court of Justice in case C-13/05, *Chacón Navas*, since the wording is broader, than concerning professional life only.

In addition to this, the Law on Social Integration of the Disabled also provides definition of the 'disabled person', stating that it is 'a person, who according to this law has been set a level of disability or a level of 55 percent (or less) of working efficiency'. Thus in order for a person to be considered disabled, this should be officially recognised by a competent institution.

However, such recognition leads to allocating particular aid and social benefits to disabled person, but it does not prevent the Equal Opportunities Ombudsperson or courts from using a wider interpretation of disability, when enforcing the Law on Equal Treatment, because the Law on Equal Treatment does not provide exact definition of disability. In practice, the Equal Opportunities Ombudsperson interprets disability wider and does not limit itself with provisions of the Law on the Social Integration of the Disabled.

²⁴ Lithuania/Lietuvos Respublikos *Neįgalųjų socialinės integracijos įstatymas*, Official Gazette *Valstybės žinios*, 2004, Nr. 83-2983. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=373285.



No other legislation defining the aforementioned grounds of non-discrimination can be identified at national level. Recital 17 of Directive 2000/78/EC is not reflected in the national legislation against discrimination.

- 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)?*

Age is not defined in the Law on Equal Treatment, so there is no set age limit below which anti-discrimination law would not be applicable. The Labour Code, for instance, only 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 s/he reaches the age of 16 years. Exceptions shall be established by this Code and other labour laws.' Thus when it comes to employment, the scope would be limited, because, for instance, working under the age of 14 would be illegal according to the national law.

- 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. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination. Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

There are no legal rules or plans for the adoption of rules in the field of anti-discrimination which deal with cases of multiple discrimination. No information about court cases in this area is available either.

The *Lygių galimybių kontrolierius* [Equal Opportunities Ombudsperson], however, takes into account situations of multiple discrimination. However, there are no special rules or procedures regarding the investigation of such cases by the Ombudsperson. In its reports the Ombudsperson mentions a few examples of the combination of gender and age and of religion and ethnicity.²⁵ In 2011 the Ombudsperson was addressing a higher profile multiple discrimination case, concerning the new amendments of the Law on State service, which gave preference to candidates, who have served basic military service or attended basic military training. A disability NGO complained to the Ombudsperson, stating that such law is indirectly discriminating people with disabilities as well as all persons on the ground of age. The Ombudsperson found the law to be discriminatory and in contradiction with the Law on Equal Treatment and the Constitution and recommended competent institutions to initiate appropriate amendments.²⁶

²⁵ The Equal Opportunities Ombudsperson annual reports 2005 - 2011. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>.

²⁶ During the time of the writing of this report (March, 2012), the law in question remained unchanged and valid.



First of all, a system of data collection must be established, in order to evaluate the real scale of multiple discrimination at national level. Only then additional legislation should be considered. However, since all the developments in national anti-discrimination law took place in response to requirements to implement EU laws, it is hard to believe that an initiative regarding new anti-discrimination law on multiple discrimination could come from national level.

- e) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

No multiple discrimination court cases have been heard in court. So far only one case of discrimination on the ground of ethnicity has been adjudicated.

A Roma woman successfully claimed discrimination in access to employment, but her gender did not play a role in that particular situation (she was applying to be a dishwasher, which in Lithuania is a position mostly occupied by women).²⁷

The fact that the Equal Opportunities Ombudsperson takes into consideration multiple discrimination situations does not benefit the victims of discrimination nor does it result in application of greater sanctions. The Ombudsperson does not address multiple discrimination cases systematically. It only occasionally refers to the concept in its annual reports, explaining that such situations may arise, but it has not found a case of multiple discrimination in practice.

2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

Since the latest amendments of June 2008, the definition of direct discrimination corresponds to the wording of the Directives and can be interpreted to include assumed discrimination. However, this issue has not yet been raised in practice.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

²⁷ The case is described in detail in the 'Cases' section of this report.



National law does not explicitly prohibit discrimination based on association with persons with particular characteristics. Before the amendments of 17 June 2008, the definition of direct discrimination had excluded the possibility of prohibiting associated discrimination. However, the present definition of direct discrimination corresponds to the wording of the Directives and hence can be interpreted in the light of Case C-303/06 *Coleman v Attridge Law and Steve Law*. However, no cases of discrimination by association have been investigated by the Equal Opportunities Ombudsperson or courts.

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

a) *How is direct discrimination defined in national law?*

The Law on Equal Treatment (Article 2, Para. 7) defines direct discrimination as follows:

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

The definitions in the Directives concentrate on the current, 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 as are the grounds covered: a person’s age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).*

Article 11 of the Law on Equal Treatment,²⁸ under the heading ‘Discriminatory advertisements’, explicitly states that announcements which give preference to candidates of a particular gender, age, sexual orientation, disability, racial or ethnic origin, language, social status, religion or beliefs constitute a breach of equal treatment, with the exception of situations set out by Paragraph 7 of Article 2 of this law (a general clause on genuine occupational requirements).

However, in practice this provision is limited only to published job vacancy announcements. Although there is no court case law regarding discriminatory job vacancy announcements, the Equal Opportunities Ombudsperson monitors job

²⁸ Lithuania/*Lietuvos Respublikos Lygių galimybių įstatymas*. Official Gazette/*Valstybės žinios*, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132 .



advertisements on a regular basis. Even when there is no direct complaint the Ombudsperson usually finds a 'breach of equal opportunities' if a discriminatory advertisement is found. The Ombudsperson then contacts the perpetrator and issues a recommendation to stop discriminatory practice.

According to the Ombudsperson, the recommendations are usually followed without dispute. However, a breach in such cases is not explicitly categorised as direct discrimination.

However, according to the latest case law, it seems that general discriminatory oral statements would not fall under the scope of the Law on Equal Treatment.²⁹

This provides a narrow interpretation of the Law on Equal Treatment, in spite revealing inconsistencies in the decision making of the Equal Opportunities Ombudsperson. Although in previous years the Ombudsperson has investigated oral statements by public servants (particularly on the ground of gender) and found them to be discriminatory,³⁰ in this particular case of alleged discrimination on the ground of sexual orientation,³¹ the court supported the reasoning of the Ombudsperson that public oral statements do not fall under the scope of the law.

c) *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).*

The Law on Equal Treatment does not permit justification of direct discrimination generally, but provides an exhaustive list of exceptions, specifically adjusted to particular grounds. According to the Law, the following are not considered direct discrimination:

- 1) Restrictions on grounds of age, set by law, when such a practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- 2) Requirements, set by law, to know the State language.
- 3) Prohibition from taking part in political activities, as set out by law.
- 4) Different rights applied on the basis of citizenship, as set out by law.
- 5) Special measures applied in the spheres of healthcare, safety at work, employment and the labour market when striving to create and apply conditions and opportunities guaranteeing and promoting integration policies in the working environment.

²⁹ The decision of the Supreme Administrative Court of Lithuania of 19 April, 2010 in case No. A⁶⁶²-665/2010 / *Vyriausiojo administracinio teismo 2010 m. balandžio 19 d. sprendimas byloje Nr. A⁶⁶²-665/2010*.

³⁰ Annual Report of the Equal Opportunities Ombudsperson 2008, available in Lithuanian at www.lygybe.lt.

³¹ The applicants claimed discrimination and instructions to discriminate (hate speech was not involved in this particular case).



- 6) Special temporary measures applied when striving to ensure equality and hinder the violation of equal treatment on the basis of gender, age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or convictions, language or social status.³²
- 7) By reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, a specific characteristic of a person may constitute a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.
- 8) When restrictions, special requirements or conditions with regards to a person's social status are regulated by law, which is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. According to Paragraph 6 of Article 2, 'social status' is defined as the status of a person based on his/her past or present education, qualifications, income or property ownership, dependence on social assistance schemes as well as any other characteristics related to the financial situation of a person.
- 9) Organisation of special sports competitions for persons with disabilities.

Thus in most cases the Law on Equal Treatment requires that exceptions regarding particular grounds must be set out by laws, objectively justified by a legitimate aim, and the means of achieving that aim must be appropriate and necessary.

- d) *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?*

There are no provisions which specify how a comparison is to be made with respect to 'less favourable treatment' in relation to age discrimination.

2.2.1 Situation Testing

- a) *Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

There are no explicit legal provisions permitting or prohibiting situation testing in national law on civil or administrative procedure. Law on Equal treatment does not specifically mention it as a possibility or set out conditions for its admissibility either.

During civil procedure, evidence is considered to be any factual data accepted by the court which can prove or disprove each party's arguments.³³ The same concept is

³² On the other hand, special measures or special temporary measures that can be used as a basis for positive action are not detailed in other laws (with the exception of disability).

³³ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official Gazette/Valstybės žinios, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205.



applied in administrative procedures. As it was proven by the case-law,³⁴ a court would accept evidence based on the use of situation testing, but it would not be treated as evidence of high probative value.

b) Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc).

So far there has been only one (pilot) case of the use of situation testing model in practice, implemented by a human rights advocacy NGO. A bailiff was approached to approve the results of the testing. Later an NGO participated in the court proceedings as a third party in support of the victim (see section d) below).

c) Is there any reluctance to use situation 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)?

The lack of case law as well as of legal certainty regarding procedural conditions and methodology might hinder use of situational testing in practice. It seems that developments in other countries have not influenced Lithuanian national law as no provisions concerning situational testing have been adopted recently or are set to be adopted.

d) Outline important case law within the national legal system on this issue.

So far there has been only one case of discrimination brought to court. The complainant successfully challenged racial discrimination with the help of situation testing.³⁵ This case concerned discrimination against a Roma woman and was brought to court at the end of 2007. A Vilnius-based human rights advocacy NGO – the Human Rights Monitoring Institute – assisted Roma women by using situation testing to prove that discrimination did actually occur in the recruitment of women by a café. A Lithuanian woman of a similar age as the complainant was sent to the café a few hours after the Roma woman was told that the position was no longer vacant. The Lithuanian woman was immediately accepted. The results of the situation testing were approved by a bailiff and later used in court to successfully challenge discriminatory behaviour.

The NGO took part in the proceedings as a third party in support of the victim, but an attorney was nonetheless required, who directly represented the victim in legal proceedings. The Equal Opportunities Ombudsperson took part in the proceedings as an expert and provided its findings in the case.

³⁴ S. Marinkevic v. UAB Disona, case no. 2-1189-545/2008, for more information please see section on case-law of this report.

³⁵ *Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-1189-545/2008, 2008 m. birželio 30 d.*



No other cases of situation testing have been exercised in practice or brought to the court, as far as it is known to the author of this report. National human rights NGOs lack resources and capacity to exercise such activity on a regular basis.

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

a) *How is indirect discrimination defined in national law?*

The definition of indirect discrimination for the grounds covered by the Racial Equality and Employment Equality Directives is provided in the Law on Equal Treatment, where indirect discrimination is defined as follows:

‘Indirect discrimination shall be taken to occur where an action or omission, legal norm or assessment criterion, apparently neutral provision or practice are formally equal, but in implementing or adopting them an actual restriction of the enjoyment of rights by or a provision of privileges, priority or advantage to persons of a certain age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or conviction, language or social status can, does or might emerge, unless this action or omission, legal norm or assessment criterion, apparently neutral provision or practice is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.’

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

The law provides a general exception test to justify indirect discrimination: treatment must be justified by a legitimate aim and the means of achieving that aim must be proportionate and necessary. It is far from clear how the test would be implemented in practice since scarce indirect discrimination case law exists. However, from existing jurisprudence of the Constitutional Court, it seems that a ‘legitimate aim’ must be ‘constitutionally justified’, which presupposes that a legitimate aim has the same value as the general principle of equality.³⁶ However, this interpretation did not particularly consider the wording of the Law on Equal Treatment.

c) *Is this compatible with the Directives?*

The definition of indirect discrimination provided in national law is sufficient to achieve the goals set out in the Directives, but its implementation in practice has not yet been established. There is no definition of indirect discrimination in other laws

³⁶ Lithuania/Lietuvos Respublikos Konstitucinis Teismo 2004 m. gruodžio 13d. nutarimas „Dėl kai kurių teisės aktų, kuriais reguliuojami valstybės tarnybos ir su ja susiję santykiai, atitikties Lietuvos Respublikos Konstitucijai”.



(the Law on Education, the Law on the Public Service or the Law on the State Defence Service, etc.). Amendments to these laws should be made in order to create a unified system of protection against discrimination.

- d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

In relation to age discrimination the law does not specify how a comparison should be made.

- e) *Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

First of all, it must be mentioned, that language is an explicitly mentioned discrimination ground, embodied in the Law on Equal Treatment. However, the Law also provides exceptions to this ground in case of direct discrimination. Whether particular language requirements, set by law, could potentially have indirect discrimination effect on the grounds of race or ethnic origin, the general justification test contained in the definition of indirect discrimination should be used by the courts or other judicial or administrative bodies in concrete cases.

Yet no cases of indirect discrimination regarding language have been adjudicated in court. However, the Equal Opportunities Ombudsperson clearly states the link between requirements to know a particular language and indirect discrimination on ethnic origin.³⁷ In the past there were a couple of such cases investigated by the Ombudsperson, concerning discriminatory job vacancy announcements that gave preference to candidates who were native speakers of a particular language (Russian). In both instances the private companies corrected the advertisements after an inquiry by the Ombudsperson.

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?*

National law neither explicitly permits, nor prohibits the use of statistical evidence. However, the Code of Civil Procedure and the Law on Administrative Procedure 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. Thus no special conditions for using statistical evidence to establish indirect discrimination are required, although due to the lack of case law in the field of discrimination it is not possible to state whether use of this evidence has been advantageous or not.

³⁷ Annual Report of the Equal Opportunities Ombudsperson of 2009, available in Lithuanian at www.lygybe.lt.



- b) *Is the use of such evidence widespread? 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 (European strategic litigation issue)?*

There is no information which could indicate reluctance to use statistical data as evidence in court. As was mentioned, the law does not explicitly prohibit its use, but the major obstacle is the general lack of reliable qualitative statistical equality data. In 2009 the Ombudsperson produced a draft national action plan for equality data collection. It identified a need for such data as well as the rather scarce statistical data sources which are currently available. The Ombudsperson recommended that the Government produce a national action plan for the collection of equality data 2011-2014.³⁸ However, since the plan eventually was not approved, no financing was allocated to implement it in practice.

