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# Country report

## Non-discrimination

Lithuania

2017

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# **Country report**

# **Non-discrimination**

# **Lithuania**

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Reporting period 1 January 2016 – 31 December 2016

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## EXECUTIVE SUMMARY

### 1. Introduction

Lithuania regained its independence from the Soviet Union in 1990. The current constitution<sup>1</sup> 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 should be mentioned that in most cases the legal changes were not widely discussed, and society was not sufficiently prepared for some of the new non-discrimination standards.

According to the general census carried out in 2011, Lithuanians account for 84.2 % of the population, with the biggest minority groups being Poles and Russians (Poles make up 6.6 % of the population and Russians account for 5.8 %, although there are certain regions where ethnic minorities form the majority of population). The same could be applied to religion and beliefs: 77.2 % of the population consider themselves to be Roman Catholics; 10.1 % did not indicate their religion; 4.1 % are Orthodox; and 8.6 % belong to other religious communities. Hence Lithuania could be considered a rather homogenous country. That is supported by the results of the 2015 Eurobarometer survey on discrimination: only 29 % of Lithuanian residents think that discrimination on the basis of ethnicity is widespread in the country (the EU average is 64 %) and just 17 % think that religious discrimination is widespread (the average in the EU is 50 %).

The lack of comprehensive equality data remains a barrier to assessing the real situation faced by particular vulnerable groups. A comprehensive equality data collection system has not yet been established. The data currently available mostly derive from various studies, public opinion surveys and data collected by administrative bodies, all of which is done on an ad hoc basis. The number of complaints received by the Equal Opportunities Ombudsperson adds to the picture. Although general awareness of human rights is slightly increasing, awareness of institutions working in the field of human rights protection as well as public trust in existing mechanisms remain unsatisfactory. A survey conducted in 2014 indicated that although 53 % of the population claim to know to whom to address a complaint of human rights violation, 95 % of those who claimed that their rights had been recently violated (that is 18 % of all respondents), did not make a complaint anywhere.

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, which reveal that the 'hierarchy of intolerance' remains the same - the Roma, ex-convicts, mentally disabled people and the LGBT community are the least tolerated in Lithuania, and thus the groups most vulnerable to discrimination. The LGBT community and mentally ill people face widespread negative attitudes in everyday life.

According to a 2015 survey, only 20 % of Lithuanian residents would accept an LGBT person in the highest state office (the EU average is 54 %). Prejudice towards gay people is deeply rooted in society. This is mostly a relic of the Soviet past, when 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. Traditionally, the education system has not addressed the issue either, leading to frequent misunderstanding and ignorance about sexual orientation in Lithuanian society. However, there has been significant progress in recent years, with more and more people openly supporting the rights of LGBT people. In

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<sup>1</sup> Lithuania, Lietuvos Respublikos Konstitucija (Constitution of the Republic of Lithuania), 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

2010, the first Pride event raised controversy and opposition, but subsequent events in 2013 and 2016 took place in the main avenue of the capital, successfully and with relative calm.

A small population of Lithuanian Roma (just over 2 000 persons) live in poverty and exclusion, despite 96 % of them being Lithuanian citizens.<sup>2</sup> In contrast to the general population, most Lithuanian Roma live in premises that they do not own (69 %, in comparison to the state average of only 9 %), and 38 % live in social housing (the state average is 1 %). About a fifth of Lithuanian Roma live in the premises without paying rent (illegal housing, staying at relatives, etc.), in contrast to the state average of 4 %. Hence not surprisingly, living standards are much lower than the state average: the Roma live in much more crowded premises (less than half the average number of square metres per person) and more than half of their premises are not equipped with bathtub or shower. The Roma community living in the Kirtimai (a district of the Vilnius city municipality), is the most obvious example of segregation. This community of approximately 500 people live in a slum-like settlement and residents face housing problems on a regular basis. Educational levels are also very low – only 2 % of the Roma population has a college or university degree, while 44 % have attained only basic education. In 2016, Vilnius city municipality adopted the Vilnius Kirtimai Roma Community Integration to Society Programme 2016–2019. The programme sets out a number of measures aimed at providing social housing options to Kirtimai Roma community members. According to the representatives of the municipality, the aim of the programme of housing measures was to adopt a new approach, avoiding enforcing evictions (most buildings were built illegally), but rather offering incentives (financial support for rent or social housing options) to those who voluntarily agree to leave the settlement.

The number of refugees and asylum seekers arriving in Lithuania remains relatively small and it is not considered a destination country. The action plan for the implementation of the integration of foreigners' programme for 2015–2017 sets out a number of measures for the integration of foreigners. However, recent International Organisation for Migration studies<sup>3</sup> identify systematic flaws in national integration measures: the vast majority of resettled and relocated persons do not see any prospect of staying in the country and do not link their future with Lithuania; the local language training is insufficient; there is a lack of interpreters; the amount of EUR 2 allocated per person per day does not ensure even the most modest standards of living; and employment access facilitation is insufficient.<sup>4</sup>

## 2. Main legislation

The principle of equality of persons is outlined in the Constitution. Although age, disability and sexual orientation are not explicitly mentioned in the constitution's equality clause, the constitution could presumably be interpreted in such a way as to protect

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<sup>2</sup> VŠĮ Diversity Development Group (2015), 'Lithuania / Sociologinio tyrimo "Romų padėtis lyginant su kitais šalies gyventojais" tyrimo ataskaita', (30 April 2015). Available in Lithuanian at <http://www.lygybe.lt/data/public/uploads/2015/12/romu-tautybes-asmenu-padetis-lyginant-su-kitais-salies-gyventojais.pdf>.

<sup>3</sup> International Organisation for Migration/European Migration Network (2015), 'A study on the Lithuanian system of refugee integration' (*Prieglobstį Lietuvoje gavusių užsieniečių integracija: teisinis reguliavimas ir situacija*) available at: [http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BEEsienie%C4%8Di%C5%B3-integracija\\_National-Report.pdf](http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BEEsienie%C4%8Di%C5%B3-integracija_National-Report.pdf).

International Organisation for Migration (2016), 'A study on the refugee re-location programme in Lithuania: the experience of asylum seekers, expert views and attitude of general population' (*Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos*), available at: [http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf).

<sup>4</sup> International Organisation for Migration (2016), 'A study on the refugee re-location programme in Lithuania: the experience of asylum seekers, expert views and attitude of general population' (*Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos*), available at: [http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf).



against discrimination on those grounds (although 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. However, so far only a handful of discrimination cases have been brought to court.

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 and the UN Convention on the Rights of Persons with Disabilities. According to the Constitution, international agreements that have been ratified by Parliament form a constituent part of the legal system. The Law on International Agreements<sup>5</sup> also asserts that if an international agreement that 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 by 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.

Equal opportunities and discrimination began to be addressed in 1998 when the Law on Equal Opportunities for Women and Men<sup>6</sup> was passed. The law not only established the concept of discrimination on the ground of sex, it also created a quasi-judicial institution to investigate complaints - the Office of the Equal Opportunities Ombudsperson.<sup>7</sup> The Office of the Equal Opportunities Ombudsperson for Women and Men (for the ground of gender) began functioning in 1999 and 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<sup>8</sup> came into force in 2005. Thus since then, national anti-discrimination law consisted of two major laws: the Law on Equal Opportunities for Women and Men, which prohibited discrimination on the grounds 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 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. In November 2016, both laws were amended (the amendments entered into force on 1 January 2017) and all procedural aspects (appointment criteria and procedure as well as competence and provisions on investigations of complaints) were moved from the Law on Equal Opportunities of Women and Men to the Law on Equal Treatment. Therefore, the Law on Equal Opportunities of Women and Men lost its relevance with regards to all other grounds of discrimination.

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 later amendments formally eliminated major weaknesses in implementation and also expanded the list of protected grounds by adding social status, language and convictions. The scope of the Law on Equal Treatment

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<sup>5</sup> Lithuania, *Tarptautinių sutarčių įstatymas* (Law on International Agreements), 1999, Nr. 60-1948, Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.5BCEC9B41811/tdfXOqlzCP>.

<sup>6</sup> Lithuania, *Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas*. (Law on Equal Opportunities for Women and Men), 1998, Nr. 112-3100. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/udzdOFTUte>.

<sup>7</sup> Official website of the institution: <http://www.lygybe.lt>.

<sup>8</sup> Lithuania, *Lietuvos Respublikos Lygių galimybių įstatymas* (Law on Equal Treatment), 2003, No.114-5115. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/KelaXtCsAE>.

encompasses employment, education, provision of goods and services, but does not explicitly state that it also applies in the sphere of social security (including housing, social benefits and healthcare).

### **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, but the wording is imprecise and somewhat 'softer' than that of the relevant directive. In 2014 the court ruled in favour of the complainant in a case of unfair dismissal due to failure to provide reasonable accommodation, but it is questionable whether such a failure would be considered as direct discrimination if a similar case were brought in the context of recruitment.<sup>9</sup> According to one court's interpretation, public statements of officials cannot constitute discrimination and do not fall under the scope of the Law on Equal Treatment. In addition, the provision on genuine and determining occupational requirements in the Law on Equal Treatment is found 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 that 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 in case law.

### **4. Material scope**

National anti-discrimination law applies to 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 its scope. The generally defined duty of state and municipal institutions and agencies to implement equal opportunities could theoretically be interpreted to apply to social security and healthcare since those fields are not mentioned among those where, according to the law, the principle of non-discrimination does not apply.

When it comes to social security and benefits, the practice of the Ombudsperson is inconsistent. In the past it considered that social security did not fall under its scope. However, since 2014 it has accepted complaints and conducted investigations in the area of social benefits. Healthcare is also not explicitly mentioned in the Law on Equal Treatment, but the Ombudsperson considers that it falls under the general definition of 'services' and is hence covered.

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<sup>9</sup> Lithuania, Vilnius County Court, case No. 2A-557-640/2014, 27 February 2014, (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*). Available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaijeska/tekstas.aspx?id=88b49cea-b30b-4a64-9fd8-fbcb2dc1efe4>.

## 5. Enforcing the law

It should be emphasised that the only way for a victim of discrimination to get some sort of compensation for the harm suffered is to pursue the case in court. In practice, a person who wishes to initiate court proceedings will have to consult a lawyer. Legal services are relatively expensive and thus the issue of unequal access to justice by different social groups does exist. Although there is a system of state supported legal aid and a few legal aid clinics (mostly staffed by law students), the legal aid mechanism needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights in court. In addition to this, the Code of Civil Procedure and other procedural laws do not include special judicial, administrative, mediation or conciliation procedures for cases of discrimination. Thus, in civil or administrative cases, victims of discrimination must rely on the general procedures of civil procedure and therefore a qualified and experienced legal consultant is necessary.

In practice, associations initiate administrative proceedings with the Ombudsperson, although case law on the issue confirms that only persons whose rights have been directly infringed by particular decisions have the right to appeal to the Ombudsperson.<sup>10</sup> However, recent practice is that when the complaint is received from an NGO and the rights of the organisation have not been directly infringed, the Ombudsperson would start an investigation 'on its own initiative'. In addition, the procedure at the Equal Opportunities Ombudsperson that is 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 the time limit are not investigated unless the Equal Opportunities Ombudsperson decides otherwise.

