



Executive Summary

Country Report Lithuania 2011 on measures to combat discrimination

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1. Introduction

Lithuania regained its independence from the Soviet Union in 1990. The present Constitution was approved by referendum in 1992. On 1 May 2004 Lithuania joined the EU, meaning that significant changes to the legal system had taken place in little over a decade to meet EU and international standards. It must be mentioned that in most cases legal changes were not widely discussed, and society was not sufficiently prepared for new equality standards.

The lack of comprehensive equality data on the composition of society and communities vulnerable to discrimination in Lithuania remains quite a barrier to assessing the real situation faced by particular minorities. A comprehensive equality data collection system has not been established yet: the data currently available mostly derives from *ad hoc* studies, public opinions surveys, data collected by administrative bodies as well as the number of complaints received by Equal Opportunities Ombudsperson. The lack of equality data has been emphasised by intergovernmental bodies (CERD, ECRI, etc.).

In 2011 a general census was carried out, but its results will become available only in 2013, hence the most reliable statistics remains of the latest census carried out a decade ago. According to this data, Lithuania could be considered a rather homogenous country. Lithuanians account for 83.5% of the population, while only 29 nationalities had one hundred or more people. The biggest minority groups were Poles and Russians. Poles made up 6.7% of the population and Russians 6.3%, although there are some regions where ethnic minorities form the majority of population. The same could be applied to religion and beliefs. 79% of the population considered themselves Roman Catholics, 9.5% are non-believers, 4% are Orthodox and 7.5% belonged to other religious communities.

The issue of discrimination is a relatively new phenomenon in the country. It is hence not surprising that a significant portion of the population is not aware of it. Stereotypes and prejudice are also persistent, particularly as regards some minority groups. The potential vulnerability of particular communities can be estimated from analysing the data from annual surveys on public attitudes towards various minority groups. These public opinion surveys are not carried out systematically and the methodology used in the surveys depends on the institution conducting it, which must be taken into account when using the data collected.

Nonetheless, public opinion surveys reveal that the 'hierarchy of intolerance' remains the same - the Roma, migrants and refugees and LGBT community are the least



tolerated and thus the groups most vulnerable to discrimination in Lithuania. Homosexuals face widespread negative attitudes in everyday life. Prejudice towards gay people is deeply rooted in society. This is mostly the relict of the Soviet past, since consensual homosexual relationships were considered a crime and homosexuality was treated as a mental illness. The issue of sexual orientation was almost invisible in public discourse until 2005 when the Law on Equal Treatment, designed to transpose EU anti-discrimination legislation, came into force. The education system has traditionally not addressed it either, leading to frequent misunderstanding and ignorance about sexual orientation in Lithuanian society.

Many challenges hence need to be addressed in order to apply existing laws in practice. The year 2007 was marked with increased attention to discrimination, quite a few successful awareness raising activities took place and as a follow-up the Government approved a number of policy documents in 2008-2009, that outlined various anti-discrimination measures: the National Anti-discrimination Programme 2009-2011, and the Strategy for the Development of a National Minority Policy by 2015, Programme of the Integration of Roma in Lithuanian Society for 2008 – 2010. Unfortunately, in 2009 the country was severely hit by economic crisis and all of these programs were severely underfinanced in 2009-2011, most of the measures remained on paper only. At the end of 2011 a new Inter-institutional Action Plan for Promotion of Non-discrimination 2012-2014 was adopted by the government.

2. Main legislation

The principle of equality outlined in the Constitution. Although age, disability and sexual orientation are not explicitly mentioned in the constitutional equality clause, the Constitution could presumably be interpreted in such a way as to protect against discrimination on these grounds (jurisprudence of the Constitutional Court on equality remains rather scarce). The general principle of equality is repeated in various national legal enactments, including the Labour Code, Civil Code, Criminal Code and other laws. Although every individual can defend his or her rights on the basis of Constitution, non-discrimination cases are almost non-existent in practice.