In 2011 the Ombudsperson managed to make a small step forward with the support of the PROGRESS funding. It implemented a project and one of the outcomes of the project was analyses of the statistical indicators in Lithuania as well as provided some recommendations.³⁹ The research once again highlighted the fact, that currently equality data collection system in Lithuania is not established yet, the data which is managed by the Department of statistics is insufficient. The research recommended that inter-institutional plan for the collection of equality data as well as working group should be established. It also emphasised the need of proper financing as well as the need to involve both NGOs as well as scientists in developing equality data collection system in Lithuania.

- c) *Please illustrate the most important case law in this area.*

There are no court cases concerning the use of statistics in indirect discrimination cases yet.

- d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

There are no legal provisions permitting or prohibiting the collection of data that relates to discrimination. In general, personal data collection must proceed under

³⁸ Equal Opportunities Ombudsperson, Annual Report for 2009, available in Lithuanian at www.lygybe.lt.

³⁹ Statistikos rodiklių apie lygybę ir klasifikatorių diskriminacijos apraiškoms parengimas ir vertinimas (įgyvendinta remiant PROGRESS programai (projekto nr. VS/2010/0555). Available in Lithuanian at www.lygybe.lt.



requirements of the Law on the Legal Protection of Personal Data.⁴⁰ In order to collect data legally, the consent of the person concerned is required.

Other requirements may be also necessary. For instance, in employment, the collection of data by employers in respect of specific features of employees would be legal only if the employer considers the requirement of law mentioned above.

According to the Law on the Legal Protection of Personal Data, all information concerning the specific physiological, psychological, economic, cultural or social features of a person is considered as personal data. The Law also provides a definition of 'special personal data', which is data relating to a person's race, ethnicity, political, religious, philosophical or other views, membership of trade unions, data, health and sexual life as well as information about previous criminal convictions. Such data can only be processed with a person's written consent.

The general rule is that it is forbidden to collect and process such data. However, the law explicitly provides an exception for litigation. 'Special data' can also be used for statistical purposes only when strict anonymity is ensured. There are no other provisions in the Law on the Legal Protection of Personal Data concerning use of ethnic data with the purpose of designing positive action measures.

As it was already mentioned, the lack of proper statistical data is one of the obstacles to assessing discrimination at national level. The competent institutions use statistical data to design positive action measures, but this use is not extensive and covers only a relatively small amount of data, mostly taken from public opinion surveys. These surveys are usually performed by private companies on the basis of service contracts. The competent institutions (Department of Statistics etc.) lack the capacity and financial resources to manage large scale data collection.

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.*

The definition of harassment provided in the Law on Equal Treatment is compatible with the definition outlined in the Directives (covering all five grounds of discrimination): 'Harassment shall be deemed to be undesirable conduct when, on the basis of age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or convictions, language or social status, a person seeks to violate or violates the dignity of another and seeks to create or creates an intimidating, hostile and degrading or offensive environment.'

⁴⁰ Lithuania / *Asmens duomenų teisinės apsaugos įstatymas*, Official Gazette/*Valstybės žinios*, 1996, Nr. 63-1479, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314940.



Specific forms of harassment on a number of grounds are also punishable under the Criminal Code and the Code of Administrative Violations. The Criminal Code 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 three years’.⁴¹

This particular provision of the Criminal Code has rarely been used in practice.⁴² Article 170 of the Criminal Code also prohibits incitement or encouragement to discriminate against groups of persons or against a specific person on account of various grounds.⁴³ Most investigations into racially motivated crimes are started on the basis of this article.

b) Is harassment prohibited as a form of discrimination?

The Law on Equal Treatment explicitly states that harassment is a form of discrimination.

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

There are no other sources on the concept of harassment. Codes of practice are not widespread in Lithuania. Some governmental agencies (particularly those dealing with implementation of EU funded programs) as well as larger companies do have codes of conduct in their work. However, in most cases these codes of conduct do not have detailed provisions on non-discrimination or harassment. Non-discrimination is addressed only by general provisions on equality and impartiality, embodied in these codes. In some instances sexual harassment is mentioned but not defined.

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case law) prohibit instructions to discriminate?

⁴¹ Lithuania / Lietuvos Respublikos Baudžiamojo kodekso 60, 129, 135 ir 138 straipsnių papildymo įstatymo projektas,

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=322032&p_query=&p_tr2=.

⁴² Lithuania/Lietuvos Respublikos Generalinės Prokuratūra, Nusikalstamų veikų, padaromų dėl rasinės, etninės, tautinės, religinės neapykantos, kitokios netolerancijos ir diskriminavimo, ikiteisminio tyrimo rezultatų, problematikos, tendencijų ir prevencijos priemonių apibendrinimas, 2008-12-31, Nr. 12.14-41. Available in Lithuanian at:

<http://www.prokuraturos.lt/nbspnbspnusikalstamaismoniskumui/tabid/221/Default.aspx>.

⁴³ Ibid.



If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

The Law on Equal Treatment defines discrimination as follows: 'Discrimination – direct or indirect discrimination, harassment, or an instruction to discriminate on the basis of age, sexual orientation, disability, racial or ethnic origin, religion, beliefs or convictions, language or social status'. Hence instructions to discriminate are therefore considered discrimination. However, there are no specific provisions on the liability of a legal person for instructions to discriminate (the general provisions of the Law on Equal Treatment as well as the Civil Code would apply).

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

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 people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, 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?*
Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

The duty to provide reasonable accommodation is embodied only in the Law on Equal Treatment. However, its wording lacks precision and is somewhat 'softer' than that of the Directive. Article 7 of the Law states that when applying equal treatment employers must 'take appropriate measures to provide conditions for disabled people to obtain work, to work, to pursue a career or to study, including adapting premises, provided that the employer would not be disproportionately burdened with duties as a result'.⁴⁴ The provision has never been interpreted in practice either by courts. There were a few cases investigated at Equal Opportunities Ombudsperson, regarding accessibility of public buildings (for instance, polyclinics, hospitals). In those instances the Ombudsperson simply identified that due to the lack of funds the institutions were unable to reconstruct their buildings and make them accessible for

⁴⁴ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official Gazette Valstybės žinios, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.



people with disabilities and issued recommendations to make adjustment in the near future.

Moreover, the law does not provide any criteria for assessing employers' duty or to evaluate if it might be disproportionate. Financial assistance from the state in this respect is hence not taken into account in the Law on Equal Treatment.

In addition, the Law on Equal Treatment neither defines disability nor 'reasonable accommodation'. It can be supposed that the personal scope in the context of reasonable accommodation does not differ from the general prohibition of non-discrimination on the ground of disability.

It must be mentioned, that Lithuania has ratified the UN Convention on the Rights of Persons with Disabilities.⁴⁵ According to the national law it is now an integral part of the national legal system and can be directly relied upon in Lithuanian courts. The Convention states that failure to provide reasonable accommodation is considered discrimination.

b) Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?

A specific system of additional support has been established in the field of education. The Law on Education provides possibilities for accommodating students with special needs (special educational assistance, special study aids, and social and medical care). In addition, disabled students have the right to financial support granted by the state during their studies in further education establishments and universities. However, the concept of 'disproportionate burden' is not known in this realm.

c) Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?

It is doubtful that current provisions of the Law on Equal Treatment on reasonable accommodation would let courts constitute failure to provide reasonable accommodation as discrimination. As it was mentioned, there is no case law on the matter yet. The national provision which transposes the Directive's requirement is phrased in 'softer', less explicit wording, than original provision. It can be interpreted in various ways; As experience shows, generally defined provisions tend to be interpreted narrowly by courts.

⁴⁵ The Convention is in force since September 17th, 2010.



Moreover, there is no clear mechanism provided in national law for the enforcement of such a duty in practice. Thus at this moment, failure to provide reasonable accommodation could hardly be considered discrimination.

- d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

The duty to provide reasonable accommodation is not applied in respect of any other grounds. There is no case on the matter either.

- e) *Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

The shift of the burden of proof in cases of was formally introduced into the Law on Equal Treatment in June, 2008.⁴⁶ There are no special provisions regarding the right to reasonable accommodation.

The current wording states that the shift of the burden of proof should be applied 'in courts as well as in other institutions when investigating complaints of discrimination'. Thus, in theory, if a failure to provide reasonable accommodation was interpreted as 'discrimination', the shift should be applied.

- f) *Does national law require services available to the public, 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 the Social Integration of the Disabled⁴⁷ requires the environment to be made disability-accessible. However, it does not have any provisions on sanctions or a monitoring mechanism. Thus it is doubtful if failure to comply with this legislation could be considered as discrimination. In theory, one could use the provisions of the Law on Equal Treatment, which imposes a general duty on service providers and state and municipal institutions to implement equal opportunities.

The Law on Construction⁴⁸ as well as order from the Ministry of Environment, set the standards for newly designed and built buildings and infrastructure.⁴⁹ These requirements, however, are only applied for newly built infrastructure or in case of

⁴⁶ The latest amendment took place on 17.06.2008.

⁴⁷ Lithuania/Lietuvos Respublikos Neįgalųjų socialinės integracijos įstatymas, Official Gazette/Valstybės žinios, 2004, Nr. 83-2983. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330987.

⁴⁸ Lithuania / Lietuvos Respublikos Statybos įstatymas, Official Gazette/Valstybės žinios, 1996, Nr. 32-788. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=378329.

⁴⁹ Lithuania / Lietuvos Respublikos Aplinkos ministro 2001-06-14 įsakymas Dėl STR 2.03.01:2001 "Statiniai ir teritorijos. Reikalavimai žmonių su negalia reikmėms" patvirtinimo Nr. 53-1898. Available in Lithuanian at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=139277&p_query=&p_tr2=.



major renovation. However, most of the public buildings are built during soviet times, thus they in many cases remain inaccessible (due to lack of financing the process of renovating is very slow). In 2010 the Ombudsperson investigated a complaint on the matter (a woman complained about lack of accessibility at one of Vilnius cities' clinics). The Ombudsperson indeed found, that the public building was not accessible for wheelchair users. However, it did not explicitly find discrimination but issued recommendation, suggesting, that Vilnius city municipality should allocate other premises for clinic, which should be accessible.⁵⁰

- g) *Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

The previously mentioned Law on the Social Integration of the Disabled⁵¹ sets out principles for the integration of people with disabilities that are legally binding for municipalities and state institutions as well as educational institutions and a broad spectrum of other entities. Among other general provisions, it also includes a general duty to provide accessibility in a wide range of fields (employment, goods and services, transport, housing, education, etc.). Accessibility is defined very broadly, encompassing various fields. However, the Law does not establish a monitoring mechanism and does not provide any details on how these principles should be implemented in practice. Generally speaking, due to poor economical situation, as well as the fact that significant amount of the infrastructure comes from the soviet times, authorities do not vigilantly pursue accessibility requirements. Only in case of newly built infrastructure the requirements are monitored more efficiently.

- h) *Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

There are various provisions in different laws on people with disabilities and providing them with particular rights, tax and social concessions. For instance, persons with disabilities are entitled to additional support and guarantees in the employment market under various laws as well as the Labour Code.⁵² The Law on the Support of Employment creates a system of additional support to employers employing disabled

⁵⁰ The Equal Opportunities Ombudsperson annual report 2010. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>.

⁵¹ Lithuania/Lietuvos Respublikos Neįgalųjų socialinės integracijos įstatymas, Official Gazette/Valstybės žinios, 2004, Nr. 83-2983. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330987.

⁵² Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official Gazette/Valstybės žinios, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264.



people.⁵³ Disabled people are included in the list of unemployed people who have the right to additional support, and an employer can receive special subsidies if it creates additional workplaces for disabled people.

Secondly, a specific system of additional support has been established in the field of education. The Law on Education⁵⁴ makes provision for students with special needs (special educational assistance, special study aids, social and medical care). Students with disabilities have the right to financial support granted by the state during their studies in further education establishments and universities. There are other provisions in other legislation (concerning urban planning, etc.), but they cannot be enforced through the procedures, embodied in the Law on Equal Treatment.

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 workers with disabilities?*

National legislation has already created a system for encouraging employers to employ people with disabilities. As mentioned above, disabled people are included in the list of unemployed persons who have the right to additional support. Under the rules relating to unemployed people who are entitled to additional support in the labour market, an employer may receive special subsidies if s/he creates additional workplaces for disabled people. However, it should be noted that these subsidies are still not sufficient. In addition to this, a number of provisions supporting disabled persons in employment are outlined in the Law on Support for Employment (since people with disabilities are considered one of the groups, in the need for additional support in the labour market).⁵⁵ These involve counselling, intermediation, vocational training, subsidised employment, etc.

The Law on Social Enterprises⁵⁶ creates incentives for employers to employ people with disabilities and establishes a basis for setting up social enterprises for disabled people. In order to register this type of social enterprise, it is necessary to comply with the requirement set out in the Law on Social Enterprises that no less than 50 per cent of the average annual number of employees recorded in the employee register must belong to target groups of disabled people. A social enterprise for disabled people has the same rights and duties as any other social enterprise, but it can receive additional financial support from the State to compensate for additional

⁵³ Lithuania/ *Užimtumo rėmimo įstatymas*, *Official Gazette/Valstybės žinios*, 2006, Nr. 73-2762 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=349684.

⁵⁴ Lithuania/*Lietuvos Respublikos Švietimo įstatymas*. *Official Gazette/Valstybės žinios*, 2003, Nr. 63-2853. Available in Lithuanian at : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350527.

⁵⁵ Lithuania / *Lietuvos Respublikos Užimtumo rėmimo įstatymas* *Official Gazette/Valstybės žinios*., 2009, Nr. 86-3638, Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=387493.

⁵⁶ *Socialinių įmonių įstatymo pakeitimo ir papildymo įstatymas* (Law on Social Enterprises). *Official Gazette/Valstybės žinios*, 2005, No. 85-3137.



expenses relating to employees from the target group (specific groups who are supported by the State, including people with disabilities) and lower productivity, limited efficiency, etc.