In Lithuania, there are two options for imposing sanctions for discriminatory behaviour: judicial procedure in criminal, administrative or civil courts (mostly for claiming compensation, although the national law does not accept the concept of punitive damages) or through the Equal Opportunities Ombudsperson (who can impose sanctions, but does not in any way compensate the victim). As there have been only a handful of successful discrimination cases (most of them on the basis of gender discrimination and only a few on other grounds) it is too early to provide a comprehensive answer about general trends. Currently, judicial compensation for victims of discrimination ranges from EUR 579 to 830.

In the opinion of the author of this report, the system of sanctions for discriminatory acts in Lithuania (as well as the practice of the Equal Opportunities Ombudsperson) cannot be considered effective, proportionate or dissuasive.

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 any type of compensation for damage to the victim of discrimination. In the absolute majority of cases, the Ombudsperson chooses to issue 'recommendations' to stop discriminatory actions, which are not binding in essence. According to the Ombudsperson, most of the recommendations are followed. Until 2016 it was difficult to estimate whether this was actually the case in practice, since neither legislation nor the Ombudsperson's internal rules of procedure provided for any follow-up action and no system for administrative follow-up was in place before 2016. However, a number of measures to ensure the efficiency of the institution were established in 2016 and the introduction of an administrative follow-up system was one of them. A table of recommendations and the status of their implementation (a

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<sup>10</sup> The Supreme Administrative Court of Lithuania, No. A<sup>62</sup>-665/2010, decision of 19 April 2010. (*Vyriausiojo administracinio teismo 2010 m. balandžio 19 d. sprendimas byloje Nr. A<sup>62</sup>-665/2010*); Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, Administrative case No. A<sup>492</sup>-2078/2013, decision of 7 November 2013.

monitoring report) was annexed to the annual report of the Ombudsperson in 2016.<sup>11</sup> According to the document, 26 recommendations to various institutions were issued between February and December 2016. Of those recommendations, 16 were implemented, while 10 were in the process of implementation.

According to the annual reports of the institution, during the last 10 years of operation the Ombudsperson issued a fine on only one occasion.<sup>12</sup> However, even were the Ombudsperson to issue fines, such administrative sanctions could not be considered effective, proportionate and dissuasive (this was also stressed by the Ombudsperson herself in her annual report). Fines – the only administrative sanction available – are provided for in the Administrative Violations Code and might range from EUR 40 to 500 (or EUR 500 to 1000 for repeated offences).<sup>13</sup>

Support from various associations in discrimination cases is crucial, but the right of associations to engage in legal proceedings in practice is limited. Although the wording of the relevant provisions of the Law on Equal Treatment repeat the wording of the directives, the Code of Civil Procedure states that only actual members of a particular organisation can be represented in court by that association. In theory, an association can only act on behalf of the victim in administrative procedure. In addition, associations cannot act in defence of the public interest, even when applying to the Equal Opportunities Ombudsperson. The supreme administrative court has ruled that only persons whose rights have been directly affected by particular decisions have a right to appeal to the Ombudsperson.

Finally, one must take into account the fact that the national NGO scene is rather weak and fragmented, lacking financial and human resources. In general, the Government does not take NGOs seriously as partners. There are only a few NGOs that deal with human rights (and non-discrimination is only one field of their activities), in addition to organisations that deal with particular grounds of discrimination.

## 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 into force in 2005 it expanded the mandate of the previous Ombudsperson for Equal Opportunities for Men and Women (in operation since 1999). A new institution – the Equal Opportunities Ombudsperson – was established in 2005, covering all grounds of discrimination in Directives 2000/43/EC and 2000/78/EC and the ground of gender, and began work on 1 January 2005.

Although awareness raising was only formally added to the competence of the Ombudsperson on 1 January 2017, in practice the Ombudsperson had been involved in such activities since very beginning, participating in many awareness-raising activities outlined in governmental programmes on social inclusion and anti-discrimination. Awareness raising, educational activities and research are carried out by the Ombudsperson alone or in partnership with other institutions and non-governmental organisations.

For the Ombudsperson, the year 2016 was an important turning point towards increased efficiency and strengthening of the institutional structure. The institution was re-

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<sup>11</sup> Equal Opportunities Ombudsperson (2017), *Annex 1 of the Equal Opportunities Ombudsperson annual report 2016*, available at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>12</sup> Although the staff of the institution claim that fines have been issued at least a few times.

<sup>13</sup> Lithuania, Administrative Violations Code (*Lietuvos Respublikos Administracinių teisės pažeidimų administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas*), 1985 2015-06-25, No. 1-1.XII-1869. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4e6e66c0262311e5bf92d6af3f6a2e8b>.

structured with three internal divisions (legal division, equal opportunities mainstreaming division and operational management division) in addition to the chief specialist for public relations, a financial adviser and the Ombudsperson herself. Furthermore, the institution has adopted its strategic plan for 2016–2018 – the first detailed effort by the institution to implement a strategic approach with certain priorities and assessment criteria – which is definitely a step forward in increasing the efficiency of the institution.

The main function of the Ombudsperson remains, 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. Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, although 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 office, peaceful resolution of discrimination is one of its main objectives. On the other hand, such activities by the Ombudsperson have never provided compensation to the victim.

According to the law, the Ombudsman is not obliged to provide independent assistance to victims of discrimination in pursuing their complaints of discrimination, as specified in Article 13 of the Racial Equality Directive, by bringing discrimination complaints or intervening in legal cases. Such activities are not exercised in practice either. The Ombudsperson has a right to conduct independent research related to complaints of discrimination and to draft independent reports and overviews of the situation as regards discrimination.

The Office of the Equal Opportunities Ombudsperson is an independent institution financed from the fiscal budget and the Ombudsperson is appointed by Parliament for a five-year term (for no more than two consecutive terms). 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 well as its political independence completely depends on the position of the head of the institution – the Ombudsperson themselves.

## **7. Key issues**

National anti-discrimination legislation in most cases repeats the wording of the directives, without going into details of particular provisions. In the opinion of the author of this report, the transposition is still insufficient with regards to the following aspects:

- The existing Law on Equal Treatment does not explicitly state that social protection, social security and healthcare fall under its scope.
- 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, and sanctions imposed by the Ombudsperson are not effective, proportionate and dissuasive.
- Providing independent assistance to victims of discrimination in pursuing their complaints of discrimination does not fall within the competence of the national equality body - the Equal Opportunities Ombudsperson – according to the law.
- The right of associations to engage in legal proceedings was included in the Law on Equal Treatment, repeating the wording of the directives. However, exercising that right in practice is limited. The Code of Civil Procedure states that only actual members of a particular organisation can be represented in court by that association. In theory, associations can act on behalf of the victim in administrative procedures only, and not in civil cases.

- 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. Therefore it is more difficult to enforce it in practice.
- 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. Self-employment is not explicitly mentioned in the Law on Equal Treatment, although in contrast, it is referred to in the Law on Equal Opportunities of Women and Men, which deals with the ground of gender.
- 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 and there is still no case law or interpretation on the matter. There is also no information available about whether such practices existed in Lithuania before the adoption of the directive, which organisations used them and to what extent. It remains unclear which organisations can take advantage of the exception. The wording of the national provision is very broad and can be interpreted widely, for instance, in favour of discriminating against LGBT people (as was suggested during discussions in Parliament during the adoption of the provisions). Such vague provisions in national legislation are hardly compatible with the goals of the directive.

In contrast, some positive examples in 2016 can also be highlighted. One of the best practices was an awareness-raising initiative, implemented jointly by the Equal Opportunities Ombudsperson and a group of NGOs working with vulnerable groups, called 'The National Equality and Diversity Awards'. This initiative has been taking place since 2014. In April 2016, winners from various nominations (Journalist of the Year, Civic Activist of the Year, Ethno-Dialogue promoter, Golden Age award, etc.) were given awards for their achievements in the field of promoting equality or protecting people from discrimination. The awards received quite substantial media attention and a number of organisations participated by selecting nominees, voting, organising and implementing awards. The awards ceremony could serve as a tool to raise awareness, spread good practice and encourage those who work in the field in the future as well. Organisers are planning to continue its implementation next year.

## RÉSUMÉ

### 1. Introduction

La Lituanie est redevenue indépendante de l'Union soviétique en 1990. Sa Constitution actuelle<sup>14</sup> a été approuvée par référendum en 1992. Le pays a adhéré à l'UE le 1<sup>er</sup> mai 2004, ce qui signifie que le système juridique national a subi en dix ans à peine des changements majeurs pour satisfaire aux normes européennes. Il convient néanmoins de préciser que la plupart de ces changements n'ont pas fait l'objet d'un vaste débat et que la société n'a pas été suffisamment préparée à certaines nouvelles normes antidiscrimination.

Il ressort du recensement général effectué en 2011 que les Lituanais représentent 84,2 % de la population. Les principaux groupes minoritaires sont les Polonais et les Russes (les premiers formant 6,6 % de la population et les seconds 5,8 %, même si, dans certaines régions, des minorités ethniques peuvent constituer la majorité des habitants). Il en va de même de la religion et des convictions: 77,2 % de la population se déclarent catholiques romains; 10,1 % n'indiquent pas leur religion; 4,1 % sont orthodoxes; et 8,6 % appartiennent à d'autres communautés religieuses. La Lituanie peut donc être considérée comme un pays assez homogène – un constat étayé par les résultats du sondage Eurobaromètre 2015 concernant la discrimination: seuls 29 % des habitants estiment que la discrimination fondée sur l'origine ethnique est un phénomène répandu dans le pays (la moyenne de l'UE s'établissant à 64 %) et 17 % à peine sont de cet avis en ce qui concerne la discrimination religieuse (la moyenne de l'EU étant de 50 %).

La pénurie de données exhaustives en matière d'égalité ne permet toujours pas de procéder à une évaluation de la situation réellement vécue par des groupes vulnérables particuliers. Aucun système général n'a encore été mis en place pour la collecte de ces données. Celles qui sont actuellement disponibles proviennent de diverses études, de sondages d'opinion et d'informations rassemblées par des organismes administratifs, autrement dit de processus effectués de façon ponctuelle. Le nombre de plaintes adressées au Médiateur pour l'égalité des chances complète le tableau. Si l'on observe une sensibilisation générale légèrement plus marquée à l'égard des droits de l'homme, la connaissance des institutions œuvrant à les protéger ainsi que la confiance du grand public dans les mécanismes en place restent insuffisantes. Un sondage d'opinion effectué en 2014 fait apparaître qu'alors que 53 % de la population affirme savoir où adresser une plainte en cas de violation des droits de l'homme, 95 % des personnes alléguant un non-respect récent de leurs droits (soit 18 % de l'ensemble des répondants) n'ont déposé plainte nulle part.