Lithuania is party to a number of international agreements which guarantee protection against discrimination on various grounds. According to the Constitution, international agreements which have been ratified by Parliament form a constituent part of the legal system. The Law on International Agreements also 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 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, Convention on the Rights of Persons with Disabilities.

Equal opportunities and discrimination began to be addressed in 1998 when the Law on Equal Opportunities of Women and Men 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 Ombudsperson to investigate complaints. The Ombudsperson's Office began functioning in 1999. Additional equality grounds have been gradually added to the competence of the Ombudsperson (age, sexual orientation, disability, race, ethnicity, religion and beliefs) since the Law on Equal Treatment came into force 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 grounds of gender as well as establishes the functions, competence and procedural rules of the Equal Opportunities Ombudsperson, and the Law on Equal Treatment, which added age, sexual orientation, disability, race, ethnicity, religion and beliefs to the list of non-discrimination grounds, provided additional concepts and further expanded the competence of the Equal Opportunities Ombudsperson.

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. The latest amendments (particularly those of June 2008) formally eliminated significant parts of the weaknesses in implementation and also expanded the list of protected grounds by 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. The Law was also amended in July 2009, expanding the competence of the Equal Opportunities Ombudsperson.

3. Main principles and definitions

Currently the Law on Equal Treatment in most cases repeats the wording of the Directives, without going into details of particular provisions, hence most concepts still require judicial interpretation. Both natural and legal persons are protected from discrimination. Besides the prohibition of direct and indirect discrimination, discrimination by association, harassment, instructions to discriminate and victimisation are also considered illegal. However, some definitions still lack clarity.

For example, the duty to provide reasonable accommodation is embodied only in the Law on Equal Treatment. However, the wording is imprecise and somewhat 'softer' than that of the Directive. Failure to provide reasonable accommodation cannot be



considered as discrimination. According to one court's interpretation, public statements of officials cannot constitute discrimination and do not fall under the scope of the Law.

In addition, the provision on genuine and determining occupational requirements is provided by the Law on Equal Treatment in a list of exceptions to direct discrimination. The national provision simply repeats the wording of the Directive, and does not elaborate on it. As this exception has never been considered by the courts or the Equal Opportunities Ombudsperson, it is not clear how it will be used in practice.

The concept of multiple discrimination has not been addressed by the legislation or case-law. There are no legal rules or plans to adopt rules on multiple discrimination.

4. Material scope

National anti-discrimination law is applied in both the public and private sectors. It should be applied in employment, education, and access to goods and services on all grounds covered by the Directives. In addition, national anti-discrimination law also provides protection against discrimination on the grounds of social status, language and convictions.

However, part of the material scope of the Directives still lacks protection by national law. The existing Law on Equal Treatment does not explicitly state that social protection and social security fall under the scope of this law. The generally defined duty of state and municipal institutions and agencies to implement equal opportunities can be interpreted to apply to social security and healthcare since these fields are not mentioned among those where, according to the law, the principle of non-discrimination does not apply. Without case law on this particular issue, it is hard to tell whether this interpretation is right. However, case law has shown that generally defined provisions tend to be interpreted narrowly and are difficult to enforce in practice.

According to the rulings and interpretation of the Law on Equal Treatment by the Equal Opportunities Ombudsperson, social security does not fall under the scope of the Law. Healthcare is also not explicitly mentioned in the Law, but the Ombudsperson considers that it falls under the general definition of 'services' and is hence covered.

5. Enforcing the law

No special judicial, administrative or conciliation procedures for cases of discrimination exist at national level. Mediation in discrimination disputes is also not covered by national law. The Equal Opportunities Ombudsperson sometimes acts as a mediator in practice, but this procedure is not formalised and does not provide the victim with compensation.



Under national legislation, persons who have experienced discrimination have several procedural ways to protect the rights established by the Constitution and legislation. Firstly, the Constitution guarantees the right of every person to appeal to a court for the protection of rights under the Constitution which have been violated. The general principle of equality 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. So far only a couple of cases have been brought to court. In practice, a person who wants to initiate court proceedings will have to consult a lawyer. Legal services are relatively expensive, and so the issue of unequal access to justice by different social groups does exist.