Additionally, under 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 Procurement⁵⁷ simplifies purchases from companies which employ disabled people. The latest version of the Law on Public Procurement allows organisations to specify that only social enterprises for disabled people can take part in public procurement exercises.

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?

The law does not distinguish between employment and subsidised labour. The law provides for additional guarantees for people with disabilities (for instance, hiring disabled person for work at the social enterprise it is not allowed to set a trial period). However, from the legal point of view, working in such an enterprise is considered to be equivalent to employment under national legislation. Hence anti-discrimination law should apply.

⁵⁷ *Viešųjų pirkimų įstatymas* (Law on Public Procurement). *Official Gazette/Valstybės žinios*, 2005, No.X-471.



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. 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, social status and language.

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?

The Law on Equal Treatment does not explicitly distinguish between natural and legal persons. However, the phrase 'persons' should be interpreted to encompass both legal and natural. This is supported by the findings of the Equal Opportunities Ombudsperson as well as other provisions of the Law and available case-law. For instance, the provision on the shift of the burden of proof (Article 4 of the Law on Equal Treatment) states that it should be applied while investigating complaints of discrimination lodged by natural and legal persons.

Both natural and legal persons are liable for discriminatory acts. Natural persons can have administrative and criminal responsibility. Legal persons bear administrative liability (obligation to pay a fine in the case of a violation of the Law on Equal Treatment) and criminal liability on the basis of Article 170 of the Criminal Code.

An important development concerning the right of associations to complain to the Ombudsperson has been signalled by a court's ruling in a recent case of a discriminatory public statement made by an official. Previously associations could initiate administrative proceedings with the *Lygių galimybių kontrolieriaus tarnyba* [Office of the Equal Opportunities Ombudsperson], as was done on various occasions. However, the latest available case law on the issue has provided a narrower interpretation of the Law on Equal Treatment and contradicted the practice of the Ombudsperson.



In spite of the fact that in the past associations addressed the Ombudsperson in cases where their rights were not directly affected by particular actions or omissions, the court ruled that only persons whose rights were directly affected by particular decisions have the right to appeal to the Ombudsperson.⁵⁸ According to the court's interpretation, associations can thus lodge a complaint with the Ombudsperson only when their rights have been directly violated.

On the other hand, in 2011 at least in one instance the Ombudsperson once again returned to the previous practice and investigated complaint, filed by a disability NGO regarding a law, which allegedly indirectly discriminated people with disabilities.⁵⁹ This example clearly shows inconsistencies in the application of the law by the Ombudsperson.

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?

First of all, national case law on the subject is almost non-existent. However, the scope of liability would depend on the situation and the law by which it is addressed. If discrimination is addressed via provisions of criminal law, the liability is personal – only a direct perpetrator (natural and legal person) would be liable. If it is an employment dispute, usually the employer would be held liable and an employee could be involved as third party so that damages could be later claimed from the direct perpetrator.

The Equal Opportunities Ombudsperson, when applying administrative sanctions, issues them to the executive body of a legal person (director, etc.) but not its employees. According to the Ombudsperson, the current wording of the Law on Equal Treatment does not suggest that it could be enforced against a broad spectrum of parties. Neither tenants, nor customers or employees could be held liable. In its annual report for 2009 - 2011 the Ombudsperson recommended amending the Law on Equal Treatment with provisions explicitly extending the scope of liability of persons.⁶⁰ The same would apply for actions of members of particular

⁵⁸ The decision of the Supreme Administrative Court of Lithuania of 19 April, 2010 in case No. A⁶⁶²-665/2010 / *Vyriausiojo administracinio teismo 2010 m. balandžio 19 d. sprendimas byloje Nr. A⁶⁶²-665/2010*.

⁵⁹ For more details please see section 2.1.1.d) of this report.

⁶⁰ Equal Opportunities Ombudsperson, Annual Report for 2009, available in Lithuanian at www.lygybe.lt.



associations or trade unions – according to the Ombudsperson, the current wording does not suggest, that individual members could be held liable.⁶¹

3.2 Material Scope

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 does apply to all sectors of public (including military and statutory office) and private employment. However, it is not clear regarding self-employment, which is not explicitly mentioned in the Law on Equal Treatment, and legislation on particular professions (attorneys, notaries, etc.) lacks anti-discrimination provisions. Thus it depends on how the Law on Equal Treatment is interpreted. However, so far there have been no rulings on self-employment either by the courts or by the Equal Opportunities Ombudsperson.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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 employment, the public sector is not dealt with differently from the private sector. The main provisions of national law concerning non-discrimination in the field of employment (recruitment conditions, promotion, vocational training, etc.) are established in the Law on Equal Treatment. However, these provisions should also be transposed in specialised laws on self-employment because it is not clear from the Law on Equal Treatment whether self-employment is covered.

⁶¹ Equal Opportunities Ombudsperson, Annual Report for 2010, available in Lithuanian at www.lygybe.lt.



The laws relating to specific professions, such as the Attorney Law,⁶² the Law on the Healthcare System,⁶³ the Accountancy Law,⁶⁴ the Audit Law⁶⁵ and the Dentistry Law⁶⁶ and others, do not contain non-discrimination clauses, definitions of discrimination on any regulations on protection against discrimination and lack direct prohibition of discrimination on the grounds covered by the Directives.

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

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

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.

Occupational pensions are a new phenomenon - the *Profesinių pensijų kaupimo įstatymas* [Law on the Accumulation of Occupational Pensions]⁶⁷ was introduced into the country only in June 2006. Until recently, occupational pension system has not been established in practice. In November 2011 a new and significantly improved version of the law was passed.⁶⁸ Article 23 of the law forbids differential treatment of pension scheme participants on the ground of sex. However, there are no other explicit provisions regarding equality on any other grounds as well as the application of non-discrimination law to occupational pensions.

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

⁶² Lithuania/*Lietuvos Respublikos Advokatūros įstatymas*, Official Gazette /*Valstybės žinios*, 2004, Nr. 50-1632. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319071.

⁶³ Lithuania/*Lietuvos Respublikos Sveikatos sistemos įstatymas*, Official Gazette /*Valstybės žinios*, 1994, Nr. 63-1231. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319140.

⁶⁴ Lithuania/ *Lietuvos Respublikos Būhalterinės apskaitos įstatymas*, Official Gazette /*Valstybės žinios*, 2001, Nr.99-3515. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=388940.

⁶⁵ Lithuania/ *Lietuvos Respublikos Audito įstatymas*, Official Gazette /*Valstybės žinios*, 1999, Nr. 59-1916. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=325076.

⁶⁶ Lithuania/ *Lietuvos Respublikos Stomatologinės priežiūros (pagalbos) įstatymas*, Official Gazette /*Valstybės žinios*, 2004, Nr. 4-36. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=232525.

⁶⁷ Lithuania/ *Lietuvos Respublikos Profesinių pensijų kaupimo įstatymas*. Official Gazette/ *Valstybės žinios*, 2006, Nr. 82-3248. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=323193.

⁶⁸ Lithuania/ *Lietuvos Respublikos profesinių pensijų kaupimo įstatymo pakeitimo įstatymas*. Official Gazette/ *Valstybės žinios*, 2011, Nr. 146-6824. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=416876.



must be based on the conditions required by law. According to Article 95 of the Labour Code, the conditions of remuneration for work (system of remuneration for work, level of wages, payment procedure, etc.) is an essential part of every employment contract that must be agreed upon. The employment contract cannot contain illegal provisions.

Discriminatory terms of contract should be treated as a breach of the Law on Equal Treatment. Thus the fact that 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.

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, or such as adult life long learning courses?

The Law on Equal Treatment does not elaborate on ‘vocational training’ and ‘education’. National legislation obliges employers to ensure access to vocational training and retraining as well as continuing professional development. This means training closely related to work. The Labour Code does not elaborate on this in detail either. Case law on the matter is non-existent, so it is not clear whether training outside an employment relationship (such as lifelong learning) would fall under the scope of national anti-discrimination legislation. This also applies to training provided outside an employment relationship (such as that provided by technical schools or universities).

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))

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

The provision prohibiting discrimination with regard to membership of and involvement in an organisation was introduced into the Law on Equal Treatment only in June 2008. The provision repeats the wording of the Directive. As there have not been any rulings on the matter yet, it is not clear how it will function in practice.



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 does not explicitly state that social security and healthcare fall under the scope of this law. There is a general duty to implement equal opportunities, which reads as follows (Article 5): 'State and local government institutions and agencies must within the scope of their competence ensure that in all the legal acts drafted and passed by them, equal rights and treatment are laid down without regard to gender, sexual orientation, age, disability, race, ethnicity, origin, religion, beliefs or convictions, language and social status'. This can be interpreted to mean that this duty must be applied in the fields of social security and healthcare as well, since these fields are not mentioned among those where, according to the law, the principle of non-discrimination is not applied. Thus national law does not seek to explicitly rely on the exception in Article 3(3), Directive 2000/78 in relation to particular grounds.

However, the Ombudsperson suggests a different interpretation. According to the Ombudsperson, social security and social protection do not fall under the scope of the Law on Equal Treatment while healthcare does, since the wording of the Law regarding goods and services is broad enough to include health services.⁶⁹ The Ombudsperson has not investigated any social security cases. Since there is no case law either, it is hard to predict how this might be viewed by courts and applied in practice.

Moreover, social protection is mainly regulated by the Law on State Social Security Insurance. However, this law does not have anti-discrimination clauses either; it does not mention religion, belief, race or ethnicity, age, disability and sexual orientation in terms of social protection. Social protection, social security and health care are governed by a number of other special laws that cover areas such as social benefits,⁷⁰ health insurance and health care,⁷¹ but these laws also lack non-discrimination provisions.

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 to people because of their employment or residence status, for

⁶⁹ Equal Opportunities Ombudsperson, Annual Report for 2010, available in Lithuanian at www.lygybe.lt.

⁷⁰ Lithuania /Valstybinių šalpos išmokų įstatymas. Official Gazette/Valstybės žinios, 1999, 1994, Nr. 96-1873. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314524.

⁷¹ Lithuania/Lietuvos Respublikos Sveikatos sistemos įstatymas, Official Gazette /Valstybės žinios, 1994, Nr. 63-1231. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319140.



example 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 anti-discrimination law does not explicitly address social advantages. The existing Law on Equal Treatment does not explicitly state that social benefits fall under the scope of the law. The previously mentioned general ‘duty to implement equal opportunities’ can be interpreted as covering social benefits, since social benefits are not mentioned among the exceptions where, according to the law, the principle of non-discrimination is not applied. There have not been any court cases regarding the application of national non-discrimination law in the field of Social advantages.

Although Equal Opportunities Ombudsperson on a few occasions stated, that social protection does not fall under the scope of the Law on Equal Treatment, in 2011 it accepted a complaint concerning reduced rate tickets, applied to pensioners by Vilnius city municipality.⁷²

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 and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated “special” education are favoured and supported.

Generally all educational institutions, schools, scientific and academic institutions (public and private) are obliged under the Law on Equal Treatment to ensure that the principle of non-discrimination is applied in admitting students to educational institutions, awarding study grants, drafting educational programmes, selecting curricula and assessing knowledge. However, there is a type of school which enjoy an exception under the Law from applying anti-discrimination law (see below). In addition, the Law on Education states equal opportunities as one of the principles of the educational system.

One of the provisions of Article 3 of the Law on Equal Treatment states that the Law does not apply to the admission of persons to study at schools of religious communities and associations, schools established by them or their members, as well as establishments, enterprises and organisations whose main activity is other

⁷² Equal Opportunities Ombudsperson report for 2011, available in Lithuanian at www.lygybe.lt.



than academic education, which have been established with the purpose of education in an environment fostering the values of a religious community or association where refusal to admit a person is necessary in order to maintain the ethos of the said organisations. The same rules apply to the process of education as well as the selection of personnel by these establishments.

This exception was included in the Law on Equal Treatment in June 2008, and so its application is not clear. It is not clear which schools would be exempted from applying the Law and in which cases since there have not been any rulings on the issue yet. However, the debate on these exceptions in Parliament focused largely on the issue of sexual orientation. Conservative politicians stated that such provisions can be used to 'protect' schools from homosexuals. The present wording is very broad, leaving room for interpretations that could breach the requirements of Employment Equality Directive 2000/78/EC.

The education of persons with disabilities is mainly governed by the Law on Special Education⁷³ as well as the Law on Social Integration of Disabled (which establishes the general right to education of disabled persons). The former states the principles of the education of persons with special needs (persons with disabilities). The general policy of the state is to support an inclusive approach towards the education of people with disabilities, by partially or fully integrating them into mainstream education.⁷⁴ Although precise statistical information about the education of people with disabilities is lacking, rough estimates show that approximately 10% of all persons with disabilities attending basic education are placed in special institutions, while 90% are integrated into the mainstream education system.⁷⁵ Under national law, parents have the right to choose a form of education for their child, but only to a certain degree. If special educational-psychological institutions identify severe special needs making education in a mainstream school impossible, the child is placed in a special school or educated at home.

Under-financing has remained very significant in recent years. In 2004 a government education programme for persons with special needs for 2005-2008 was published, identifying the finance needed to implement the programme. During the period, however, only 21.77% of the financial resources initially allocated were actually granted.⁷⁶ Lack of financial resources, lack of specialists in mainstream education institutions and lack of accessibility for physically disabled persons were identified as the main obstacles to successful integration by the Children's Rights Ombudsman in

⁷³ Lithuania / *Lietuvos Respublikos Specialiojo Ugdymo įstatymas*, 1998 m. gruodžio 15 d. Nr. VIII-969.

⁷⁴ Lithuania / *Lietuvos Respublikos Vyriausybės 2002 m. birželio 7 d. nutarimas Nr. 850 Dėl Nacionalinės žmonių su negalia socialinės integracijos 2003-2012 metų programos patvirtinimo*.

⁷⁵ *Mokslinio tyrimo 'Specialiųjų poreikių turinčių asmenų mokymosi aprėptis' ataskaita*, Kaunas, 2007. Available in Lithuanian at:

http://www.smm.lt/svietimo_bukle/docs/tyrimai/sb/spec_poreikiai_smm_07.pdf.