Les stéréotypes et préjugés persistent, en particulier à l'égard de certaines minorités. La vulnérabilité potentielle de certaines communautés peut être constatée à l'analyse des données tirées d'enquêtes annuelles visant à déterminer l'attitude du public envers divers groupes minoritaires, lesquelles révèlent que la «hiérarchie de l'intolérance» demeure inchangée: les Roms, les anciens détenus, les handicapés mentaux et les membres de la communauté LGBT sont les moins tolérés en Lituanie et forment dès lors les groupes les plus exposés aux discriminations. Les membres de la communauté LGBT et les personnes souffrant de pathologies mentales sont confrontés dans la vie de tous les jours à des attitudes négatives largement répandues.

Selon une enquête menée en 2015, seuls 20 % des habitants de Lituanie accepteraient qu'une personne LGBT occupe la plus haute fonction de l'État (la moyenne étant de 54 % dans l'ensemble de l'UE). Les préjugés à l'égard des membres de la communauté LGBT

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<sup>14</sup> Lituanie, *Lietuvos Respublikos Konstitucija* (Constitution de la République de Lituanie), 1992, n° 33-1014. Disponible en français sur: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=313310](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=313310)



sont profondément ancrés dans la conscience collective. Il s'agit essentiellement d'un héritage du passé soviétique: à l'époque, les rapports homosexuels librement consentis étaient considérés comme un délit et l'homosexualité comme une maladie psychiatrique. La question de l'orientation sexuelle a été pratiquement absente du discours public jusqu'en 2005, date d'entrée en vigueur de la loi sur l'égalité de traitement transposant en droit interne la législation antidiscrimination de l'UE. La question n'a traditionnellement pas été davantage abordée dans le cadre du système éducatif, ce qui a conduit à beaucoup d'incompréhension et d'ignorance à propos de l'orientation sexuelle au sein de la société lituanienne. On observe néanmoins des avancées non négligeables ces dernières années dans la mesure où les gens sont de plus en plus nombreux à soutenir ouvertement les droits des membres de la communauté LGBT. En 2010, la première «gay pride» a suscité la controverse et de l'opposition, mais des événements ultérieurs organisés en 2013 et 2016 se sont déroulés avec succès et assez calmement sur l'axe principal de la capitale.

Une petite population de Roms lituaniens (un peu plus de 2 000 personnes) vivent dans la pauvreté et l'exclusion, bien que 96 % d'entre eux soient des citoyens de Lituanie.<sup>15</sup> Contrairement à la population en général, la plupart des Roms lituaniens vivent dans des habitations dont ils ne sont pas propriétaires (69% contre une moyenne nationale de 9 % seulement) et 38 % d'entre eux vivent en logements sociaux (la moyenne nationale étant de 1 %). Un cinquième environ des Roms lituaniens vivent dans des habitations dont ils ne paient pas le loyer (logements illégaux, séjour auprès de membres de la famille, etc.) contre une moyenne nationale de 4 %. Il n'est donc guère surprenant que les conditions de vie soient largement inférieures à la moyenne nationale: les Roms vivent dans des logements bien davantage surpeuplés (nombre de mètres carrés par personne inférieur à la moitié de la moyenne nationale) dont plus de la moitié ne sont équipés ni de bain ni de douche. La ségrégation est illustrée de la façon la plus flagrante par la communauté rom vivant à Kirtimai (un quartier de la municipalité de Vilnius), où 500 personnes environ vivent dans un quasi-bidonville et connaissent régulièrement des problèmes de logement. Les niveaux d'instruction y sont également très faibles, puisque 2 % seulement de la population rom ont un diplôme de l'enseignement supérieur ou universitaire, et que 44 % ne vont pas au-delà de l'enseignement de base. En 2016, la municipalité de Vilnius a adopté le programme 2016-2019 en faveur de l'intégration de la communauté rom de Kirtimai dans la société. Le programme prévoit un certain nombre de mesures destinées à offrir des possibilités de logement social aux membres de cette communauté. Selon les représentants de la municipalité, ces mesures en matière de logement s'inscrivent dans une nouvelle approche qui évite les expulsions forcées (la plupart des bâtiments ont été construits dans l'illégalité) et privilégie les incitations (aide financière pour le loyer ou options de logement social) pour ceux qui acceptent de quitter volontairement le quartier de Kirtimai.

Le nombre de réfugiés et de demandeurs d'asile arrivant en Lituanie reste relativement modeste et car elle n'est pas considérée comme un pays de destination. Le plan d'action pour la mise en œuvre du programme d'intégration des étrangers 2015-2017 comporte une série de mesures destinées à faciliter l'insertion des ressortissants de pays tiers. De récentes études de l'Organisation internationale des migrations<sup>16</sup> recense néanmoins des

<sup>15</sup> VŠĮ Diversity Development Group (2015), «Lithuania / Sociologinio tyrimo "Romų padėtis lyginant su kitais šalies gyventojais" tyrimo ataskaita» (30 avril 2015). Disponible (en lituanien) sur <http://www.lygybe.lt/data/public/uploads/2015/12/romu-tautybes-asmenu-padetis-lyginant-su-kitais-salies-gyventojais.pdf>.

<sup>16</sup> Organisation internationale des migrations/Réseau européen des migrations (2015), *Prieglobstį Lietuvoje gavusių užsieniečių integracija: teisinis reguliavimas ir situacija* (Étude sur le système lituanien d'intégration des réfugiés), disponible sur: [http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BEsienie%C4%8Di%C5%B3-integracija\\_National-Report.pdf](http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BEsienie%C4%8Di%C5%B3-integracija_National-Report.pdf). Organisation internationale des migrations (2016), *Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos* (Étude sur le programme de relocalisation des réfugiés en Lituanie: expérience des demandeurs d'asile, opinions d'experts et attitude du



lacunes systématiques au niveau de ces mesures nationales d'intégration: la grande majorité des personnes réinstallées ou relocalisées ne voient aucune perspective de séjour définitif dans le pays et n'associent pas leur avenir à la Lituanie; l'enseignement de la langue locale est insuffisamment développé; il y a pénurie d'interprètes; le montant de deux euros alloué par personne et par jour ne permet même pas d'accéder au niveau de vie le plus modeste; et l'accès à l'emploi n'est pas suffisamment facilité.<sup>17</sup>

## 2. Législation principale

Le principe de l'égalité des personnes est décrit dans la Constitution. Bien que l'âge, le handicap et l'orientation sexuelle ne soient pas mentionnés explicitement dans la clause d'égalité constitutionnelle, sans doute peut-on interpréter celle-ci de manière à ce qu'elle assure une protection contre la discrimination fondée sur ces motifs (même si la jurisprudence de la Cour constitutionnelle sur les questions d'égalité reste peu abondante). Le principe général de l'égalité de traitement est réitéré dans plusieurs textes législatifs parmi lesquels le Code du travail, le Code civil, le Code pénal et d'autres lois. À ce jour toutefois, très peu d'affaires de discrimination ont été portées en justice.

La République de Lituanie a signé, ou signé et ratifié, différents traités internationaux en matière de droits de l'homme, parmi lesquels le Pacte international relatif aux droits civils et politiques, le Pacte international relatif aux droits économiques, sociaux et culturels, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, la Convention de sauvegarde des droits de l'homme et des libertés fondamentales du Conseil de l'Europe, la Convention-cadre pour la protection des minorités nationales et la Convention des Nations unies relative aux droits des personnes handicapées. Selon la Constitution, les accords internationaux ratifiés par le Parlement font partie intégrante de l'ordre juridique interne. La loi sur les accords internationaux<sup>18</sup> affirme pour sa part que, si un accord international ratifié et mis en œuvre par la République de Lituanie instaure des normes différentes de celles définies dans sa propre législation ou dans d'autres actes juridiques existants ou prenant effet après la date d'entrée en vigueur dudit accord international, ce sont les dispositions de ce dernier qui s'appliquent.

Les questions d'égalité des chances et de discrimination ont été abordées pour la première fois en 1998 avec l'adoption de la loi sur l'égalité des chances entre les femmes et les hommes.<sup>19</sup> Celle-ci a non seulement introduit le concept de discrimination fondée sur le sexe, mais elle a également créé une institution quasi-judiciaire pour examiner les plaintes, à savoir le Bureau du Médiateur pour l'égalité des chances.<sup>20</sup> Le Bureau du Médiateur pour l'égalité des chances entre les femmes et les hommes (motif du genre) est opérationnel depuis 1999 et la compétence du Médiateur a été progressivement étendue à d'autres motifs d'égalité (l'âge, l'orientation sexuelle, le handicap, la race, l'origine ethnique, la religion et les convictions) depuis l'entrée en vigueur de la loi sur l'égalité de traitement<sup>21</sup> en 2005. La législation antidiscrimination comprenait depuis lors deux lois principales: la loi sur l'égalité des chances entre les femmes et les hommes, qui interdisait la discrimination fondée sur le genre et établissait les fonctions, les

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grand public, disponible sur:

[http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf).

<sup>17</sup> Organisation internationale des migrations (2016), *Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos* (Étude sur le programme de relocalisation des réfugiés en Lituanie: expérience des demandeurs d'asile, opinions d'experts et attitude du grand public, disponible sur:

[http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf).

<sup>18</sup> Lituanie, *Tarptautinių sutarčių įstatymas* (loi sur les accords internationaux), 1999, n° 60-1948. Disponible (en lituanien) sur: <https://www.e-tar.lt/portal/lt/legalAct/TAR.5BCEC9B41811/tdfXOqlzcP>.

<sup>19</sup> Lituanie, *Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas*. (loi sur l'égalité des chances entre les femmes et les hommes), 1998, n° 112-3100. Disponible (en lituanien) sur: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/udzdOfTUTE>.

<sup>20</sup> Site officiel de l'institution: <http://www.lygybe.lt>.

<sup>21</sup> Lituanie, *Lietuvos Respublikos Lygių galimybių įstatymas* (loi sur l'égalité de traitement), 2003, n° 114-5115. Disponible (en lituanien) sur: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/KelaXtCsAE>.

compétences et les règles procédurales du Médiateur pour l'égalité des chances; et la loi sur l'égalité de traitement, qui a ajouté l'âge, l'orientation sexuelle, le handicap, la race, l'origine ethnique, la religion et les convictions à la liste des motifs protégés, qui a introduit d'autres concepts et qui a élargi la compétence du Médiateur pour l'égalité des chances. Les deux lois ont été modifiées en novembre 2016 (avec entrée en vigueur des amendements au 1<sup>er</sup> janvier 2017) et tous les aspects procéduraux (critères et procédure de nomination, compétences et dispositions relatives à l'instruction des plaintes) ont été transférées de la loi sur l'égalité des chances entre les femmes et les hommes vers la loi sur l'égalité de traitement – la première perdant ainsi de sa pertinence pour ce qui concerne tous les autres motifs de discrimination.

La loi sur l'égalité de traitement visait à assurer la transposition en droit lituanien des directives antidiscrimination de l'UE. Elle a été votée le 18 novembre 2003 et elle est entrée en vigueur le 1<sup>er</sup> janvier 2005. Elle couvrait initialement l'âge, l'orientation sexuelle, le handicap, la race, l'origine ethnique, la religion et les convictions. Des amendements ultérieurs ont formellement comblé les principales lacunes en termes de mise en œuvre et élargi la liste des motifs protégés en y ajoutant le statut social, la langue et les opinions. Le champ d'application de la loi sur l'égalité de traitement couvre l'emploi, l'éducation et la fourniture de biens et de services, mais ne stipule pas spécifiquement s'appliquer également au domaine de la sécurité sociale (y compris le logement, les avantages sociaux et les soins de santé).