As regards evidence, national law prohibits use of neither statistical evidence nor situation testing. 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. Hence no special conditions for using statistical evidence to establish indirect discrimination need to be fulfilled, although due to the lack of case law it is not possible to state whether use of this evidence has been advantageous or not. Situation testing, on the other hand, has already been successfully used in a discrimination case, and was accepted by the court. However, there is no law that elaborates on the use of situation testing or sets out a procedure for its use.

In the case of a labour dispute, a person could take advantage of procedures established by the Labour Code by applying to the Employment Disputes Commission or courts directly.

People who believe that their rights have been infringed by individual administrative actions or actions (or omissions) of civil servants or municipality employees have the right to file a complaint to the Administrative Disputes Commission under the Law on Administrative Disputes Commissions or with the administrative courts under the Law on Administrative Procedure.

Another possibility is to initiate criminal proceedings under the 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.

In practice, the most widely used possibility is an application to the Equal Opportunities Ombudsperson, who mainly acts as a quasi-judicial body. Every natural or legal person has the right to file a complaint with the Equal Opportunities Ombudsperson regarding the violation of rights to equal treatment. However, according to recent judicial interpretation, only persons whose rights have been



directly violated can bring a complaint to the Ombudsperson (although the practice of the Ombudsperson does not fully confirm such interpretation). Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions (a fine, for instance) are binding and can be challenged in court. However, in practice the Ombudsperson usually issues recommendations and warnings, which are in essence of a not binding character. However, in most cases these recommendations are followed. In practice, the Ombudsperson can be considered as a mediator since, according to the Ombudsperson, the peaceful resolution of discrimination is one of its main objectives. An application to the Equal Opportunities Ombudsperson does not prevent the complainant from filing an application with a court on the same matter.

Support from various associations in discrimination cases is crucial, but the right of associations to engage in legal proceedings was included in the Law on Equal Treatment only recently. It also cannot be considered effective due to legal gaps in other procedural legislation. In addition, one must take into account the fact that the national NGO scene is very weak and fragmented, available financial resources for its operation are also very limited. In general, the government does not take NGOs seriously as partners. There is no government 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 which work on lobbying or policymaking.

6. Equality bodies

The 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 in force in 2005 it expanded the mandate of the previous Ombudsperson for Equal Opportunities for Men and Women (in operation since 1999). Hence 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 from 1 January 2005. The Ombudsperson monitors the implementation of the Law on Equal Treatment in the manner prescribed by the Law on Equal Opportunities for Women and Men. It is the main national institution dealing with equality and non-discrimination.

The Ombudsperson is an independent institution financed from the fiscal budget and appointed by Parliament for a five-year term (there is no limit on the number of terms that may be served). The current procedure for appointing the Ombudsperson does not involve civil society.

The main function of the Ombudsperson is, however, quasi-judicial. 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). The decisions of the Ombudsperson, however, do not seek to compensate the victim.



According to the law, the Ombudsman is not charged with providing independent assistance to victims of discrimination in pursuing their complaints of discrimination, as specified in the Article 13 of the Racial Equality Directive, bringing discrimination complaints or intervening in legal cases. These activities are not exercised in practice either. 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 as regards discrimination. This particular field of competence is hence rather new and not well developed: no subject-specific or other reports were previously drafted by the Ombudsperson since national law only obliges the Ombudsperson to present an annual report to Parliament.

Although since establishment in 2005 awareness raising, research, and conducting independent surveys and other functions did not fall within the competence of the Ombudsperson according to the law, in practice the Ombudsperson has been involved in these activities (particularly in 2007). The Government considers the Ombudsperson as the key institution for promoting equal opportunities. It is hence involved in many awareness raising activities outlined in governmental programmes on social inclusion and anti-discrimination. In practice, the Ombudsperson is involved in various projects to implement anti-discrimination measures. Awareness-raising, educational activities and research are carried out by the Ombudsperson alone or in partnership with other institutions and non-governmental organisations.

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