⁷⁶ *Lietuvos Respublikos Švietimo ir Mokslo ministro 2009 m. rugsėjo 3 d. įsakymas Nr. ISAK-1796 „Dėl Specialiojo ugdymo plėtros programos patvirtinimo“*, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=352526&p_query=&p_tr2=.



one of its reports.⁷⁷ The period of 2008-2011 was even more severe and almost all major social inclusion or anti-discrimination governmental programs were not given any funding at all.

When it comes to education at universities and colleges, the percentage of students with disabilities is only about 0,5 % of the total number of students. Only a small number of higher education institutions are fully accessible.⁷⁸

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 the latest available report on Roma education, the main reasons for the Romas' educational lack of achievement are related to a lack of social skills, linguistic barriers and poor school attendance.⁷⁹ Most Roma children (69%) do not attend either pre-school establishments or pre-school groups; participation in after-school activities is uncommon among Roma. It is thus more difficult for them to acquire social skills that would contribute to their adaptation to the school environment. There are no precise official statistics on how many Roma pupils attend school, but data provided by NGOs and schools suggests that there is a positive trend for Roma to attend schools. However, many Roma start attending school late (at around the age of 10) and this is usually the cause of dropping out and low attendance.

Additionally, it seems that schools do not find ways to solve problems related to poor attendance. According to some experts, the most effective way of dealing with Roma problems at school and further social integration could be closer cooperation among several institutions and individual relations with Roma parents.⁸⁰

As regards the major ethnic minorities (Polish and Russian), the situation is very different. To start with, the education of ethnic minorities is an issue only in culturally diverse areas of Lithuania, particularly the Vilnius region. Although the latest in-depth report⁸¹ on education in the Vilnius region did not prove significant disparities or structural discrimination, some problematic areas can be identified. Among these, the

⁷⁷ *Neįgalųjų vaikų situacija ir problemos Lietuvoje, Vaiko teisių apsaugos kontrolieriaus informacinis biuletenis* Nr. 8, 2006.

⁷⁸ The Equal Opportunities Ombudsperson annual report 2010. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>.

⁷⁹ *Romų padėties tyrimas: Romai švietimo ir darbo rinkos sankirtoje, Socialinių tyrimų instituto etninių tyrimų centras, 2008 gruodis*, http://www.ces.lt/wp-content/uploads/2008/06/STI_TMID_Romu-padeties-tyrimas-2008_ataskaita.pdf

⁸⁰ *Romų bendruomenės socialinės integracijos galimybių tyrimas, Etninių tyrimų centras, tyrimo vadovas dr. Tadas Leončikas, 2007 m.* <http://www.lygybe.lt/ci.admin/Editor/assets/Romu%20integrac%20galimybes%20ataskaita.pdf>.

⁸¹ *Mokymosi prieinamumas Vilniaus rajono gyventojams, LR Švietimo ir mokslo ministerija*, http://www.smm.lt/svietimo_bukle/docs/tyrimai/sb/Mokymosi_prieinamumas.pdf.



dual system of subordination of schools raises concerns. The fact that some schools in the Vilnius district municipality are subordinate to Vilnius County (mainly monolingual Lithuanian schools)⁸² causes confrontation between communities. Although this *per se* does not reveal discrimination, the latest survey indicates that all communities consider it negative, causing non-transparent competition and distance between communities.⁸³

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

- a) *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.*

The general rule of the Law on Equal Treatment is that it does not distinguish between goods and services available to the public and those available privately. However, there is one exception to the rule. Religious communities or associations, as well as associations founded by these religious communities or their members, are not obliged to follow the Law on Equal Treatment when providing goods and services when the purpose of this provision is of a religious character.⁸⁴

As this exception was introduced only during the latest amendments of the law (June 2008), it has not yet been applied in practice. However, since the wording of this provision is rather broad and vague, there is enough room for interpretations which could be used to justify discrimination against homosexuals. For example, religious organisations sometimes sell food to homeless people (for a very small price) during particular celebrations or commemorative days (a week before Easter, etc.). Under the Law, they could refuse to sell the food to an openly gay person, justifying their decision on the ground of religion.

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

There are no exceptions in the Law on Equal Treatment that would allow differences in treatment on the grounds of age and disability in the provision of financial services.

⁸² Vilniaus rajono švietimo būklė ir problemos, Vilniaus rajono savivaldybė, 2007, <http://www.vilniaus-r.lt/index.php?id=3564>.

⁸³ Mokymosi prieinamumas Vilniaus rajono gyventojams, LR Švietimo ir mokslo ministerija, http://www.smm.lt/svietimo_bukle/docs/tyrimai/sb/Mokymosi_prieinamumas.pdf.

⁸⁴ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official Gazette/Valstybės žinios, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.



However, the Law on Insurances⁸⁵ does allow the differential treatment on the grounds of age as well as state of health when calculating insurance risks, adding that there should not be discrimination within a group of particular risk level. In contrast, for example when it comes to ground of sex, treatment can be differential only when sex is a major risk factor of particular profession and this is officially approved by accurate statistics, provided by Insurance Supervisory Commission (Article 100).

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

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

When it comes to housing, the Law on Equal Treatment does not clearly say, which exactly aspects of housing fall under the scope. The wording of Article 8 (equal opportunities in the sphere of consumer rights protection) can be interpreted to include all spheres of housing, including social housing. However, until the end of 2011 there has not been any court decisions, concerning discrimination in the field of housing.

Reliable data on housing remains scarce. No studies or research exist on discrimination against particular groups in the field of housing, with the exception of the Roma community living in the Kirtimai district of the Vilnius city municipality. This community of approximately 500 residents faces housing problems on a regular basis (see below). In general, Lithuanian Roma live a settled life. Over half of Roma indicate that they have been living in their current city, town or village for over 20 years.⁸⁶ Over one third of Roma questioned (38%) live in their own house or in property belonging to their family members. Roma living in municipal housing make up another large group (31%).

The housing problem faced by the Kirtimai Roma settlement is well known. The Roma community were forced to settle in the outskirts of Vilnius some 50 years ago, but the houses which the Roma built for themselves on state-owned land were not legalised. Most of the buildings therefore currently remain illegal. Standards of living, housing and sanitation in Kirtimai are unsatisfactory. An investigation by the *Seimo kontrolierius* [the Parliamentary Ombudsman] found⁸⁷ that the policies of social integration conducted by the Vilnius City Municipality were neither effective nor

⁸⁵ Lithuania / Draudimo įstatymas, *Official Gazette/Valstybės žinios*, 2003, Nr. 94-4246. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=386840.

⁸⁶ *Romų padėties tyrimas: Romai švietimo ir darbo rinkos sankirtoje*, Socialinių tyrimų instituto etninių tyrimų centras, 2008 gruodis, http://www.ces.lt/wp-content/uploads/2008/06/STI_TMID_Romu-padeties-tyrimas-2008_ataskaita.pdf.

⁸⁷ *Lietuvos Respublikos Seimo kontrolierių 2009 m., veiklos ataskaita*, <http://www.lrski.lt/files/373.pdf>.



properly funded or managed, thus deepening the segregation of the Kirtimai Roma community and keeping their housing conditions unsatisfactory. According to the Ombudsman's report, the buildings belonging to the Kirtimai Roma should be legalised as soon as possible.



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?

The provision on genuine and determining occupational requirements is provided in the Law on Equal Treatment in a list of exceptions to direct anti-discrimination provisions. The national provision repeats the wording of the Directive and does not elaborate on it. The provision has never been considered by the courts or the Equal Opportunities Ombudsperson.

A ruling of the Constitutional Court,⁸⁸ passed much earlier than the Law on Equal Treatment, gives some idea of how such an exception may be applied in practice. According to the Constitutional Court, a legal regulation that treats certain groups of people differently in order 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 of the education, qualifications, health or work experience of citizens who enter the civil service.

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

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?*

The Law on Equal Treatment does provide an exception concerning recruitment and employment by employers with an ethos based on religion or belief. According to Article 3, the law would not apply to teachers, employees and personnel of religious communities, associations, and centres, as well as associations and legal persons (whose ethos is based on a religion or belief and have been founded to serve its purposes) founded by these religious communities or their members, where, by reason of the nature of the activities of these entities, or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, with regard to the organisation's ethos. Additionally, the Law provides these organisations and institutions with the right to require individuals working for them to act in good faith and with loyalty to the organisation's ethos, as allowed by the Directive.

⁸⁸ Lietuvos Respublikos Konstitucinio teismo 1998 m. Lapkričio 11 d. nutarimas 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 Gazette/Valstybės žinios, 1998, No. 100-2791.



However, it must be taken into account that this exception was explicitly mentioned and included in the Law on Equal Treatment only during the latest amendments of June 2008. The first version of the Law did not contain the exception, thus there is no case law or interpretation on the matter. There is also no information available about whether such practices existed before the country adopted the Directive, and in which organisations and to what extent they were used, since none of this was discussed in Parliament when the amendments were passed.

It is not clear which organisations can take advantage of this exception. The wording of national provision is very broad and can be interpreted very widely. This is hardly compatible with the goals of the Directive. Moreover, this could eliminate LGBT people from significant areas of public life. Some members of Parliament who are notorious for opposing homosexuality and protecting 'traditional values' identified the connection between these provisions and the issue of sexual orientation during discussions of the amendments, and stated that the exception could be used as a 'self-defence tool' for eliminating people of a 'non-traditional' sexual orientation from schools and the education system in general.⁸⁹

- 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? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

There is no case law on the subject. However, conflict with respect to the ground of sexual orientation might arise in the future since the initial debate on this amendment focused on homosexuality. The Catholic Church played a significant role in the introduction of these provisions.⁹⁰ Bearing in mind the openly negative attitude of the Church to sexual minorities in Lithuania, there is a possibility that these broad provisions could be used to discriminate on grounds other than religion and belief.

- c) *Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

⁸⁹ Stenograph of the Parliamentary sitting of 18.09.2007. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466.

⁹⁰ The Minister of Social Affairs and Labour publicly admitted that the inclusion of these provisions was discussed with the Lithuanian Conference of Bishops, and that the draft law and these particular provisions were approved by Lithuanian Conference of Bishops. Stenograph of the Parliamentary sitting of 18.09.2007. The text in Lithuanian can be found at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466.



According to the Law on Education⁹¹ in order to become a religious education teacher, a person must be approved by the religious community. This is an obligatory requirement. In case of the Catholic Church this is also regulated by an agreement with the Holy See⁹² which states that a person wishing to teach religion must have a permit from the local bishop (*missio canonica*). This applies to all schools (state and private) as well as other institutions in the formal education system.

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

- 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)?*

The Law on Equal Treatment does not explicitly provide for an exception for the armed forces in relation to age or disability discrimination. In this case the general rule on genuine occupational requirements would apply. However, when it comes to laws, governing particular statutory professions there are a number of exceptions, which concern age (these are discussed more in detail under section 4.7.3).

- b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

The Law on Equal Treatment does not contain any explicit provisions or exceptions relating to employment in the police, prison or emergency services. In this case the general rule on genuine occupational requirements would apply. However, there are other laws that provide special requirements for persons joining these institutions. First of all, Lithuanian nationality is a requirement for joining the armed forces and the police. Certain health requirements also need to be met to serve in these forces.

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

- a) *How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?*

⁹¹ Lithuania/Lietuvos Respublikos Švietimo įstatymas. Official Gazette/ Valstybės žinios, 2003, Nr. 63-2853. Available in Lithuanian at : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350527.

⁹² Lietuvos Respublikos ir Šventojo Sosto sutartis 'Dėl bendradarbiavimo švietimo ir kultūros srityje', Official Gazette/Valstybės žinios, 2000-08-09, Nr. 67-2024. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=106813&p_query=&p_tr2=.



Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?)

Generally, the law provides protection from discrimination to every person within the jurisdiction of the country (notwithstanding nationality or statelessness – the law does not elaborate on this). However, the Law on Equal Treatment provides an exception with regard to nationality. Discriminatory treatment must be justified and provided for by law. There are other laws which mention the requirement of nationality. For instance, 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. A 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 relationship between 'nationality' and 'race or ethnic origin' is not elaborated in national law, and confusion undoubtedly occurs in practice. Cases of multiple discrimination might arise in these instances. Nevertheless, the case law is scarce and no definite conclusions can be drawn on this subject. There are no commentaries on Lithuanian anti-discrimination law and case law is almost non-existent.

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

The Law on Equal Treatment 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 to know the State language, prohibition from taking part in political activities and different rights applied on the basis of citizenship if such exceptions have been provided for by the law. These exceptions are outlined in Paragraph 7 of Article 3 of the Law on Equal Treatment.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

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 employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?

The question of family-related benefits is not very common in the national context. In practice, such benefits are rare and there is no actual case law in this field.



However, such benefits are not directly prohibited either to married employees or to those with opposite-sex partners, neither in the Law on Equal Treatment nor in any other legislation. 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).

However, currently it is not possible to register partnership, not to mention partnership of same sex couples. Same sex partnerships are not recognised by law, thus benefits to married employees only most probably would not constitute discrimination from the perspective of the Law on Equal Treatment.

- b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?*

As it was mentioned, same sex partnerships are not recognised by law in Lithuania, hence benefits to opposite sex partners only most probably would not constitute discrimination from the perspective of the Law on Equal Treatment. On the other hand, since there is no Law on Partnerships in Lithuania (although the draft was prepared in 2004), it is impossible to register one. Thus at this stage this question is not of great relevance in the national context.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

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

Article 279 of the Labour Code contains a general statement on guarantees of health and safety at work for working disabled people: 'Health and safety at work for working disabled people 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. Competent institution under the Ministry of Social Affairs and Labour (*Neįgalumo ir darbingumo nustatymo tarnyba (NDNT)*) assesses whether the employment of a disabled person in particular position will result in a risk to health and safety of this person. An employer can exclude a disabled person following the assessment of this institution.

- b) 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)?*

There are no other exceptions, relating to other grounds.



4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

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?*

The Law on Equal Treatment repeats the wording of the Directive regarding the exception of age. Since there is no case law on the matter, it is not clear how the test for justification would be applied in practice.