### **3. Principes généraux et définitions**

Actuellement, la loi sur l'égalité de traitement reproduit le plus souvent le libellé des directives sans préciser davantage certaines dispositions, de sorte que la plupart des concepts requièrent encore une interprétation judiciaire. Tant les personnes physiques que les personnes morales sont protégées à l'encontre des discriminations. Outre la discrimination directe et indirecte, la loi interdit la discrimination par association, le harcèlement, l'injonction de discriminer et les représailles.

Certaines définitions demeurent néanmoins peu claires. Ainsi par exemple, l'obligation d'aménagement raisonnable figure uniquement dans la loi sur l'égalité de traitement – et sa formulation est imprécise et quelque peu «moins contraignante» que celle de la directive pertinente. En 2014, la justice s'est prononcée en faveur de la partie requérante dans une affaire de licenciement abusif pour cause de non-aménagement raisonnable, mais on peut se demander si ce non-aménagement serait considéré comme une discrimination directe par une juridiction saisie d'un cas similaire dans le cadre d'un recrutement.<sup>22</sup> Selon l'interprétation d'une juridiction, les déclarations publiques de fonctionnaires ne peuvent constituer une discrimination et ne relèvent pas du champ d'application de la loi sur l'égalité de traitement. Par ailleurs, la disposition relative aux exigences professionnelles essentielles et déterminantes figurant dans la loi sur l'égalité de traitement est incluse dans une liste de dérogations à l'interdiction de discrimination directe. La disposition nationale se contente de reproduire la formulation de la directive, sans la préciser. Cette exception en particulier n'ayant jamais été examinée par les tribunaux ou par le Médiateur pour l'égalité des chances, on ne peut réellement savoir qu'elle en sera l'application pratique.

La notion de discrimination multiple n'a encore été abordée ni par la législation ni par la jurisprudence.

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<sup>22</sup> Lituanie, Tribunal régional de Vilnius, arrêt du 27 février 2014 dans l'affaire n° 2A-557-640/2014 (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*). Disponible (en lituanien) sur: <http://liteko.teismai.lt/viesasprendimupaiska/tekstas.aspx?id=88b49cea-b30b-4a64-9fd8-fbcb2dc1efe4>.

#### 4. Champ d'application matériel

La législation nationale antidiscrimination s'applique tant au secteur public qu'au secteur privé. Elle couvre l'emploi, l'éducation et l'accès aux biens et aux services, ainsi que tous les motifs visés par les directives. Cette législation nationale offre également une protection contre les discriminations fondées sur le statut social, la langue et les opinions.

Une partie du champ d'application matériel des directives ne bénéficie cependant pas encore de la protection de la législation nationale. L'actuelle loi sur l'égalité de traitement ne stipule pas expressément que la protection sociale et la sécurité sociale relèvent de son champ d'application. L'obligation générale des institutions et agences nationales et municipales de mettre en œuvre l'égalité des chances pourrait théoriquement être interprétée de manière à l'appliquer aux domaines de la sécurité sociale et des soins de santé, étant donné que ces domaines ne sont pas cités parmi ceux dans lesquels, aux termes de la loi, le principe de non-discrimination ne s'applique pas.

La pratique du Médiateur manque de cohérence lorsqu'il s'agit de sécurité sociale et de prestations sociales. Il a considéré par le passé que la sécurité sociale ne relevait pas de son champ de compétence. Or il a accepté des plaintes et procédé à des enquêtes en matière de prestations sociales depuis 2014. La loi sur l'égalité de traitement ne mentionne pas davantage les soins de santé de manière expresse, mais le Médiateur considère qu'ils relèvent de la définition générale de «services» et qu'ils sont, dès lors couverts.

#### 5. Mise en application de la loi

Il convient de souligner que la seule voie de recours dont dispose une victime de discrimination pour obtenir une quelconque indemnisation du préjudice subi consiste à saisir la justice. Or, en pratique, une personne désireuse d'engager une procédure judiciaire doit consulter un avocat. Les services juridiques étant relativement onéreux, il existe une problématique d'inégalité d'accès à la justice entre les différentes catégories sociales. Bien qu'un système d'aide juridique financée par l'État soit en place, de même que quelques services communautaires d'aide judiciaire (principalement assurés par des étudiants en droit), le dispositif en la matière doit être renforcé pour que les groupes vulnérables aient davantage de possibilités de défendre leurs droits devant les tribunaux. De surcroît, le Code de procédure civile et autres règles de procédure ne contiennent aucune procédure judiciaire, administrative, de médiation ou de conciliation concernant spécifiquement les cas de discrimination. Ainsi donc, lorsqu'il s'agit d'affaires civiles ou administratives, les victimes de discrimination doivent avoir recours aux procédures civiles générales – ce qui leur impose de faire appel à un juriste qualifié et expérimenté.

En pratique, des associations initient des procédures administratives auprès du Médiateur, bien que la jurisprudence en la matière confirme que seules les personnes dont les droits ont été directement lésés par une décision particulière peuvent saisir le Médiateur.<sup>23</sup> On constate toutefois récemment que, lorsque le Médiateur est saisi d'une plainte émanant d'une ONG et que les droits de l'organisation n'ont pas été directement lésés, il entame une investigation «de sa propre initiative». La procédure la plus souvent mise en œuvre au niveau du Médiateur prévoit en outre que le dépôt de la plainte doit intervenir dans un délai maximum de trois mois après que les actes en cause aient été commis. Les plaintes introduites après l'expiration de ce délai ne sont pas examinées, sauf si le Médiateur pour l'égalité des chances en décide autrement.

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<sup>23</sup> Cour administrative suprême de Lituanie, arrêt du 19 avril 2010 dans l'affaire n° A<sup>662</sup>-665/2010 (*Vyriausiojo administracinio teismo 2010 m. balandžio 19 d. sprendimas byloje Nr. A<sup>662</sup>-665/2010*); Cour administrative suprême de Lituanie, *Europos žmogaus teisių fondas c. Lygių galimybių kontrolieriaus tarnyba*, arrêt du 7 novembre 2013 dans l'affaire administrative n° A<sup>492</sup>-2078/2013.

Il existe en Lituanie deux options pour faire sanctionner un comportement discriminatoire: la procédure judiciaire auprès de juridictions pénales, administratives ou civiles (le plus souvent pour réclamer une indemnisation, même si la législation nationale n'admet pas la notion de dommages-intérêts punitifs) ou la saisie du Médiateur pour l'égalité des chances (qui peut imposer des sanctions, mais ne peut accorder d'indemnisation, sous quelque forme que ce soit, à la victime). Étant donné que seule une poignée d'affaires de discrimination ont abouti (la plupart d'entre elles portant sur une discrimination fondée sur le genre et quelques-unes seulement sur d'autres motifs), il est trop tôt pour tenter d'esquisser des tendances générales. L'indemnisation judiciaire accordée à des victimes de discrimination représente actuellement de 579 à 830 euros.

De l'avis de l'auteur du présent rapport, le régime lituanien de sanctions pour actes discriminatoires (tout comme la pratique du Médiateur pour l'égalité des chances) ne peut être considéré comme efficace, proportionné ou dissuasif.

Les décisions du Médiateur pour l'égalité des chances d'appliquer des sanctions sont exécutoires et peuvent dès lors être contestées en justice. Bien que ce Médiateur ait été habilité à examiner des plaintes pour discrimination, ses décisions ne peuvent prévoir aucun type d'indemnisation en faveur de la victime de discrimination pour le préjudice qu'elle a subi. Dans la majorité absolue des cas, le Médiateur opte pour la formulation de «recommandations» visant à mettre fin aux actes discriminatoires, lesquelles ne sont, par essence, pas contraignantes. Selon le Médiateur, la plupart des recommandations sont suivies d'effet. Jusqu'en 2016, il était difficile d'établir si tel était effectivement le cas, étant donné que ni la législation ni le règlement intérieur du Médiateur ne prévoyait la moindre action de suivi et qu'aucun système de suivi administratif n'était en place avant cette date. Un certain nombre de mesures destinées à garantir l'efficacité de l'institution ont toutefois été instaurées en 2016, parmi lesquelles l'introduction d'un mécanisme de suivi administratif. Un tableau reprenant les recommandations et l'état d'avancement de leur mise en œuvre (rapport de suivi) a été annexé au rapport annuel du Médiateur en 2016.<sup>24</sup> Il en ressort que 26 recommandations ont été adressées à diverses institutions entre février et décembre 2016: 16 d'entre elles ont été appliquées et la mise en œuvre des dix autres est en cours.

Selon les rapports annuels de l'institution, le Médiateur n'a imposé d'amende, au cours des dix dernières années d'activité, que dans un seul cas.<sup>25</sup> D'ailleurs, même si le Médiateur imposait des amendes, il s'agirait d'une sanction administrative ne pouvant être considérée comme efficace, proportionnée et dissuasive (ce point a également été souligné par le Médiateur dans son rapport annuel). Des amendes – seule sanction administrative disponible – sont prévues dans le code des infractions administratives et pourraient aller de 40 à 500 euros (ou de 500 à 1 000 euros en cas de récidive).<sup>26</sup>

En vertu de récents amendements du Code des infractions administratives, si la sanction maximale d'une violation spécifique du code est inférieure à un montant déterminé (ce qui est le cas des amendes imposées par le Médiateur), il convient de sanctionner initialement l'auteur d'un montant représentant moins de la moitié du minimum. Ce n'est que si l'auteur ne paie pas volontairement cette amende dans un délai de 10 jours ouvrables que l'on peut engager des poursuites pour discrimination et des sanctions plus importantes. En d'autres termes, en cas de non-respect de la loi sur l'égalité de traitement, il convient d'imposer à l'auteur une amende correspondant à la moitié (soit

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<sup>24</sup> Médiateur pour l'égalité des chances (2017), *Annexe au rapport annuel 2016 du Médiateur pour l'égalité des chances*, disponible sur: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>25</sup> Même si le personnel de l'institution affirme que des amendes ont été imposées dans quelques cas au moins.

<sup>26</sup> Lituanie, code des infractions administratives (*Lietuvos Respublikos Administracinių teisės pažeidimų administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas*), 1985 2015-06-25, n° 1-1.XII-1869. Disponible (en lituanien) sur: <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b>.

14 euros) de l'amende minimale, et ce n'est qu'au cas où il n'aurait pas versé cette somme dans un délai de 10 jours qu'une sanction supplémentaire, allant de 28 à 572 euros, peut lui être infligée.

Le soutien apporté par diverses associations dans les affaires de discrimination s'avère crucial, mais le droit des associations d'engager des poursuites est, en pratique, limité. Bien que le libellé des dispositions pertinentes de la loi sur l'égalité de traitement reproduise celui des directives, le Code de procédure civile stipule que seuls les membres effectifs d'une organisation particulière peuvent être représentés en justice par l'association en question. En théorie, l'association peut uniquement agir au nom de la victime dans le cadre d'une procédure administrative. Les associations ne peuvent en outre agir pour défendre l'intérêt public, même en s'adressant au Médiateur pour l'égalité des chances. La Cour administrative suprême a dit pour droit que seules des personnes dont les droits avaient été directement lésés par une décision particulière étaient habilitées à saisir le Médiateur.

Enfin, il convient de tenir compte du fait que le secteur national des ONG est assez peu développé, qu'il est fragmenté et qu'il manque de ressources financières et humaines. De manière générale, le gouvernement ne considère pas les ONG comme des partenaires sérieux. Seules quelques ONG s'occupent des questions de droits de l'homme (et la non-discrimination n'est que l'un de leurs domaines d'activité), en plus des organisations traitant de motifs spécifiques de discrimination.

## **6. Organismes de promotion de l'égalité de traitement**

Le Médiateur pour l'égalité des chances, institué en vue de satisfaire aux exigences de la directive sur l'égalité raciale, est l'organisme national de lutte contre les discriminations. Lors de son entrée en vigueur en 2005, la loi sur l'égalité de traitement a élargi le mandat du précédent Médiateur pour l'égalité des chances entre les hommes et les femmes en place depuis 1999. Une nouvelle institution – le Médiateur pour l'égalité des chances – a été instituée en 2005: elle couvre tous les motifs de discrimination visés par les directives 2000/43/CE et 2000/78/CE ainsi que le motif du genre, et elle est opérationnelle depuis le 1<sup>er</sup> janvier 2005.

Bien que la sensibilisation n'ait été formellement ajoutée à son mandat que le 1<sup>er</sup> janvier 2017, le Médiateur a participé dans la pratique et dès le début aux activités de ce type décrites dans des programmes gouvernementaux en faveur de l'inclusion sociale et de la non-discrimination. Il mène des actions de sensibilisation, des activités pédagogiques et des travaux de recherche seul ou en partenariat avec d'autres institutions et organisations non gouvernementales.

L'année 2016 a marqué un tournant majeur pour le Médiateur en termes d'efficacité accrue et de consolidation de la structure institutionnelle. L'institution a été restructurée et dotée de trois départements internes (département juridique, département en charge de l'intégration de l'égalité des chances et département de la gestion opérationnelle) en complément du spécialiste responsable des relations publiques, d'un conseiller financier et du Médiateur lui-même. L'institution a adopté en outre son plan stratégique pour 2016–2018 – premier effort aussi poussé de la part de l'institution en vue de mettre en œuvre une approche stratégique assortie de priorités et de critères d'évaluation – lequel plan marque une avancée décisive vers une efficacité accrue de l'institution.

La fonction principale du Médiateur demeure toutefois de nature quasi-judiciaire. Il est compétent pour tous les motifs couverts par les directives, ainsi que pour les motifs du genre, de la langue, des opinions et du statut social. Les décisions du Médiateur de l'égalité des chances d'imposer des sanctions administratives sont exécutoires, bien qu'elles puissent être annulées en justice. Le fait qu'il s'adresse au Médiateur pour l'égalité des chances n'empêche nullement un plaignant de saisir une juridiction pour la

même affaire. Le Médiateur agit souvent en qualité d'intermédiaire et, selon son Bureau, la résolution pacifique des discriminations constitue l'un de ses principaux objectifs. Par ailleurs, ces activités du Médiateur n'ont jamais donné lieu à une indemnisation de la victime.

La loi n'oblige pas le Médiateur à fournir une aide indépendante aux victimes de discrimination pour engager des poursuites invoquant une discrimination comme le prévoit l'article 13 de la directive sur l'égalité raciale, en introduisant une plainte ou en intervenant dans une affaire judiciaire. Il n'exerce pas ces activités en pratique non plus. Le Médiateur est habilité à réaliser des études indépendantes en rapport avec des plaintes pour discrimination et à établir des projets de rapports et des états des lieux de la situation en matière de discrimination.

Le Bureau du Médiateur pour l'égalité des chances est une institution indépendante financée par le budget de l'État et le Médiateur est nommé par le Parlement pour un mandat de cinq ans (avec un maximum de deux mandats consécutifs). En l'absence toutefois de conseil d'administration ou d'autre instance, la société civile n'est ni consultée ni impliquée dans la désignation du Médiateur. L'activité de l'institution et son indépendance politique dépendent dès lors totalement de la prise de position du responsable de l'institution – autrement dit du Médiateur lui-même.

## **7. Points essentiels**

La législation nationale antidiscrimination reproduit le plus souvent le libellé des directives sans préciser davantage certaines dispositions particulières. De l'avis de l'auteur du présent rapport, la transposition reste insuffisante par rapport aux aspects suivants:

- La loi actuelle sur l'égalité de traitement ne stipule pas expressément que la protection sociale, la sécurité sociale et les soins de santé relèvent de son champ d'application.
- Le régime de sanctions doit être considérablement renforcé pour que celles-ci soient efficaces, proportionnées et dissuasives. Les victimes de discrimination ne bénéficient pas de la fonction quasi-judiciaire du Médiateur, et les sanctions qu'il impose ne sont ni efficaces, ni proportionnées, ni dissuasives.
- L'apport d'une aide indépendante aux victimes de discrimination dans le cadre de leurs recours ne relève pas, aux termes de la loi, de la compétence de l'organisme pour la promotion de l'égalité, à savoir le Médiateur pour l'égalité des chances.
- Le droit d'associations d'engager des poursuites judiciaires est prévu par la loi sur l'égalité de traitement, qui reproduit le libellé des directives. L'exercice de ce droit est néanmoins limité dans la pratique. Le Code de procédure civile stipule en effet que seuls les membres effectifs d'une organisation particulière peuvent être représentés en justice par l'association en question. En théorie, l'association peut uniquement agir au nom de la victime dans le cadre d'une procédure administrative, et non dans des affaires civiles.
- L'obligation d'aménagement raisonnable figure exclusivement dans la loi sur l'égalité de traitement. La formulation manque toutefois de précision et s'avère quelque peu «moins contraignante» que celle de la directive – ce qui rend l'obligation en question plus difficile à faire respecter dans la pratique.
- En ce qui concerne la législation relative au travail indépendant, il est difficile d'établir clairement sur la base de la loi sur l'égalité de traitement si les directives ont fait l'objet d'une transposition adéquate. Cette loi ne mentionne pas explicitement le travail non salarié – lequel est, en revanche, cité dans la loi sur l'égalité des chances entre les femmes et les hommes, qui traite du motif du genre.
- Lorsqu'il applique des sanctions administratives, le Médiateur pour l'égalité des chances les adresse à l'organe exécutif d'une personne morale (directeur, etc.) mais pas à ses salariés. Selon le Médiateur, le libellé actuel de la loi sur l'égalité de

traitement ne conduit pas à penser qu'elle peut être appliquée à l'encontre d'un large spectre de parties. Ni des locataires, ni des clients, ni des salariés ne peuvent être tenus responsables.

- La loi sur l'égalité de traitement prévoit depuis juin 2008 une exception concernant le recrutement et l'emploi par des employeurs ayant une éthique fondée sur la religion ou les convictions. La première version de la loi ne prévoyait pas cette exception et il n'existe encore aucune jurisprudence ni interprétation à son sujet. On ne dispose pas davantage d'informations sur le point de savoir si des pratiques de ce type existaient en Lituanie avant l'adoption de la directive, quelles étaient les organisations qui les appliquaient, et dans quelle mesure. On voit encore mal quelles organisations pourront bénéficier de l'exception. Le libellé de la disposition nationale est très ouvert et peut faire l'objet d'une large interprétation – en faveur par exemple d'une discrimination à l'encontre des personnes LGBT (comme cela a été évoqué lors des débats parlementaires au moment de l'adoption des dispositions). Des dispositions aussi vagues dans une législation nationale ne sont guère compatibles avec les objectifs de la directive.

Plusieurs exemples positifs en 2016 méritent eux aussi d'être mis en évidence. Il convient notamment de citer au titre de bonne pratique une initiative de sensibilisation intitulée «Prix nationaux pour l'égalité et la diversité», instaurée en 2014 et conjointement menée par le Médiateur pour l'égalité des chances et un groupe d'ONG œuvrant auprès de groupes vulnérables. En avril 2016, les lauréats appartenant à diverses catégories (Journaliste de l'année, Activiste civique de l'année, Promoteur de l'ethno-dialogue, Prix de l'âge d'or, etc.) ont été récompensés de leurs accomplissements dans le domaine de la promotion de l'égalité ou de la protection contre la discrimination. Ces récompenses ont largement mobilisé l'attention des médias et plusieurs organisations ont pris part à la sélection des nominés, au vote, à l'organisation et à la mise en œuvre des récompenses. La cérémonie au cours de laquelle celles-ci sont décernées pourrait servir à renforcer la sensibilisation, à diffuser de bonnes pratiques et à encourager pour l'avenir ceux qui œuvrent dans ce domaine. Les organisateurs prévoient de renouveler l'initiative l'année prochaine.

## ZUSAMMENFASSUNG

### 1. Einleitung

Litauen hat seine Unabhängigkeit von der Sowjetunion im Jahr 1990 zurückgewonnen. Die heutige Verfassung<sup>27</sup> wurde 1992 durch ein Referendum bestätigt. Am 1. Mai 2004 trat Litauen der Europäischen Union bei. Das bedeutet, dass das Rechtssystem in etwas mehr als einem Jahrzehnt durch umfassende Reformen an die europäischen und internationalen Normen angepasst werden musste. Dabei ist zu erwähnen, dass die rechtlichen Reformen meistens nicht öffentlich diskutiert wurden, so dass die Gesellschaft auf manche der neuen Nichtdiskriminierungsstandards nicht ausreichend vorbereitet war.

Nach der allgemeinen Volkszählung von 2011 stellen Litauer 84,2 % der Bevölkerung, während Polen und Russen die größten Minderheiten sind (Polen machen 6,6 % der Bevölkerung aus, Russen 5,8 %; in bestimmten Regionen stellen ethnische Minderheiten jedoch die Bevölkerungsmehrheit). Im Bereich Religion und Weltanschauung ergibt sich ein ähnliches Bild: 77,2 % der Bevölkerung bezeichnen sich selbst als römisch-katholisch, 10,1 % machten keine Angaben zur Religionszugehörigkeit, 4,1 % sind orthodox und 8,6 % gehören anderen Religionsgemeinschaften an. Litauen kann somit als ziemlich homogenes Land gelten. Die Ergebnisse der Eurobarometer-Umfrage von 2015 zum Thema Diskriminierung stützen dies: Nur 29 % der litauischen Einwohner sind der Meinung, dass Diskriminierung aufgrund der ethnischen Herkunft in ihrem Land weit verbreitet ist (EU-Durchschnitt: 64 %), und nur 17 % glauben, dass religiöse Diskriminierung häufig vorkommt (EU-Durchschnitt: 50 %).