- b) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

Yes, the Law on Equal Treatment does make exceptions to requirements for equal treatment on the ground of age, provided that they are set by law and pursuit a legitimate aim by legitimate and proportional means. Most of the age-based exceptions concern minimum and maximum age requirements for entry to certain professions are set by other laws (discussed under section 4.7.3 of this report). There are also prohibitions on access to some goods and services to protect the under-aged.

- c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2)?*

According to the recent version of *Profesinių pensijų kaupimo įstatymas* [Law on Accumulation of Occupational Pensions], adopted in November 2011,⁹³ it is allowed to fix occupational pension scheme admission to particular age, however, the set age cannot be higher than 21 years old (Article 22.5 of the law).

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.

There are quite a few special conditions for young, older or persons with caring responsibilities, embodied in The Labour Code. Article 129 of the labour Code states,

⁹³ Lithuania/ Lietuvos Respublikos profesinių pensijų kaupimo įstatymo pakeitimo įstatymas. *Official Gazette/ Valstybės žinios*, 2011, Nr. 146-6824. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=416876.



that employment contracts with employees who will be entitled to the full old-age pension in not more than five years, persons under eighteen years of age, disabled persons and employees raising children under fourteen years of age may be terminated on the initiative of an employer without any fault on the part of an employee but only in those cases where the retention of an employee would substantially violate the interests of the employer. 'Younger employees' are defined as those under the age of 18. For instance, these workers are prevented from working overtime or at night, they have a right to choose their vacation time, and are entitled to 35 days' holiday (the normal entitlement is 28 days), they have a right for additional breaks if working time exceeds 4 hours (Article 159), they must have 2 days off work during a week, etc.

There are also additional guarantees for older workers. For instance, workers who have 3 years or less of working until they reach retirement age have a priority from being dismissed in case of restructuring. These workers must be notified four months in advance of any organisational restructuring (usual term is 2 months); for example, merging of departments (other employees are notified two months in advance). According to the Labour Code, people with family care responsibilities are ensured protection if the child is under seven years old or, in the case of a disabled child, under 16 years old. Pregnant women, as well as employees caring for child under 3 years old, single parents, caring for a child under 14 years old or a disabled child under 18 cannot be allocated to working overtime without their consent.

The Labour Code provides additional guarantees to certain groups of persons. In the event of reduction in the number of employees for economic or technological reasons or due to structural reorganisations at the workplace, the right of priority to retain the job shall be enjoyed by the following employees: who sustained an injury or contracted an occupational disease at that workplace; who are alone raising children (adopted children) under sixteen years of age, or care for other family members who have been established a severe or moderate disability level or whose capacity for work has been rated below 55 percent or family members who have reached old-age retirement age, who have been assessed in accordance with the procedure established by legal acts as having high or moderate special needs; whose continuous length of service at that workplace is at least ten years, with the exception of employees, who have become entitled to the full old age pension or are in receipt thereof; who will be entitled to the old-age pension in not more than three years (Article 135). Additional guarantees are provided to pregnant women – they can be dismissed only in limited instances, defined by law. Certain guarantees are provided to employees who are attending educational institutions (schools, universities, etc.).

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?



The Labour Code sets the general minimum age for persons entering into employment contracts as workers at 16 years of age. Children younger than 16 are generally forbidden to work, except in relation to artistic, cultural, advertising or sporting activities under the conditions established by the Labour Code. Such activity must be proportionate to the child's age, not dangerous, must not jeopardise his/her education, school attendance or attendance of educational programmes and must not be harmful to his/her health, or psychological or moral development. For specific professions, the age of competency differs, with the minimum age often set at 18 and usually dependent on a material condition relating to carrying out the work in question. The general minimum age for self-employment is 18, but in specific cases it can differ, according to the special requirements for various types of self-employment, for example requirements for training or experience necessary for the proper performance of the activity.

Most of particular age-based exceptions concern minimum and maximum age requirements to access employment are set for certain statutory bodies (customs, State security department, etc.), specific professions (ship captains, pilots, armed forces, etc.) or state services (judges, bailiffs, notary, members of parliament, members of municipal council, etc.).

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 actually 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).

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

- 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 longer, or can a person collect a pension and still work?*

In 2011 the pension age in Lithuania remained 60 years for women and 62 years and six months for men.⁹⁴

⁹⁴ Since 2012 a new system will be established, which will gradually prolong pension age and by 2026 the pension age for women and men will be equated to 65 years old.



According to the jurisprudence of the Constitutional Court, gaining one constitutional right cannot deprive a person from gaining another constitutional right.⁹⁵

Thus when a person reaches the age when he or she is entitled to a state pension, this cannot be considered as legitimate reason to terminate employment.

Article 129 of the Labour Codes states that age cannot be a legitimate reason to terminate an employment contract. An employment contract with employees who will be entitled to the full old-age pension in not more than five years (the collective agreement may stipulate that this restriction applies to employees who will be entitled to the full old-age pension in not more than three years) may be terminated only in cases where the retention of an employee would substantially violate the interests of the employer.

- b) *Is there a normal age when people 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 longer, or can an individual collect a pension and still work?*

Occupational pensions are a new phenomenon - the Profesinių pensijų kaupimo įstatymas [Law on the Accumulation of Occupational Pensions]⁹⁶ was introduced into the country only in June 2006. Until recently, occupational pension system has not been established in practice. In November 2011 a new and significantly improved version of the law was passed.⁹⁷ The law does allow various arrangements, as well as the right to collect pension and continue working. It has to be said, that occupational pensions are a rather new phenomenon in the country, hence issues, concerning its practical application will emerge in the future.

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

⁹⁵ Lietuvos Respublikos Konstitucinio teismo 2002 m. lapkričio mėn. 25 d. nutarimas 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 // Valstybės žinios, 2002. Nr. 113-5057.

⁹⁶ Lithuania/ Lietuvos Respublikos Profesinių pensijų kaupimo įstatymas. Official Gazette/ Valstybės žinios, 2006, Nr. 82-3248. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=323193.

⁹⁷ Lithuania/ Lietuvos Respublikos profesinių pensijų kaupimo įstatymo pakeitimo įstatymas. Official Gazette/ Valstybės žinios, 2011, Nr. 146-6824. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=416876.



The general rule is that compulsory retirement is not imposed. However, there are requirements for particular professions (mostly public sector, state officials), which set a maximum age of employment, which is the same as the general retirement age (62 years and 6 months). In general, maximum retirement age for most public sector professions is between 62 years and 6 months and 65 years.

There is a compulsory maximum age limit for particular professions, some examples can be provided. For instance according to the Law on Diplomacy, the maximum age of a diplomat is 65 years and this can only be extended to a year, but not more than 5 times. According to the Law on Courts, when a judge reaches the age of 65, during the hearing of a case, he/she may continue in office to complete the hearing of the case or until the hearing is postponed. The President of the Republic is required in these circumstances to accept a recommendation by the Judicial Council for the extension of the judge's term of office. Prosecutors must retire at the age of 65,⁹⁸ the same applies to bailiffs, however, the Minister of Justice may extend the term of office of particular bailiff, but no longer than until the age of 70.⁹⁹

Similar rules apply to other state officials, particular professions (pilots, ship captains, etc.) as well as the head of administrations of universities and other educational or scientific institutions.

- 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?*

No, the law does not permit the setting of retirement ages in these ways.

- 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)?*

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 people who have no more than five years until they reach pension age are provided with additional guarantees. Article 135 of the Labour Code provides that, in the event of a reduction in the number of employees on economic or technological grounds or due to the restructuring of the workplace, employees who will be entitled to old age pension in no more than three years shall enjoy a priority right to job retention. However, as was mentioned before, there is a compulsory maximum age limit for particular professions in public sector which does match the general retirement age of men. It can be extended only a limited time. These rules mostly apply to state officials, pilots (other military, statutory institutions) as well as

⁹⁸ Lithuania/ Law on Public Prosecutor's Office (Official gazette, 1994, No.81-1514, *Mutatis mutandis*).

⁹⁹ Lithuania / Law on Bailiffs (Official gazette, 2002, No.53-2042, *Mutatis mutandis*).



the head of administrations of universities and other educational or scientific institutions.

4.7.5 Redundancy

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

No, the law does not permit the use of age as a ground for selecting workers for redundancy. On the contrary, some guarantees are provided to senior workers. According to the Labour Code, in case of redundancy the right of priority to retain the job is enjoyed by those who will be entitled to the old-age pension in not more than three years.

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

Age is taken into account to the extent that the amount of compensation depends on the time for which the worker has been employed in that particular company or institution.

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 Employment Equality 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 requirement to know the state language as well as a prohibition of participation in political activities are listed as exceptions. These exceptions are elaborated in other laws. For example, those serving in the armed forces or police cannot be members of a 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.*

The Law on Equal Treatment provides exceptions to direct discrimination legislation that should be interpreted as allowing positive action: (1) special measures applied in healthcare, safety at work, employment, and the labour market when striving to create and implement conditions and opportunities guaranteeing and promoting the integration of the disabled into the work environment; (2) special temporary measures applied in an attempt to ensure equality and prohibit violation of equal treatment on the basis of age, sexual orientation, disability, racial ethnic, religion, beliefs or convictions, language or social status.

The concept of positive action is not widely discussed at national level. Although various measures exist in practice, a consistent legal/political approach is lacking. This was also highlighted by the Equal Opportunities Ombudsperson.¹⁰⁰ The Ombudsperson identified the need for a comprehensive approach to positive action measures as well as the lack of clear mechanism for their implementation. The Ombudsperson recommended that a law on positive action should be passed.

- b) *Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.*

Article 92 of the Labour Code provides that additional guarantees can be established by law to facilitate access to the employment market for certain vulnerable groups. The Law on Support for Employment creates a system of additional support for employers employing disabled people, as well as foresees various measures of support for vulnerable groups.¹⁰¹ People with disabilities as well as persons over the age of 50 years, young persons under 29 are identified as groups (among other), who are additionally supported in the labour market. There are various measures, foreseen in the law for these groups in order to facilitate their access to employment – starting from consulting, counselling to subsidies for employers or public work.

¹⁰⁰ Equal Opportunities Ombudsperson, Annual Report for 2009, available in Lithuania at www.lygybe.lt.

¹⁰¹ Lithuania/ *Užimtumo rėmimo įstatymas*, *Official Gazette/Valstybės žinios*, 2006, Nr. 73-2762 Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=349684.



Currently, support related to the employment of the above-mentioned groups is also regulated by a procedure approved by the Minister of Social Security and Labour under which special employment plans are to be produced for such individuals when they register at an employment exchange. In cases where they are not employed within three months of their date of registration, measures are taken to provide/adapt jobs for these people. Jobs may be established/adapted in any organisation or enterprise that demonstrates continuous activity.

As it was mentioned, persons with disabilities are entitled to additional support and guarantees in the employment market under the Labour Code.¹⁰² Additionally, a specific system of additional support has been established in the field of education. The Law on Education¹⁰³ makes provision for students with special need (special educational assistance, special study aids, and social and medical care). Students with disabilities have the right to financial support granted by the state during their studies in further education establishments and universities.

One of the main policy developments with regards to social inclusion of Roma was the adoption of the Programme for the Integration of the Roma into Lithuanian Society for 2008-2010.¹⁰⁴ The programme, in contrast to the previous version, was mainly aimed at improving the situation of the Roma as regards employment and education. However, due to economical crisis, most of the measures of this program remained unimplemented and it was eventually cancelled. It seems that in 2009 only 1/5 of the planned budget was actually allocated.¹⁰⁵ The programme was not given any funds in the beginning of 2010¹⁰⁶ and was formally discontinued in June 2010.¹⁰⁷ The main institution responsible for its implementation – The Department of National Minorities under the Government of Lithuanian – was dissolved and ceased to exist. Its functions were allocated to Ministry of Culture, however, during 2011 it has not prepared a new draft of the program. The main reason for this most probably is the lack of both adequate funding and human resources of the department of the ministry, which is responsible for ethnic minority issues.

¹⁰² Lithuania/*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official Gazette/Valstybės žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264.

¹⁰³ Lithuania/*Lietuvos Respublikos Švietimo įstatymas. Official Gazette/Valstybės žinios*, 2003, Nr. 63-2853. Available in Lithuanian at : http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350527.

¹⁰⁴ Lithuania / *Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“*, 2008 m. kovo 26 d. Nr. 309.

¹⁰⁵ Lithuania/Lietuvos Respublikos Vyriausybės nutarimas “Dėl 2009 metų Lietuvos Respublikos biudžeto patvirtintų asignavimų paskirstymo pagal programas“, 2009 m. sausio 21 d. Nr. 32.

¹⁰⁶ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas “Dėl 2010 metų Lietuvos Respublikos biudžeto patvirtintų asignavimų paskirstymo pagal programas“, 2010 m. sausio 20 d. Nr. 70.

¹⁰⁷ Lithuania /Lietuvos Respublikos Vyriausybės 2010 m. birželio 2 d. nutarimas nr. 692 Dėl 2008 m. kovo 26 d. Nutarimo Nr. 309 „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309 pripažinimo netekusiu galios.



A thorough report, written by the Seimas Ombudsman¹⁰⁸ indicated, that the same can be said about Vilnius city municipality's policy for Roma integration – recent years' policies were underfinanced, mismanaged, there was no control on the results of the programme and lack of evaluation.

¹⁰⁸ Seimas Ombudsmen's Office, Human Rights Protection: Roma's Rights, 2009. Available in Lithuanian at: www.lrski.lt/index.php?n=362&l=LT.



6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions 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 to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

No special judicial, administrative or conciliation procedures for cases of discrimination exist at national level. Mediation in discrimination disputes is not covered in national law either (in practice the Equal Opportunities Ombudsperson acts as a mediator, but this procedure is not formalised).

According to national legislation, persons who have experienced discrimination have several procedural ways to protect their rights as established by the Constitution and legislation. The Constitution guarantees the right of every person to appeal to a court for the protection of rights under the Constitution that have been violated. The general principle of equality of persons is embodied in a number of laws (e.g. the Civil Code and the Labour Code). However, the Code of Civil Procedure and other procedural laws do not include special judicial, administrative or conciliation procedures for cases of discrimination. Thus, in civil or administrative cases victims of discrimination must rely on general procedures, which can be very difficult to apply in discrimination cases. So far only a few cases that concern discrimination in some way have been brought to court.