Der Mangel an umfassenden Gleichstellungsdaten ist nach wie vor ein Hindernis für die Bewertung der realen Situation besonders gefährdeter Gruppen. Ein umfassendes System zur Erfassung von Gleichheitsdaten existiert noch nicht. Die aktuell verfügbaren Daten stammen zumeist aus verschiedenen Studien, öffentlichen Meinungsumfragen und Datenerhebungen von Verwaltungsstellen, die allesamt ad hoc durchgeführt werden. Die Zahl der bei der Ombudsperson für Chancengleichheit eingegangenen Beschwerden ergänzt dieses Bild. Obwohl das Thema Menschenrechte langsam ins öffentliche Bewusstsein dringt, ist das Wissen über Institutionen, die sich für den Schutz der Menschenrechte einsetzen, und das öffentliche Vertrauen in bestehende Schutzmechanismen weiterhin nicht zufriedenstellend. Bei einer Befragung im Jahr 2014 gaben zwar 53 % der Bevölkerung an, die Stellen zu kennen, bei denen gegen eine Verletzung der Menschenrechte Beschwerde eingereicht werden kann, allerdings hatten sich 95 % der Personen, die angaben, vor kurzem in ihren Rechten verletzt worden zu sein (das heißt 18 % der Befragungsteilnehmer), bei keiner Stelle beschwert.

Es gibt hartnäckige Stereotypen und Vorurteile, insbesondere in Bezug auf bestimmte Minderheiten. Wenn man die Daten einer jährlichen Umfrage über die Einstellung der Öffentlichkeit gegenüber einzelnen Minderheiten analysiert, lässt sich die Gefährdung bestimmter Gruppen recht gut abschätzen. Die Daten zeigen, dass die „Hierarchie der Intoleranz“ konstant ist. Roma, ehemaligen Häftlingen, geistig behinderten Menschen und LGBT-Personen werden in Litauen am wenigsten Toleranz entgegen gebracht; damit sind diese Gruppen besonders von Diskriminierung betroffen. Im Alltag sind LGBT-Menschen und geistig behinderte Personen einer weit verbreiteten Ablehnung ausgesetzt.

Einer Umfrage von 2015 zufolge würden nur 20 % der Litauer eine LGBT-Person im höchsten Staatsamt akzeptieren (EU-Durchschnitt: 54 %). Vorurteile gegen Homosexuelle sind tief in der Gesellschaft verankert. Dies ist vor allem ein Relikt aus der sowjetischen Vergangenheit, als einvernehmliche homosexuelle Beziehungen als

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<sup>27</sup> Litauen, *Lietuvos Respublikos Konstitucija* (Verfassung der Republik Litauen), 1992, Nr. 33-1014; abrufbar (in englischer Sprache) unter: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.



Verbrechen galten und Homosexualität als psychische Erkrankung behandelt wurde. Das Thema sexuelle Orientierung war im gesellschaftlichen Diskurs fast unsichtbar, bis 2005 das Gesetz über Gleichbehandlung in Kraft trat, mit dem die Antidiskriminierungsvorschriften der EU umgesetzt wurden. Auch das Bildungssystem hat dieses Thema traditionell ausgeklammert, weshalb in der litauischen Gesellschaft Missverständnisse und Ignoranz über sexuelle Orientierung weit verbreitet sind. In den letzten Jahren gab es jedoch erhebliche Fortschritte, seit sich immer mehr Menschen offen für die Rechte von LGBT-Menschen einsetzen. 2010 löste die erste Pride-Veranstaltung Kontroversen und Widerspruch aus, aber spätere Veranstaltungen in den Jahren 2013 und 2016 fanden im Zentrum der Hauptstadt statt, waren ein Erfolg und verliefen relativ ruhig.

Eine kleine Bevölkerungsgruppe litauischer Roma (etwas mehr als 2000 Menschen) lebt in Armut und Ausgrenzung, obwohl 96 % von ihnen litauische Bürger sind.<sup>28</sup> Im Gegensatz zur Gesamtbevölkerung leben die meisten litauischen Roma in Wohnungen, die ihnen nicht gehören (69 %, im Vergleich zum Landesdurchschnitt von nur 9 %), und 38 % in Sozialwohnungen (Landesdurchschnitt: 1%). Rund ein Fünftel der litauischen Roma lebt in Wohnungen, ohne Miete zu bezahlen (illegaler Wohnraum, Unterbringung bei Verwandten usw.), im Gegensatz zum Landesdurchschnitt von 4 %. Es verwundert daher nicht, dass der Lebensstandard deutlich unter dem Landesdurchschnitt liegt: Die Roma leben in weitaus beengteren Verhältnissen (weniger als die Hälfte der durchschnittlichen Wohnfläche pro Person), und mehr als die Hälfte ihrer Wohnungen verfügt weder über eine Badewanne noch über eine Dusche. Am deutlichsten wird die Segregation an der Roma-Gemeinschaft in Kirtimai, einem Vorort von Vilnius. Diese Gemeinschaft von etwa 500 Menschen lebt in einer slumähnlichen Siedlung, und die Bewohner haben regelmäßig mit Wohnungsproblemen zu kämpfen. Auch das Bildungsniveau ist sehr gering: Nur 2 % der Roma-Bevölkerung haben einen Hochschul- oder Universitätsabschluss, 44 % verfügen lediglich über eine Grundbildung. 2016 brachte die Gemeinde Vilnius das Programm zur gesellschaftlichen Integration der Roma-Gemeinschaft von Kirtimai 2016-2019 auf den Weg. Das Programm sieht eine Reihe von Maßnahmen vor, die es den Mitgliedern der Roma-Gemeinschaft von Kirtimai ermöglichen sollten, Zugang zu Sozialwohnungen zu erhalten. Ziel des Wohnraumprogramms, so die Vertreter der Gemeinde, war es, einen neuen Ansatz zu finden, bei dem Zwangsräumungen (die meisten Gebäude wurden illegal errichtet) vermieden werden und stattdessen diejenigen, die sich bereit erklären, die Siedlung freiwillig zu verlassen, Anreize erhalten (finanzielle Unterstützung bei der Miete oder Zugang zu Sozialwohnungen).

Die Zahl der Flüchtlinge und Asylbewerber, die in Litauen ankommen, ist nach wie vor relativ gering; Litauen gilt nicht als ein Zielland. Der Aktionsplan für die Umsetzung des Programms für Ausländerintegration 2015-2017 enthält eine Reihe von Maßnahmen zur Integration von Ausländern. Jüngste Studien der Internationalen Organisation für Migration<sup>29</sup> weisen jedoch auf systematische Mängel bei den nationalen Integrationsmaßnahmen hin: Die überwiegende Mehrzahl der umgesiedelten und umgezogenen Personen sieht keinerlei Chance, im Land zu bleiben, und knüpft ihre

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<sup>28</sup> VšĮ Diversity Development Group (2015), Litauen, *Sociologinio tyrimo "Romų padėtis lyginant su kitais šalies gyventojais" tyrimo ataskaita*, (30. April 2015); zu finden (in litauischer Sprache) unter <http://www.lygybe.lt/data/public/uploads/2015/12/romu-tautybes-asmenu-padetis-lyginant-su-kitais-salies-gyventojais.pdf>.

<sup>29</sup> Internationale Organisation für Migration/Europäisches Migrationsnetzwerk (2015), „A study on the Lithuanian system of refugee integration“ (*Prieglobstį Lietuvoje gavusių užsieniečių integracija: teisinis reguliavimas ir situacija*), abrufbar unter: [http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BFsienie%C4%8Di%C5%B3-integracija\\_National-Report.pdf](http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BFsienie%C4%8Di%C5%B3-integracija_National-Report.pdf). Internationale Organisation für Migration (2016), „A study on the refugee re-location programme in Lithuania: the experience of asylum seekers, expert views and attitude of general population“ (*Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos*), abrufbar unter: [http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidiny\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidiny_2016_2_web.pdf).

Zukunft nicht an Litauen; das lokale Angebot an Sprachunterricht ist unzureichend; es mangelt an Dolmetschern; der Betrag von 2 Euro, der jeder Person pro Tag zusteht, deckt nicht einmal den bescheidensten Lebensstandard ab; die Förderung des Zugangs zu Beschäftigung ist unzureichend.<sup>30</sup>

## 2. Wichtigste Gesetze

Der Gleichbehandlungsgrundsatz ist in der Verfassung verankert. Obwohl Alter, Behinderung und sexuelle Orientierung im Gleichbehandlungsartikel der Verfassung nicht ausdrücklich erwähnt werden, kann die Verfassung als Schutz gegen Diskriminierung wegen dieser Gründe ausgelegt werden (es gibt allerdings kaum Rechtsprechung des Verfassungsgerichts zum Thema Gleichstellung). Der allgemeine Gleichbehandlungsgrundsatz wird in mehreren litauischen Gesetzen wiederholt, unter anderem im Arbeitsgesetz, im Bürgerlichen Gesetzbuch, im Strafgesetzbuch und anderen Gesetzen. Allerdings sind bisher nur eine Handvoll Diskriminierungsfälle vor Gericht gebracht worden.

Die Republik Litauen hat zahlreiche internationale Menschenrechtsabkommen unterzeichnet und teilweise auch ratifiziert, z. B. den Internationalen Pakt über bürgerliche und politische Rechte, den Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte, das Internationale Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung, die Konvention des Europarats zum Schutz der Menschenrechte und Grundfreiheiten, das Rahmenübereinkommen zum Schutz nationaler Minderheiten des Europarats und das Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen. Nach der Verfassung sind internationale Verträge, die vom Parlament ratifiziert wurden, Teil des litauischen Rechts. Das Gesetz über internationale Abkommen<sup>31</sup> stellt außerdem fest, dass die Normen internationaler Abkommen, die von der Republik Litauen ratifiziert und durchgesetzt wurden, Vorrang vor anderen Gesetzen der Republik Litauen oder sonstigen Rechtsvorschriften haben, die nach Inkrafttreten des internationalen Abkommens bestehen oder in Kraft treten.

Im Jahr 1998 wurde mit dem Gesetz über Chancengleichheit von Frauen und Männern<sup>32</sup> die erste Rechtsvorschrift über Chancengleichheit und Diskriminierung verabschiedet. Das Gesetz führte nicht nur den Begriff der *Diskriminierung aufgrund des Geschlechts* ein, sondern schuf auch eine quasi-gerichtliche Einrichtung zur Untersuchung von Beschwerden: die Ombudsstelle für Chancengleichheit.<sup>33</sup> 1999 nahm die Ombudsstelle für die Chancengleichheit von Frauen und Männern (Diskriminierungsgrund Geschlecht) ihre Arbeit auf; seit Inkrafttreten des Gleichbehandlungsgesetzes<sup>34</sup> im Jahr 2005 wurde der Aufgabenbereich der Ombudsperson schrittweise um weitere Diskriminierungsgründe (Alter, sexuelle Orientierung, Behinderung, Rasse, ethnische Zugehörigkeit, Religion und Weltanschauung) erweitert. Seither bestand das litauische Antidiskriminierungsrecht also im Wesentlichen aus zwei Gesetzen: dem Gesetz über die Chancengleichheit von Frauen und Männern, das Diskriminierung aufgrund des Geschlechts untersagte und die Funktionen, Zuständigkeiten und Verfahrensregeln der Ombudsperson für Chancengleichheit regelte, und dem Gleichbehandlungsgesetz, mit dem der Schutz auf

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<sup>30</sup> Internationale Organisation für Migration (2016), „A study on the refugee re-location programme in Lithuania: the experience of asylum seekers, expert views and attitude of general population“ (*Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos*), abrufbar unter: [http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf).

<sup>31</sup> Litauen, *Tarptautinių sutarčių įstatymas* (Gesetz über internationale Abkommen), 1999, Nr. 60-1948; abrufbar (in litauischer Sprache) unter: [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=437697](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=437697).

<sup>32</sup> Litauen, *Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas*. (Gesetz über die Chancengleichheit von Frauen und Männern), 1998, Nr. 112-3100; abrufbar (in litauischer Sprache) unter: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=330994](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330994).

<sup>33</sup> Offizielle Webseite der Ombudsstelle: <http://www.lygybe.lt>.

<sup>34</sup> Litauen, *Lietuvos Respublikos Lygių galimybių įstatymas* (Gleichbehandlungsgesetz), 2003, Nr. 114-5115, abrufbar (in litauischer Sprache) unter: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=324132](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324132).

die Merkmale Alter, sexuelle Orientierung, Behinderung, Rasse, ethnische Zugehörigkeit, Religion und Weltanschauung ausdehnt, wichtige Begriffe definiert und der Zuständigkeitsbereich der Ombudsperson für Chancengleichheit erweitert wurde. Im November 2016 wurden beide Gesetze geändert (die Änderungen traten am 1. Januar 2017 in Kraft) und sämtliche Verfahrensaspekte (Berufungskriterien und -verfahren, Zuständigkeiten und Regeln für die Untersuchung von Beschwerden) vom Gesetz über die Chancengleichheit von Frauen und Männern auf das Gleichbehandlungsgesetz verlagert. Das Gesetz über die Chancengleichheit von Frauen und Männern verlor damit in Bezug auf alle anderen Diskriminierungsgründe seine Relevanz.

Mit dem Gleichbehandlungsgesetz sollte die Umsetzung der Antidiskriminierungsrichtlinien der EU in litauisches Recht gewährleistet werden. Das Gesetz wurde am 18. November 2003 verabschiedet und trat am 1. Januar 2005 in Kraft. Ursprünglich deckte es die Gründe Alter, sexuelle Orientierung, Behinderung, Rasse, ethnische Zugehörigkeit, Religion und Weltanschauung ab. Durch spätere Änderungen wurden bedeutende Schwächen bei der Umsetzung formal behoben und die Liste der geschützten Diskriminierungsgründe um den sozialen Status, die Sprache und Vorstrafen erweitert. Unter den Anwendungsbereich des Gleichbehandlungsgesetzes fallen Beschäftigung, Bildung, Zugang zu Gütern und Dienstleistungen, jedoch nicht ausdrücklich der Bereich der sozialen Sicherheit (einschließlich Wohnraum, soziale Vergünstigungen und Gesundheitsversorgung).

### **3. Wichtigste Grundsätze und Begriffe**

Derzeit wiederholt das Gleichbehandlungsgesetz in den meisten Fällen den Wortlaut der Richtlinien, ohne diesen durch weitere Bestimmungen näher auszuführen; daher bedürfen die meisten Begriffe einer juristischen Auslegung. Der Schutz vor Diskriminierung gilt für natürliche und juristische Personen. Neben dem Verbot von unmittelbarer und mittelbarer Diskriminierung werden auch Diskriminierung durch Assoziierung, Belästigung, Anweisung zur Diskriminierung und Viktimisierung für gesetzwidrig erklärt.

Allerdings fehlt es einigen Definitionen an Klarheit. Beispielsweise enthält das Gleichbehandlungsgesetz die Pflicht zu angemessenen Vorkehrungen, jedoch ist der Wortlaut ungenau und etwas „weicher“ als der Wortlaut der relevanten Richtlinie. 2014 gab ein Gericht einer Klage statt, bei der dem Kläger gekündigt worden war, weil sein Arbeitgeber keine angemessenen Vorkehrungen getroffen hatte. Wenn ein ähnlicher Fall im Zusammenhang mit einem Einstellungsverfahren verhandelt würde, würde ein entsprechendes Verhalten aber vermutlich nicht als unmittelbare Diskriminierung ausgelegt werden.<sup>35</sup> Nach der Auslegung eines Gerichts können öffentliche Erklärungen von Amtsträgern keine Diskriminierung darstellen und fallen nicht unter den Anwendungsbereich des Gleichbehandlungsgesetzes. Außerdem sieht das Gleichbehandlungsgesetz zahlreiche Ausnahmen vom Verbot der unmittelbaren Diskriminierung vor, unter anderem für wesentliche und entscheidende berufliche Anforderungen. Das litauische Gesetz wiederholt einfach den Wortlaut der Richtlinie, führt ihn aber nicht weiter aus. Da diese Ausnahme noch nie von einem Gericht oder der Ombudsperson für Chancengleichheit berücksichtigt wurde, ist ihre praktische Anwendung noch ungeklärt.

Der Begriff der Mehrfachdiskriminierung taucht weder im Gesetz noch in der einschlägigen Rechtsprechung auf.

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<sup>35</sup> Litauen, Amtsgericht Vilnius, Rechtssache Nr. 2A-557-640/2014, 27. Februar 2014 (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*); abrufbar (in litauischer Sprache) unter: <http://liteko.teismai.lt/viesasprendimupaiska/tekstas.aspx?id=88b49cea-b30b-4a64-9fd8-fbcb2dc1efe4>.

#### 4. Sachlicher Geltungsbereich

Das litauische Antidiskriminierungsrecht gilt sowohl für die öffentliche Hand als auch für den privaten Sektor. Es verbietet Diskriminierung in den Bereichen Beschäftigung, Bildung und Zugang zu Gütern und Dienstleistungen aus allen in den Richtlinien genannten Diskriminierungsgründen. Außerdem bietet das litauische Antidiskriminierungsrecht Schutz vor Diskriminierung aufgrund von sozialem Status, Sprache und Vorstrafen.

Dennoch sind nicht alle sachlichen Anwendungsbereiche der Richtlinien durch nationales Recht geschützt. Das aktuelle Gleichbehandlungsgesetz zählt die Bereiche Sozialschutz und soziale Sicherheit nicht ausdrücklich zu seinem Anwendungsbereich. Die allgemeine Pflicht staatlicher und kommunaler Stellen und Organe zur Umsetzung der Chancengleichheit könnte theoretisch als Ausweitung auf die soziale Sicherheit und Gesundheitsversorgung ausgelegt werden, weil diese Bereiche im Gesetz nicht ausdrücklich zu denen gezählt werden, für die der Gleichbehandlungsgrundsatz nicht gilt.

Im Bereich soziale Sicherheit und Sozialleistungen ist die Praxis der Ombudsperson uneinheitlich. In der Vergangenheit vertrat sie die Auffassung, dass soziale Sicherheit nicht in ihren Aufgabenbereich falle. Seit 2014 nimmt sie jedoch Beschwerden zu Sozialleistungsfragen entgegen und führt entsprechende Untersuchungen durch. Gesundheitsversorgung ist im Gleichbehandlungsgesetz nicht ausdrücklich erwähnt, die Ombudsperson ist allerdings der Auffassung, dass sie unter die allgemeine Definition der „Dienstleistungen“ fällt und daher abgedeckt ist.

#### 5. Rechtsdurchsetzung

Für Opfer von Diskriminierung ist die einzige Möglichkeit, eine Entschädigung zu erhalten, die Klage vor einem ordentlichen Gericht. In der Praxis müssen Opfer, die Klage einreichen möchten, einen Anwalt beauftragen. Anwaltliche Dienstleistungen sind relativ teuer, weshalb ein gleichberechtigter Zugang zum Rechtssystem nicht für alle sozialen Gruppen gegeben ist. Obwohl es ein System der staatlichen Prozesskostenhilfe und einige wenige juristische Beratungsstellen gibt (in denen vor allem Jurastudenten arbeiten), muss das Rechtshilfesystem gestärkt werden, um benachteiligten Gruppen die Durchsetzung ihrer Rechte vor Gericht zu erleichtern. Die Zivilprozessordnung und andere Verfahrensregelungen sehen für Diskriminierungsfälle keine speziellen Schlichtungs- oder Schiedsverfahren vor einem Gericht oder einer behördlichen Stelle vor. Deshalb müssen die Opfer von Diskriminierung in zivil- oder verwaltungsrechtlichen Fällen die allgemeinen Regeln von Zivilverfahren einhalten und benötigen dazu einen ausgebildeten und erfahrenen Rechtsbeistand.

In der Praxis leiten auch Verbände Verwaltungsverfahren beim Büro der Ombudsperson ein, obwohl die Rechtsprechung zu diesem Thema bestätigt, dass nur Personen, deren Rechte direkt durch eine konkrete Entscheidung verletzt wurden, beim Ombudsperson Beschwerde einlegen können.<sup>36</sup> Die aktuelle Praxis löst das Problem, indem die Ombudsperson „auf eigene Initiative“ eine Untersuchung einleitet, wenn eine NRO Beschwerde einreicht, obwohl die Rechte der Organisation selbst nicht verletzt wurden. Das Beschwerdeverfahren bei der Ombudsperson für Chancengleichheit, das am häufigsten genutzt wird, erlaubt eine Beschwerde nur innerhalb einer Frist von drei Monaten nach der diskriminierenden Handlung. Beschwerden, die nach Ablauf der Frist eingereicht werden, untersucht die Ombudsperson für Chancengleichheit nur in speziellen Ausnahmefällen nach eigenem Ermessen.

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<sup>36</sup> Oberstes Verwaltungsgericht Litauens, Nr. A<sup>662</sup>-665/2010, Beschluss vom 19. April 2010 (*Vyriausiojo administracinio teismo 2010 m. balandžio 19 d. sprendimas byloje Nr. A<sup>662</sup>-665/2010*); Oberstes Verwaltungsgericht Litauens, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, Verwaltungsrechtssache Nr. A<sup>492</sup>-2078/2013, Beschluss vom 7. November 2013.

In Litauen gibt es zwei Optionen zur Verfolgung diskriminierenden Verhaltens: die Klage vor einem Straf-, Verwaltungs- oder Zivilgericht (meistens auf Zahlung einer Entschädigung, obwohl das litauische Recht den Begriff des Strafschadenersatzes nicht kennt) oder eine Beschwerde bei der Ombudsperson für Chancengleichheit (die Geldbußen verhängen, dem Opfer aber keinerlei Entschädigung zusprechen kann). Da es bisher nur eine Handvoll erfolgreicher Diskriminierungsklagen gegeben hat (die meisten wegen Diskriminierung aufgrund des Geschlechts und nur wenige aus anderen Gründen), lassen sich noch keine allgemeinen Trends festmachen. Bisher liegt die Höhe des Schadenersatzes, der Diskriminierungsopfern vom Gericht zugesprochen wurde, zwischen 579 und 830 Euro.

Nach Ansicht des Verfassers ist das Sanktionssystem für diskriminierende Handlungen in Litauen (und die Praxis der Ombudsperson für Chancengleichheit) weder wirksam noch verhältnismäßig noch abschreckend.