In practice, a person who wishes to initiate court proceedings will have to consult a lawyer. Legal services are relatively expensive, thus the issue of unequal access to justice by different social groups does exist. Although a few legal aid clinics (mostly staffed by law students) are in operation, the state legal aid mechanism needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights in court.



In the case of a labour dispute, a person could take advantage of procedures established by the Labour Code.¹⁰⁹ However, it must be mentioned that the Labour Code does not directly provide any sanctions for discrimination in the workplace; these sanctions are provided for in the *Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas* [Administrative Violations Code].¹¹⁰ A person can apply to the *Darbo ginčų komisija* [Employment Disputes Commission] or courts directly. According to the Labour Code, the responsibility for establishing a *Darbo ginčų komisija* [Employment Disputes Commission] in a company, agency or organisation rests with the employer. The Commission comprises 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 can award compensation to an individual in a case of discrimination which is generally prohibited under the Labour Code (a sum of up to twice his or her annual salary can be awarded where a person proves that, as a result of a discriminatory act, he or she cannot continue to work in the same position).

In addition, it is possible to apply to the *Valstybinė darbo inspekcija* [State Labour Inspectorate], which monitors compliance with laws on labour relations and the Labour Code, including those related to employment contracts, payment for work, organisation of work and rest periods, as well as the enforcement of relevant resolutions of the Government and orders of the *Socialinės apsaugos ir darbo ministerija* [Ministry of Social Security and Labour]. Theoretically, the State Labour Inspectorate could impose administrative sanctions on employers who discriminate against employees and thus violate the provisions of the Labour Code. Sanctions are imposed by a general provision in the Administrative Violations Code.¹¹¹ In practice, however, State Labour Inspectorate officials do not address issues of discrimination in the workplace.

Persons who believe that their rights have been infringed by individual administrative actions or actions (or omissions) of civil servants or 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 the *Administracinių ginčų komisija* [Administrative Disputes Commission] under the Law on Administrative Disputes Commissions or with the administrative courts under the Law on Administrative Procedure.

¹⁰⁹ Lithuania/*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official Gazette/Valstybės žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264.

¹¹⁰ Lithuania/*Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official Gazette/Valstybės žinios*, 1985, Nr. 1-1. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314423.

¹¹¹ 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 at work is punishable by a fine for employers or their authorised representatives of an amount between 500 and 5 000 litas'.



Another possibility is to start criminal proceedings under the previously mentioned provisions of the Criminal Code, including the provision which prohibits discrimination (Article 169). However, in this case only severe discriminatory acts can be brought before a court, and so far these provisions have rarely been used in practice.

Finally, the most widely used possibility in practice is to apply to the Equal Opportunities Ombudsperson. The Office of the Equal Opportunities Ombudsperson was created by the Law on Equal Treatment, which expanded the mandate of the previous institution (the Ombudsman of Equal Opportunities for Men and Women), and can thus be considered as a national equality body in terms of Article 13 of Race Equality Directive 2000/43/EC. The procedure at the Office of the Equal Opportunities Ombudsperson is quite simple and reasonably inexpensive. Every natural or legal person has a right to file a complaint with the Equal Opportunities Ombudsperson if its, his or her rights have been directly violated.

Until recently associations could initiate administrative proceedings with the Ombudsperson even if their rights were not directly affected. However, the latest available case law on the issue has provided a narrower interpretation of the Law on Equal Treatment, which contradicted the practice of the Ombudsperson. In spite of the fact that in the past associations applied to the Ombudsperson in cases where their rights were not directly affected by particular actions or omissions, the court ruled that only persons whose rights have been directly infringed by particular decisions have the right to appeal to the Ombudsperson.¹¹² However, it seems that in 2011 the Ombudsperson returned to its previous approach and accepted a complaint, which was submitted by a disability NGO regarding a law, which indirectly discriminated people with disabilities.¹¹³

Complaints should be made in writing: the complainant or her or his representative may send a complaint to the Equal Opportunities Ombudsperson by post, fax, e-mail or bring it in person to the office. If a complaint has been received orally or by telephone, or if the Equal Opportunities Ombudsperson has found indications of a violation of equal rights in the mass media or other sources of information, the Ombudsperson may also initiate an investigation. The Ombudsperson may also decide to investigate anonymous complaints.

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding. However, they can be overruled by a court. Applying to the Equal Opportunities Ombudsperson does not prevent a complainant from lodging a claim with a court on the same matter. The Ombudsperson often acts as a mediator in practice as, according to the Ombudsperson, peaceful resolution of discrimination

¹¹² The decision of the Supreme Administrative Court of Lithuania of 19 April, 2010 in case No. A⁶⁶²-665/2010 / *Vyriausiojo administracinio teismo 2010 m. balandžio 19 d. sprendimas byloje Nr. A⁶⁶²-665/2010*. For more information about the case please see the section of this report on case law (0.3).

¹¹³ For more details please see section 2.1.1.d) of this report.



is one of its main objectives.¹¹⁴ On the other hand, such activities by the Ombudsperson have never provided compensation to the victim.

b) Are these binding or non-binding?

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding. However, in absolute majority of cases the Ombudsperson chooses to issue “recommendations”, which in essence are not binding. In practice most of these recommendations are followed. Through years only on a very few occasions the Ombudsperson has issued an administrative fine.

c) What is the time limit within which a procedure must be initiated?

The time limits differ, depending on the procedure. The procedure at the Equal Opportunities Ombudsperson, the most commonly used, has a time limit for filing complaints of three months after the commission of the acts in question. Complaints lodged after the expiry of this time limit are not investigated unless the Equal Opportunities Ombudsperson decides otherwise.

d) Can a person bring a case after the employment relationship has ended?

Under Article 27 of the Labour Code, the general time limit for a person to bring a case is three years after the discriminatory act has occurred. However, this limit is not applied to an employee’s defence of his/her honour and dignity. A person can bring a case after the employment relationship has ended. An individual may apply to the Employment Disputes Commission within three months from the day when s/he found out or ought to have found out about the violation of his or her rights.

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) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).

The requirements of the Directives in this respect were formally transposed into the Law on Equal Treatment only in June 2008. The wording of Paragraph 2 of Article 12 of the Law on Equal Treatment states that associations whose field of activity as stated in their founding documents encompasses representation of victims of discrimination on a particular ground of discrimination in court, have the right to engage on behalf or in support of the complainant, with his or her approval, in judicial

¹¹⁴ The Equal Opportunities Ombudsperson Annual Reports 2005, 2006, 2007. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>.



and administrative procedures, in a manner prescribed by law.¹¹⁵ This provision does not concern trade unions.

- b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove “legitimate interest”, what types of proof are needed? Are there legal presumptions of “legitimate interest”?*

As it was mentioned, according to the Law on Equal Treatment, associations whose field of activity as stated in their founding documents encompasses representation of victims of discrimination on a particular ground of discrimination in court, have the right to engage on behalf or in support of the complainant, with his or her approval, in judicial and administrative procedures, in a manner prescribed by law.¹¹⁶ This means, that association must be officially registered and in its founding statutes it must have a provision, which explicitly states, that representation of victims falls under the scope of its activity. No other requirements are set in the law.

Under the Code of Civil Procedure¹¹⁷ (which is also applied in labour disputes), an association could be involved in a discrimination case in support of the victim if the case concerned the rights and responsibilities of the association. In all cases it is up to the court to decide whether organisation has a legitimate interest in participating as a third person in support of the complainant.

- c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

The law does not provide any details on this.

- d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

¹¹⁵ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official Gazette/Valstybės žinios, 2003, No.114-5115. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.

¹¹⁶ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official Gazette/Valstybės žinios, 2003, No.114-5115. Available in Lithuanian at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.

¹¹⁷ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official Gazette/Valstybės žinios, 2002, Nr. 36-13640.

Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205.



There is no legal duty for associations to get involved.

- e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

Despite the previously quoted provision of the Law on Equal Treatment, legal representation by associations or NGOs in courts on behalf of the victim is hardly possible under current procedural legislation.

According to Paragraph 1 of Article 56 of the *Civilinio proceso Kodeksas* [Code of Civil Procedure], the legal representation of persons is performed almost exclusively by attorneys, with only a few exceptions granted to trade unions representing their members, and to persons with a degree in law in cases involving legal representation of their relative or spouse.¹¹⁸ According to Paragraph 2 of Article 56 of the Code, other persons can represent a party in a legal dispute, but only as subsidiaries to attorneys or attorneys' assistants acting as primary legal representatives.

Thus the main activity would be filing complaints to Equal Opportunities Ombudsperson. However, recent case law¹¹⁹ provided a narrower interpretation of the right to engage. Previously associations could initiate administrative proceedings at the Office of the Equal Opportunities Ombudsperson even if their rights were not directly affected (for instance, complaining to the Ombudsperson about general policies or actions of officials which discriminated against particular groups, or trying to oblige state or local institutions to comply with the general 'duty to implement equal opportunities' as set out in the Law on Equal Treatment). However, the latest available case law on the issue has provided a narrower interpretation of the Law on Equal Treatment and contradicted the previous practice of the Ombudsperson. In spite of the fact that in the past associations applied to the Ombudsperson in cases where their rights were not directly affected by particular actions or omissions, the court ruled that only persons whose rights have been directly infringed by particular decisions have the right to appeal to the Ombudsperson. According to the court's interpretation, associations can lodge a complaint with the Ombudsperson only when their rights have been directly violated.

- f) *What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.*

The law does not provide any details on this, thus no difference can be identified.

¹¹⁸ Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official Gazette/Valstybės žinios, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205.

¹¹⁹ The decision of the Supreme Administrative Court of Lithuania of 19 April, 2010 in case No. A⁶⁶²-665/2010 / Vyriausiojo administracinio teismo 2010 m. balandžio 19 d. sprendimas byloje Nr. A⁶⁶²-665/2010. For more information about the case please see the section of this report on case law (0.3).



- g) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

No, there are no special rules in this respect.

- h) *Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

No, apparently not. According to the latest decision of the Supreme Administrative Court, it seems that only persons, whose right were directly affected by particular actions or inactions of state or municipal institutions or agencies have a right to complain to Equal Opportunities Ombudsperson (please see section “Case law” of this report). Associations would not be allowed to act without a specific victim or if the rights of the associations have not directly been infringed.

Speaking about legal proceedings in courts, Article 49 of the Code of Civil Procedure, mentions that in cases, prescribed by law, prosecutor, state institutions or other persons to have a right to pursue *actio popularis*. However, no additional law, which would allow associations to act in the public interest, exists at national level. Thus currently action in the public interest in case of discrimination is not possible.

- i) *Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Under Article 49 of the Code of Civil Procedure, in certain cases prescribed by law the possibility exists for ‘other entities’ to pursue a class action on behalf of a group of persons.¹²⁰ However, the detailed procedure in such cases is not clear, because as yet no class action case has been brought to court by NGOs.

However, it is theoretically possible for NGOs and associations to engage in administrative proceedings on behalf of the victim in administrative courts.

According to Paragraph 3 of Article 49 of the Law on Administrative Procedure,¹²¹ mandatory legal representation is ‘usually, but not necessarily’ performed by an

¹²⁰ Ibid.

¹²¹ Lithuania/Lietuvos Respublikos Administracinių bylų teisenos įstatymas. Official Gazette/Valstybės žinios, 1999, Nr. 13-308. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312242.



attorney, which leaves an opening for possible representation by associations. However, this opportunity has never been used in practice, and it is hard to predict whether it would be accepted by the courts.

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 shift of the burden of proof covered by the Directives was formally introduced into the Law on Equal Treatment only in June 2008.¹²² The current wording repeats the provision of the Directives, and does not go into details. There are no other legal acts which explain the procedure in anti-discrimination cases in detail, hence the interpretation of the law would largely depend on the judge. For the sake of legal certainty the Government initiated an amendment to Article 178 of the Code of Civil Procedure to include a provision for the shift of the burden of proof in discrimination cases.¹²³ However it did not convince members of Parliament to approve it,¹²⁴ and the draft amendment was dismissed.

However, recent case-law show, that it is possible to shift the burden of proof using existing legal provision. Code of Civil Procedure provides the general rule that the burden of proof falls upon the applicant.¹²⁵ However, Article 182 of the Code also has a provision, which states, that parties are not obliged to prove circumstances that are presumed by laws. Since there is a provision on the shift of the burden of proof in the Law on Equal Treatment, these provision can be used together to convince the court to shift the burden of proof. But the criteria will completely depend on the circumstances of the case in hand as well as the position of the judge.

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 people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

The provision in the Law on Equal Treatment repeats the wording of the Directives, saying that an employer is obliged to take necessary measures to ensure that

¹²² The latest amendment took place on 17.06.2008.

¹²³ Lithuania/ *Civilinio proceso kodekso 178 straipsnio pakeitimo ir papildymo bei priedo papildymo įstatymo projektas*, Nr. XP-2349, 2007-06-19. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299949&p_query=&p_tr2=.

¹²⁴ Stenograph of the Parliament sitting of 27.06.2007. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=300811.

¹²⁵ Lithuania/Lietuvos Respublikos *Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official Gazette/Valstybės žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=332205.



employees are protected against dismissal or other adverse treatment which could occur as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

National law does not elaborate on which measures particularly should be taken. Thus presumably all persons involved in the dispute should be protected.

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.*

The Criminal Code provides sanctions for severe discriminatory behaviour which can comprise (a) community service work (b) a fine (c) detention or (d) imprisonment for up to 3 years.¹²⁶ However, only one investigation on the basis of this article has been started since 2003 and no sanctions have been brought.¹²⁷

Civil sanctions in a discrimination dispute (in the form of the right to claim compensation) have only recently been formally introduced into national law. Under Paragraph 2 of Article 6.250 of the Civil Code,¹²⁸ non-pecuniary damages in a civil case can be claimed only in cases prescribed by law. The right to claim compensation in cases of discrimination on grounds covered by the Directives was introduced into the Law on Equal Treatment in June 2008.¹²⁹

However, the equality of persons is one of the principles of law embodied in the Labour Code.¹³⁰ A person has the right to bring a civil action against an employer and claim compensation in the case of discrimination in a workplace. This particular option was used in the first case brought to court in Lithuania.¹³¹ At the time of the action, the right to claim compensation for a breach of the Law on Equal Treatment

¹²⁶ Lithuania/Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas. Official Gazette /Valstybės žinios, 2000, Nr. 89-2741. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141.

¹²⁷ Lithuania/ Generalinės Prokuratūros Specialiųjų Tyrimų skyriaus veiklos 2007 m. ataskaita, 2008-01-29 Nr. 12. 14-2 Vilnius. Available in Lithuanian at: <http://www.prokuraturos.lt/nbspnbspNusikaltimaižmoniškumui/tabid/221/Default.aspx>.

¹²⁸ Lithuania/Lietuvos Respublikos Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis Kodeksas. Official Gazette/Valstybės žinios, 2000, Nr. 74-2262. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299402.

¹²⁹ Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official Gazette/Valstybės žinios, 2003, No.114-5115. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132.

¹³⁰ Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official Gazette/Valstybės žinios, 2002 Nr. 64-2569. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264.

¹³¹ Lithuania/ Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-1189-545/2008, 2008 m. birželio 30 d.



did not exist, thus the provisions of national anti-discrimination legislation were not tested in practice.

The court ruled in favour of the applicant and awarded her compensation of 2864.98 litas (approximately 830 euros).¹³² On the other hand, in an alleged discrimination case in 2011 (on the grounds of social status and sexual orientation) the court of first instance issued a compensation to the victim worth 7800 EUR, which is considered rather substantial for a case where no physical harm was caused.¹³³ The decision later was overruled by the court of appeal, though.

The decisions of the Equal Opportunities Ombudsperson remain the most widely used sanctions for perpetrators. As was mentioned, the Ombudsperson usually issues a warning or recommendation to halt discriminatory practices (in essence these are not binding). It can also issue administrative sanctions – fines of up to 4 000 litas (1 158 euros) – which are provided for in the Administrative Violations Code.¹³⁴ However, the Ombudsperson only on a few occasions exercised this function in practice. The Ombudsperson has stated numerous times in its annual reports that it does not consider a fine an effective solution to discriminatory situations. On the other hand, if the Ombudsperson issued fines, they could be challenged in court, which would result in litigation, causing an extra burden to the Ombudsperson's staff. However, even if the Ombudsman did issue fines, such administrative sanctions can hardly be considered effective, proportionate and dissuasive. In addition, the decisions of the Ombudsperson do not seek to compensate the victim.

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

There is no limit on compensation for non-pecuniary harm suffered because of discriminatory behaviour.

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 required by the Directives?*

So far there has been only a couple of decisions in a discrimination case, discussed above. Most of the sanctions in discrimination cases are applied by the Equal Opportunities Ombudsperson, when it is fulfilling its quasi-judicial role. In most cases

¹³² Ibid.

¹³³ Lithuania/ Vilniaus miesto 2-jo apylinkės teismo sprendimas civilinėje byloje Nr. 2-101-294/2011, kovo 31 d. 2011.

¹³⁴ Lithuania/Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official Gazette/Valstybės žinios, 1985, Nr. 1-1. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335295.



the Ombudsperson issues warnings and recommendations to halt discriminatory behaviour. Out of all decisions on all grounds of discrimination an administrative sanction (fine) was issued six times: 2005 – 4 occasions; 2006 – 2; 2007 – 0; 2008 – 0; 2009 – 0, 2010 – 0, 2011 – 0.¹³⁵ In each of its annual reports to Parliament the Ombudsperson has stated that priority is given to peaceful conflict resolution, rather than administrative sanctions which are not considered effective measures to prevent discriminatory behaviour.

Among the decisions that the Ombudsperson can take, there is none that seek to compensate a victim of discrimination.

¹³⁵ The Equal Opportunities Ombudsperson annual reports 2005 - 2011. Available in Lithuanian at: <http://www.lygybe.lt/?pageid=7>.



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) for the promotion of equal treatment, 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? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

The *Lygių galimybių kontrolierius* [Equal Opportunities Ombudsperson] is the national anti-discrimination body founded in order to fulfil the requirements of the Racial Equality Directive. When the Law on Equal Treatment came into force in 2005 it expanded the mandate of the previous *Moterų ir vyrų lygių galimybių kontrolierius* [Ombudsperson for Equal Opportunities for Men and Women]. Thus a new institution – the Equal Opportunities Ombudsperson – covering all grounds of discrimination in Directives 2000/43/EC and 2000/78/EC and the ground of gender started working on 1 January 2005. The Ombudsperson monitors the implementation of the Law on Equal Treatment in the manner prescribed by the *Moterų ir vyrų lygių galimybių įstatymas* [Law on Equal Opportunities for Women and Men].¹³⁶ It is the main national institution dealing with equality and non-discrimination.

- 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. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

The Ombudsperson is appointed by Parliament for a term of five years (there is no limit on his/her number of terms). The current appointment procedure does not involve civil society. Since there is no board or other body, the Speaker of the Parliament may suggest a candidate for Parliament to vote on, without consulting civil society. The requirements for the candidate are set out in the Law on Equal Opportunities: an impeccable reputation, a university degree in law, and a minimum of five years' experience in law or a minimum of five years' service in a municipal or state institution or agency. Before the Ombudsperson takes up office, s/he is obliged to take an oath to honour the Lithuanian state, impartiality and the rule of law. Thus a candidate for the post of Ombudsperson can be either an experienced lawyer or an experienced state official.

¹³⁶ Lithuania/Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas. Official Gazette/Valstybės žinios, 1998, Nr. 112-3100. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330994.



The independence of the Ombudsperson is also ensured by the provision which prohibits the Ombudsperson from any other job or involvement in any profit-making activities with exception of creative or educational work. The term of the Ombudsperson can be terminated by Parliament only if the Ombudsperson is ill for a certain period of time as specified by law, Parliament passes a vote of no-confidence or Ombudsperson is convicted of a criminal offence.

The Office of the Equal Opportunities Ombudsperson is financed from the budget, thus financial independency is also ensured by law. The Ombudsperson has a right to use the general financing according to its needs and priorities (neither the government, nor the parliament have any control on this). The Ombudsperson is fully in charge of the institution and has a right to use allocated funding according to the needs of the institutions as well as manage staff, hire or fire personnel, etc.¹³⁷

However, this does not mean that the financing for each year remains unchanged. Each year, the Parliament votes for the budget (proposed by the government), thus the Parliament may cut the budget of the institution. The total budget of the institution in 2011 was 1 256 000 Litas (363 762 EUR), in comparison to 1008000 Litas (291936 EUR) which is 20 % more than in 2010. Out of this sum the staff budget was 584 000 Litas (169 138 EUR). The amount of staff remained the same for a few years already - the institution had 12 people employed, 7 of whom deal with complaints. In 2011 the Ombudsperson investigated 170 cases of alleged discrimination (roughly 2 complaints per month per 1 staff member). In addition, the Ombudsperson is involved in project and various programs (for instance, PROGRESS), thus part of its activities can be funded by other donors, not necessarily governmental ones.

According to the staff of the institution,¹³⁸ the Ombudspersons institution remained significantly underfinanced in 2011 and the staff felt under financial pressure while implementing daily tasks. The staff informed about the lack of funding not only for travel or additional qualification training of the staff, but for basic daily needs like communication, office supply, etc.

- 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.*

The Ombudsperson exercises its functions with respect to all grounds covered by the Directives as well as gender, language, convictions and social status (the last three were added in June 2008). In accordance with Article 12 of the Law on Equal

¹³⁷ Lithuania / Lietuvos Respublikos Seimo nutarimas Dėl Moterų ir vyrų lygių galimybių kontrolieriaus tarnybos pavadinimo pakeitimo ir Lygių galimybių kontrolieriaus tarnybos nuostatų patvirtinimo, Valstybės žinios, 2003-11-26, Nr. 111-4930.

¹³⁸ E-mail communication of the author of this report with the staff of the Ombudsperson institution, March 2012. Available upon request.



Opportunities for Men and Women, the competence of the Equal Opportunities Ombudsperson encompasses:

- 1) Investigating complaints regarding direct and indirect discrimination, harassment and sexual harassment and provision of objective and impartial advice with regard to this function.
- 2) Reporting on the implementation of this law to Parliament, and submitting recommendations to governmental and municipal institutions and organisations on the revision of legal acts and priorities in the policy of implementation of equal rights.
- 3) Conducting independent research related to complaints of discrimination and drafting independent reports and overviews of the situation regarding discrimination. This particular field is rather new and not well developed since it was added to the list of competences in July 2009.
- 4) Exchanging information with analogous institutions in other Member States.

Although awareness raising, conducting research and surveys and other functions do not fall within the competence of the Ombudsperson according to the Law, in practice the Ombudsperson is involved in these activities. The Ombudsperson was appointed by the Government to be the main national body implementing the European Year of Equal Opportunities for All 2007, a number of educational, awareness raising and research functions were allocated to the Ombudsperson by the Government since the Ombudsperson was involved in the National Anti-discrimination Programme for 2006-2008¹³⁹ (later extended to 2009-2011),¹⁴⁰ the Government Programme for the Integration of the Roma 2008-2010,¹⁴¹ and the Strategy for the Development of a National Minority Policy by 2015.¹⁴²

At the end of 2011 the government appointed the Ombudsperson to be one of the main institutions, implementing most of the activities of the new Inter-institutional Action Plan for Promotion of Non-discrimination 2012-2014.¹⁴³ Hence, the Government considers the Ombudsperson as the key institution for awareness raising and promoting equal opportunities.

¹³⁹ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2006–2008 metų programos patvirtinimo“, 2006 m. rugsėjo 19 d. Nr. 907. Available in Lithuania at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=282802&p_query=&p_tr2=.

¹⁴⁰ Lithuania / Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2009–2011 metų programos patvirtinimo“, 2009 m. balandžio 15 d., Nr. 317.

¹⁴¹ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=317530&p_query=&p_tr2=.

¹⁴² Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo“, 2007 m. spalio 17 d. Nr. 1132. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=.

¹⁴³ Lithuania / Lietuvos Respublikos Vyriausybės nutarimas „Nediskriminavimo skatinimo 2012–2014 metų tarpinstitucinio veiklos plano patvirtinimo“, 2011-11-02, Valstybės žinios, 2011-11-10, Nr. 134-6362, Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_p?p_id=410523.



- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

Under the Law, the Ombudsperson for Equal Opportunities is not responsible for providing independent assistance to victims of discrimination in pursuing their complaints of discrimination, as provided for in the Article 13 of the Racial Equality Directive. These activities are also not exercised in practice.

In July 2009 the competence of the Ombudsperson was expanded to include conducting independent research related to complaints of discrimination and drafting independent reports and overviews of the situation regarding discrimination. This particular field of competence is hence rather new and not explored - no subject-specific or other reports had been previously drafted by the Ombudsperson since national law only obliged the Ombudsperson to present annual report to Parliament (usually before March 15 of the following year). In 2011 new fields of competence remained unexplored.

The Ombudsperson exercises its annual reporting role fairly well and all of its annual reports are available on its website. Although none of its decisions are posted on-line on a regular basis, extracts from its reasoning for decisions are put into the annual reports.

Since the drafting of additional reports or research has been added to the competence of Ombudsperson very recently, statistical information (which is rather scarce at national level) has neither been processed nor collected by the Ombudsperson. However, basic statistical information on the number of complaints received as well as the trends identified by these figures is well reflected in the Ombudsperson's annual reports.

According to the law, the Ombudsperson is obliged to provide advice to state or municipal institutions and organisations.¹⁴⁴ In practice, the Ombudsperson is usually invited to advise Parliament and the Government, as well as other governmental or municipal institutions, when issues of equal opportunities arise.

- e) *Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).*

As it was already mentioned, the independence of the Ombudsperson is ensured by law. However, since there is no board or other body, civil society is neither consulted, nor involved in the appointment of this officer. Hence the work of the institution as

¹⁴⁴ Ibid.



well as its political independence completely depends on the position of the head of the institution - Ombudsperson himself/herself. Current Ombudsperson was appointed to the third term in 2007 and remains in the post since the establishment of the institution in 1999 (the law does not set the maximum amount of terms an Ombudsperson may serve).¹⁴⁵ In practice, on at least a few occasions the Ombudsperson lacked vigilance and consistent approach to application of Law on Equal Treatment, especially when sensitive topics, like issues of homosexuals, were concerned. In 2011 quite a few inconsistencies in decision making, described above in the report, became even more visible.

The Ombudsperson is independent from the government, however, accountable to the Parliament. It is appointed by the Parliament for a term of five years (there is no limit on his/her number of terms). The independence of the Ombudsperson is also ensured by the provision which prohibits the Ombudsperson from holding any other job or involvement in any profit-making activities with exception of creative or educational work. The term of the Ombudsperson can be terminated by Parliament only if the Ombudsperson is ill for a certain period of time as specified by law, Parliament passes a vote of no-confidence or Ombudsperson is convicted of a criminal offence.

The Office of the Equal Opportunities Ombudsperson is financed from the budget, thus financial independency is also ensured by law. The Ombudsperson has a right to use the general financing according to its needs and priorities (neither the government, nor the parliament have any control on this). However, this does not mean that the financing for each year remains unchanged. Each year, the Parliament votes for the budget (proposed by the government), thus the Parliament may cut the budget of the institution.

f) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

Bringing discrimination complaints or intervening in legal cases does not fall within the competence of the Ombudsperson. The Ombudsperson does not have legal standing to intervene in legal cases. However, in a couple of cases the Ombudsperson has been involved in the proceedings as an expert witness on the side of the complainant, providing its expertise on the matter and assisting the victim.

g) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions).*

¹⁴⁵ The next appointment must take place in 2013.



The Ombudsperson's main activity is its quasi-judicial function since the Ombudsperson can not only investigate complaints but also issue administrative sanctions in accordance with the Administrative Violations Code.¹⁴⁶

The Ombudsperson may take the following decisions:

- To refer relevant material to the public prosecution authorities if indications of an offence have been established.
- To address a recommendation to an appropriate person or institution to discontinue actions violating equal opportunities, or to recommend that a person or an institution repeal a legal act related to such violations.
- To hear cases of administrative offences and impose administrative sanctions for violations of the Law on Equal Treatment and the Law on Equal Opportunities. In accordance with Article 41(6) of the Administrative Violations Code, in such cases it can issue a fine of from 100 to 2 000 litas (from 29 to 580 euros approximately). Where the same violation is committed repeatedly, a fine of between 2 000 and 4 000 litas can be imposed on the same party.
- To admonish those who have committed a violation.
- To halt advertising activities temporarily if there is sufficient data to indicate that an advertisement campaign may incite hatred towards or encourage discrimination against a group of residents or against a specific person, on account of his or her sex, sexual orientation, race, nationality, ethnicity, age, disability, faith, religion or beliefs.
- To issue binding decisions to stop discriminatory advertisement campaigns.

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, and so they can be challenged in court. Although the Ombudsperson has been given the competence to investigate complaints of discrimination, the decisions of the Equal Opportunities Ombudsperson do not include compensation for damage to the victim of discrimination. In practice the Ombudsperson usually issues a recommendation (which is non-binding in essence) to stop discriminatory actions or occasionally admonishes those who commit violations.

- i) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

Roma problems used to be a visible issue in the agenda of the Ombudsperson, however, due to the lack of complaints from Roma in recent years (0 in 2011) Roma problems were no longer addressed by the Ombudsperson.

¹⁴⁶ Lithuania/Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official Gazette/Valstybės žinios, 1985, Nr. 1-1. Available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=335295.

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)

The Ombudsperson for Equal Opportunities was appointed by the Government to be the main national body implementing the European Year of Equal Opportunities for All 2007. 2007 was the most intense year in terms of dissemination of information and awareness raising. Additionally, a number of educational, awareness raising and research measures were outlined in the National Anti-discrimination Programme for 2006-2008,¹⁴⁷ the Government Programme for the Integration of the Roma 2008–2010,¹⁴⁸ and the Strategy for the Development of a National Minority Policy by 2015,¹⁴⁹ National Anti-discrimination Programme 2009-2011.¹⁵⁰ However, all of these three were severely underfinanced in the period of 2009-2011, hence not much in terms of dissemination has been done in last couple of years. In 2011 the Ombudsperson implemented a social campaign (the full scope of it is not known to the author of this report, however, it was fairly visible at least in the capital city). The most important recent development was the adoption of the Inter-institutional Action Plan for Promotion of Non-discrimination 2012-2014¹⁵¹ by the government in November.

A research was carried out by the Ombudsperson staff in 2011 (in the framework of the PROGRESS supported project) about equality mainstreaming in Lithuania.¹⁵² The researchers inquired different governmental bodies and reviewed existing programs and work plans. The authors concluded, that neither of the ministries or governmental bodies had an equality mainstreaming plan, ensuring equal

¹⁴⁷ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2006–2008 metų programos patvirtinimo“, 2006 m. rugsėjo 19 d. Nr. 907. Available in Lithuania at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=282802&p_query=&p_tr2=.

¹⁴⁸ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=317530&p_query=&p_tr2=.

¹⁴⁹ Lithuania/ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo“, 2007 m. spalio 17 d. Nr. 1132. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=.

¹⁵⁰ Lithuania / Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2009–2011 metų programos patvirtinimo“, 2009 m. balandžio 15 d., Nr. 317., http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=342654&p_query=&p_tr2=.

¹⁵¹ Lithuania / Lietuvos Respublikos Vyriausybės nutarimas „Nediskriminavimo skatinimo 2012–2014 metų tarpinstitucinio veiklos plano patvirtinimo“, 2011-11-02, Valstybės žinios, 2011-11-10, Nr. 134-6362, Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_p?p_id=410523.

¹⁵² *Lygių galimybių integravimas: teoriniai ir praktiniai aspektai*, sudarė: Laima Vengalė-Dits, Lygių galimybių kontrolieriaus tarnyba, Vilnius, 2011.



opportunities was understood as compliance with national laws by most of the institutions, no proactive measures were applied. Most of the ministries do not have any equality assessment mechanisms, do not integrate equality and non-discrimination aspect in their working plans. In most cases equality was understood with regard to gender equality only.

- 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*

There have not been many initiatives by the Government or the ministries directly. Most of the initiatives aimed at fostering dialogue with NGOs were allocated to the Ombudsperson. In practice, the Ombudsperson is involved in various projects organised in cooperation with NGOs to implement national anti-discrimination measures. Awareness raising, educational activities and research are conducted by the Ombudsperson or in partnership and cooperation with other institutions and non-governmental organisations. These activities were particularly visible in 2007 and 2008, when the Ombudsperson was one of the main institutions implementing the European Year of Equal Opportunities for All 2007 as well as the main institution implementing the national anti-discrimination programme for 2006-2008. It is difficult to assess whether these efforts are sufficient to implement the requirements of the Directives.

One must take into account that the national NGO scene is very weak and fragmented. In general, the Government does not take NGOs seriously as partners. There is no governmental policy on the development of this sector. There are only a few NGOs that deal with human rights (and non-discrimination is only one field of their activities), and there are almost no ethnic minority NGOs working on lobbying or policymaking. One could say that demand for governmental action is weak, and so the Government makes limited efforts. In addition to this, national anti-discrimination were completely halted in 2009-2010, all governmental programs were either cut or received none of the initial budget. Thus NGOs were deprived of any scarce governmental resources.

In 2011, however, the ministry of Social Affairs and Labour announced a call for proposals for NGO's working in the field of human rights and non-discrimination.

- 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)*

This particular field has been least explored. There is no particular information available about whether there were any initiatives implemented between social partners with a focus on giving effect to the principle of equality. Thus it can be said that the Government has not implemented the Directives properly in this respect.



Codes of practices and workforce monitoring are not commonly implemented in the country.

d) *to specifically address the situation of Roma and Travellers.*

One of the main policy developments in recent years was the adoption of the Programme of the Integration of Roma in Lithuanian Society for 2008 – 2010 in March 2008.¹⁵³ The programme, contrary to its previous version was mainly aimed at improving Roma unemployment and education, reduction of poverty and fighting social exclusion. It fairly well reflected the actual needs of the community as well as the actual situation and managed to reach some achievements in 2008. However, it was eventually severely underfinanced when economic crisis hit the country in 2009. It seems that throughout the period of its existence, it did not receive 84% of its initial budget¹⁵⁴ and was discontinued in June 2010.¹⁵⁵ The main institution responsible for its implementation – The Department of National Minorities under the Government of Lithuania – was dissolved and ceased to exist. In 2011 the new program was being developed by ethnic minorities department of the Ministry of Culture, however, it has not been adopted. Hence, at the moment of writing of this report, no governmental policy on Roma integration existed at governmental level.

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).*

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 correspond to the Constitution and laws.

An individual may contest provisions in agreements, contracts or rules relating to a professional activity, workers and employers which, in his or her opinion, are contrary to the principle of equal treatment, using non-judicial or judicial procedures. S/he may

¹⁵³ Lietuvos Respublikos Vyriausybės nutarimas „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309.

¹⁵⁴ Lietuvos Respublikos Vyriausybės nutarimas „Dėl 2009 metų Lietuvos Respublikos biudžeto patvirtintų asignavimų paskirstymo pagal programas“, 2009 m. sausio 21 d. Nr. 32.

¹⁵⁵ Lietuvos Respublikos Vyriausybės 2010 m. birželio 2 d. nutarimas nr. 692 Dėl 2008 m. kovo 26 d. Nutarimo Nr. 309 „Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo“, 2008 m. kovo 26 d. Nr. 309 pripažinimo netekusiu galios.



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. For instance, Article 36 of the Labour 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 officials if the said acts are contrary to the law; 2) by not applying an act adopted by a state institution, municipality or individual official, if that act is contrary to the law.'

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

In one way or another, the main laws regulating the various fields of everyday life have already been adapted in line with the new levels of equality provided for by Directives 2000/78 and 2000/43. However, there are some provisions of laws, regulations and rules still in force which are contrary to the principle of equality. For example, religious communities which do not meet the criteria for registration are still disadvantaged in that they cannot register as legal persons. The Law on Religious Communities and Associations makes a distinction between traditional and non-traditional religious communities. On the basis of historical and cultural criteria, the State recognises nine traditional religions.¹⁵⁶

In addition to this, there is a number of laws (particularly those regulating statutory office), which do have various provisions on age (see sections on age), which seem not to be in line with directives. In 2011 new amendments to existing laws were adopted, that clearly contradict to the principle of equality of persons as well as non-discrimination legislation (see, for instance, section 2.1.1. d of this report).

¹⁵⁶ According to the Law on Religious Communities and Associations (Article 5), these are the following: Latin catholic, Greek Catholic, Lutheran, Reformat, Orthodox, Old-believers, Jewish, Muslim (Sunni), Karaite.



9 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 main institutions dealing with anti-discrimination issues are the Ministry of Social Affairs and Labour (in 2010, however, the Department of Equal Opportunities was reorganised and now it is the Equal Opportunities division of the Social Inclusion and Communities Department, which is responsible for equal opportunities in the ministry) and the Office of the Equal Opportunities Ombudsperson.

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

A few years ago Government approved and a number of policy documents that outline various anti-discrimination measures: the National Anti-discrimination Programme 2009-2011,¹⁵⁷ and the Strategy for the Development of a National Minority Policy by 2015.¹⁵⁸ However, these programs were severely underfinanced in 2009-2011 and most of the measures remained on paper only.

At the end of 2011 the government adopted an Inter-institutional Action Plan for Promotion of Non-discrimination 2012-2014.¹⁵⁹ The plan aims to allocate resources for promotion of equality, education of general public and particular target groups (judges, officials, police, etc.). Coordinating institution, responsible for the implementation of the plan is Ministry of Social Affairs and Labour, however, the plan foresees quite a few activities for other institutions (particularly Equal Opportunities Ombudsperson). The plan is brief, there is a short introduction, describing problematic areas of all anti-discrimination grounds, followed by a list of concrete tasks, allocated to particular institutions (for instance, awareness raising campaigns, trainings of particular target groups, etc.). For the implementation of all activities during the period of upcoming 3 years the plan foresees allocation of approximately 780 000 Litas each year (225 900 EUR).

¹⁵⁷ Lithuania / Lietuvos Respublikos Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2009–2011 metų programos patvirtinimo“, 2009 m. balandžio 15 d., Nr. 317., http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=342654&p_query=&p_tr2=.

¹⁵⁸ Lietuvos Respublikos Vyriausybės nutarimas „Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo“, 2007 m. spalio 17 d. Nr. 1132. http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=, accessed 6 May 2009.

¹⁵⁹ Lithuania / Lietuvos Respublikos Vyriausybės nutarimas „Nediskriminavimo skatinimo 2012–2014 metų tarpinstitucinio veiklos plano patvirtinimo“, 2011-11-02, Valstybės žinios, 2011-11-10, Nr. 134-6362, Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_p?p_id=410523.



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: 1 January 2012

Title of Legislation (including amending legislation)	Date of adoption: Day/mont h/year	Date of entry in force from: Day/mo nth/year	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.					e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
The Constitution of the Republic of Lithuania http://www3.lrs.lt/home/Konstitucija/Constitution.htm	25/10/1992	06/11/1992	Sex, race, nationality, language, ethnic origin, convictions, opinions, social status	Civil/administrative	employment, private employment, access to goods or services, education	Prohibition of unequal treatment and guarantee of fundamental human rights

Title of Legislation (including amending legislation)	Date of adoption: Day/month h/year	Date of entry in force from: Day/mo nth/year	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
The Law on Equal Treatment http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132	18/11/2003	01/01/2005 (latest amendments of 17/06/2008)	Age, sexual orientation, disability, ethnic origin, religion, beliefs or convictions, language, social status	Civil/administrative	employment, private employment, access to goods or services, education	prohibition of direct and indirect discrimination, harassment, instruction to discriminate
Law on Equal Opportunities for Women and Men http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330994	01/12/1998	01/03/1999	Gender, sexual orientation, race, nationality, language, ethnic origin, citizenship, social status, religion, marital status, age, convictions or opinions, membership of political parties	Civil/administrative	employment, private employment, access to goods or services, education	Prohibition of direct and indirect discrimination on the ground of gender; sets out the procedural rules for a specialised body (since 2005, on all grounds of discrimination)

Title of Legislation (including amending legislation)	Date of adoption: Day/mont h/year	Date of entry in force from: Day/mo nth/year	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
			or other organisations			
Labour Code http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389979	06/06/2002	01/01/ 2003	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	Employment	General prohibition of discrimination in employment
Law on Social Integration of the Disabled	28/11/1991	28/11/ 2010 (Latest	Disability	Administrative	Public and private employment,	Prohibition of discrimination on the ground of

Title of Legislation (including amending legislation)	Date of adoption: Day/mont h/year	Date of entry in force from: Day/mo nth/year	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=373285		amendments of 29/04/2010)			culture, education, etc.	disability, various measures on social inclusion, etc.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Lithuania

Date: 1 January 2012

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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)	14/05/1993	27/04/1995	No derogations / reservations	Accepted	Yes
Protocol 12, ECHR	No	No	NA	NA	NA
Revised European Social Charter	08/09/1997	15/05/2001	No derogations / reservations	Ratified collective complaints protocol	Yes
International Covenant on Civil and Political Rights	12/03/1991	20/11/1991	No derogations / reservations	Accepted	Yes
Framework Convention for the Protection	17/02/2002	17/02/2002	No derogations / reservations	Yes	Yes

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
of National Minorities					
International Convention on Economic, Social and Cultural Rights	12/03/1991	20/11/1991	No derogations / reservations	Accepted	Yes
Convention on the Elimination of All Forms of Racial Discrimination	10/11/1998	10/11/1998	No derogations / reservations	Accepted	Yes
Convention on the Elimination of Discrimination Against Women	17/07/1994	17/07/1994	No derogations / reservations	Accepted	Yes
ILO Convention No. 111 on Discrimination	27/13/1996	27/13/1996	No derogations / reservations	Accepted	Yes
Convention on the Rights of the Child	08/01/1992	03/07/1995	No derogations / reservations	Accepted	Yes



Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
Convention on the Rights of Persons with Disabilities	30/03/2007	27/05/2010	No derogations / reservations	Accepted	Yes