Die Entscheidungen der Ombudsperson für Chancengleichheit über die Verhängung von Bußgeldern sind bindend und können somit vor Gericht angefochten werden. Die Ombudsperson ist zwar befugt, Diskriminierungsbeschwerden zu untersuchen, kann den Betroffenen in ihren Entscheidungen aber keinerlei Schadenersatz zusprechen. In den allermeisten Fällen entscheidet sich die Ombudsperson dafür, „Empfehlungen“ zur Einstellung der diskriminierenden Praktiken auszusprechen, die im Wesentlichen nicht bindend sind. Nach Angaben der Ombudsperson werden die meisten Empfehlungen befolgt. Bis 2016 war schwer nachzuvollziehen, ob dies in der Praxis tatsächlich der Fall war, da weder die Gesetzgebung noch die interne Geschäftsordnung der Ombudsperson irgendwelche Überwachungsmechanismen vorsahen und vor 2016 kein System für ein administratives Follow-up existierte. 2016 wurde jedoch eine Reihe von Maßnahmen eingeführt, um die Effizienz der Einrichtung sicherzustellen – die Etablierung eines administrativen Follow-up-Systems war eine davon. Dem Jahresbericht der Ombudsperson für 2016 wurde eine Tabelle mit Empfehlungen und dem Stand ihrer jeweiligen Umsetzung (ein Monitoring-Bericht) beigelegt.<sup>37</sup> Dem Dokument zufolge wurden zwischen Februar und Dezember 2016 insgesamt 26 Empfehlungen an verschiedene Institutionen ausgesprochen. 16 dieser Empfehlungen waren bereits umgesetzt worden, zehn weitere befanden sich noch in der Umsetzungsphase.

Den Jahresberichten der Ombudsstelle zufolge hat die Ombudsperson in den letzten neun Jahren ihrer Tätigkeit nur in einem einzigen Fall ein Bußgeld verhängt.<sup>38</sup> Selbst wenn die Ombudsperson Bußgelder verhängen würde, wären diese jedoch weder wirksam noch verhältnismäßig noch abschreckend (dies wurde auch von der Ombudsperson selbst in ihrem Jahresbericht hervorgehoben). Geldstrafen – die einzig verfügbare Verwaltungssanktion – sind im Ordnungswidrigkeitengesetz geregelt und können zwischen 40 und 500 Euro (bei wiederholten Verstößen 500 bis 1000 Euro) betragen.<sup>39</sup>

In Diskriminierungsfällen ist die Unterstützung durch Interessenverbände wichtig, diese Organisationen können sich in der Praxis aber nur eingeschränkt an Verfahren beteiligen. Obwohl die einschlägigen Bestimmungen des Gleichbehandlungsgesetzes den Wortlaut der Richtlinien wiederholen, können nach der Zivilprozessordnung nur Mitglieder der entsprechenden Organisation vor Gericht von dieser Organisation vertreten werden. Theoretisch können sich Vereinigungen nur in Verwaltungsverfahren im Namen des Opfers beteiligen. Außerdem können Vereinigungen nicht öffentliche Interessen

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<sup>37</sup> Ombudsperson für Chancengleichheit (2017), *Anlage 1 zum Jahresbericht 2016 der Ombudsperson für Chancengleichheit*, abrufbar unter: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>38</sup> Nach Aussagen von Beschäftigten der Ombudsstelle wurden jedoch mindestens in ein paar Fällen Bußgelder verhängt.

<sup>39</sup> Litauen, Ordnungswidrigkeitengesetz (*Lietuvos Respublikos Administracinių teisės pažeidimų administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas*), 1985 2015-06-25, Nr. 1-1.XII-1869; abrufbar (auf Litauisch) unter: <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b>.

verteidigen, auch nicht durch Beschwerden bei der Ombudsperson für Chancengleichheit. Nach einem Urteil des obersten Verwaltungsgerichts können nur Personen, deren Recht durch eine konkrete Entscheidung unmittelbar verletzt wurde, bei der Ombudsperson Beschwerde einlegen.

Nicht zuletzt muss man berücksichtigen, dass die litauischen NROs relativ schwach und fragmentiert sind und nur über geringe finanzielle und personelle Ressourcen verfügen. Die Regierung nimmt NROs im Allgemeinen nicht als ernstzunehmende Partner wahr. Neben den Organisationen, die bestimmte Formen der Diskriminierung bekämpfen, gibt es nur wenige NROs, die sich für Menschenrechte einsetzen (und Antidiskriminierung ist nur einer ihrer Tätigkeitsbereiche).

## **6. Gleichbehandlungsstellen**

Die Ombudsperson für Chancengleichheit ist die nationale Antidiskriminierungsstelle, die gegründet wurde, um die Anforderungen der Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse zu erfüllen. Bei Inkrafttreten des Gleichbehandlungsgesetzes im Jahr 2005 wurde die Zuständigkeit der damaligen Ombudsperson für die Chancengleichheit von Männern und Frauen (die seit 1999 tätig war) auf weitere Bereiche ausgeweitet. 2005 wurde eine neue Stelle – die Ombudsperson für Chancengleichheit – gegründet, die alle Diskriminierungsgründe der Richtlinien 2000/43/EG und 2000/78/EG sowie den Diskriminierungsgrund Geschlecht abdeckt und am 1. Januar 2005 ihre Arbeit aufnahm.

Obwohl Sensibilisierung offiziell erst am 1. Januar 2017 in die Liste der Zuständigkeiten der Ombudsperson aufgenommen wurde, hat sich die Ombudsperson in der Praxis schon von Beginn an in diesem Bereich engagiert, indem sie sich an zahlreichen Sensibilisierungsmaßnahmen beteiligte, die in Regierungsprogrammen zu sozialer Eingliederung und Antidiskriminierung vorgesehen waren. Aufklärungs- und Informationskampagnen sowie Forschungsprojekte werden von der Ombudsperson allein oder gemeinsam mit anderen Institutionen und Nichtregierungsorganisationen durchgeführt.

Für die Ombudsperson war das Jahr 2016 ein wichtiger Wendepunkt hin zu mehr Effizienz und einer Stärkung der institutionellen Struktur. Die Institution wurde mit drei internen Abteilungen (Rechtsabteilung, Abteilung für Mainstreaming im Bereich Chancengleichheit und Abteilung Betriebsmanagement) neu strukturiert, zusätzlich zum Leitenden Experten für Öffentlichkeitsarbeit, einem Finanzberater und der Ombudsperson selbst. Darüber hinaus hat die Ombudsperson ihren strategischen Plan für 2016-2018 – erster detaillierter Versuch der Einrichtung, einen strategischen Ansatz mit bestimmten Prioritäten und Bewertungskriterien umzusetzen – verabschiedet, was definitiv ein Schritt hin zu mehr Effizienz der Einrichtung ist.

Wichtigste Funktion der Ombudsperson bleibt jedoch die einer außergerichtlichen Beschwerdeinstanz. Die Ombudsperson ist für alle in den Richtlinien genannten Diskriminierungsgründe sowie für Diskriminierung aufgrund von Geschlecht, Sprache, Vorstrafen und sozialem Status zuständig. Entscheidungen der Ombudsperson für Chancengleichheit über die Verhängung eines Bußgeldes sind bindend, können von einem Gericht jedoch aufgehoben werden. Die Tatsache, dass sich eine Person mit einer Beschwerde an die Ombudsperson für Chancengleichheit wendet, hindert sie nicht daran, in derselben Angelegenheit auch vor Gericht zu ziehen. In der Praxis fungiert die Ombudsperson häufig als Mediationsinstanz, da, so die Ombudsstelle, die einvernehmliche Beilegung von Diskriminierungsfällen eines ihrer Hauptziele ist. Andererseits hat diese Funktion der Ombudsperson nie dazu geführt, dass Opfer entschädigt worden wären.

Nach dem Gesetz ist der Ombudsmann nicht verpflichtet, Diskriminierungsklagen einzureichen oder zu unterstützen und Opfern von Diskriminierung unabhängige Unterstützung bei der Durchsetzung ihrer Rechte zu gewähren, wie in Artikel 13 der Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse gefordert. Solche Aktivitäten kommen auch in der Praxis nicht vor. Die Ombudsperson kann unabhängige Untersuchungen zu Diskriminierungsbeschwerden anstellen und unabhängige Berichte und Gutachten über die Diskriminierungssituation verfassen.

Das Büro der Ombudsperson für Chancengleichheit ist eine unabhängige Stelle, die aus dem Staatshaushalt finanziert wird. Die Ombudsperson wird vom Parlament für eine Amtszeit von fünf Jahren (und für maximal zwei aufeinanderfolgende Amtszeiten) ernannt. Es gibt jedoch keinen Ausschuss oder ein sonstiges Organ für die Ernennung, so dass die Zivilgesellschaft bei der Ernennung der Ombudsperson nicht angehört oder beteiligt wird. Die Arbeit und politische Unabhängigkeit des Büros hängt vollständig von der Leitung der Stelle, also der Ombudsperson selbst ab.

## **7. Schlüsselprobleme**

Das litauische Antidiskriminierungsrecht wiederholt in den meisten Fällen den Wortlaut der Richtlinie, geht jedoch nicht näher auf die einzelnen Bestimmungen ein. Nach Ansicht des Autors ist die Umsetzung daher in den folgenden Punkten noch immer ungenügend:

- Das aktuelle Gleichbehandlungsgesetz zählt die Bereiche Sozialschutz, soziale Sicherung und Gesundheitsversorgung nicht ausdrücklich zu seinem Anwendungsbereich.
- Das Sanktionssystem muss erheblich gestärkt werden, um die Sanktionen wirksam, verhältnismäßig und abschreckend zu machen. Opfer von Diskriminierung profitieren nicht von der außergerichtlichen Funktion der Ombudsperson und die verhängten Sanktionen sind nicht wirksam, verhältnismäßig und abschreckend.
- Nach dem Gesetz ist die nationale Gleichbehandlungsstelle, die Ombudsperson für Chancengleichheit, nicht dafür zuständig, Opfer von Diskriminierung bei der Durchsetzung ihrer Rechte zu unterstützen.
- Das Gleichbehandlungsgesetz berechtigt Vereinigungen, sich an Verfahren zu beteiligen, wiederholt dabei aber nur den Wortlaut der Richtlinien. In der Praxis können sie dieses Recht jedoch nur eingeschränkt ausüben. Nach der Zivilprozessordnung können Vereinigungen nur die eigenen Mitglieder vor Gericht vertreten. In der Theorie können Vereinigungen nur in Verwaltungsverfahren im Namen des Opfers handeln, nicht jedoch in Zivilverfahren.
- Nach dem Gleichbehandlungsgesetz besteht die Pflicht zu angemessenen Vorkehrungen. Der Wortlaut ist jedoch ungenau und etwas „weicher“ als in den Richtlinien. Daher ist die Pflicht in der Praxis nur schwer einzuklagen.
- Im Bezug auf selbständige Beschäftigung geht aus dem Gleichbehandlungsgesetz nicht klar hervor, ob die Richtlinien angemessen umgesetzt wurden. Selbständige Beschäftigung wird im Gleichbehandlungsgesetz nicht ausdrücklich erwähnt, obwohl sie im Gesetz über Chancengleichheit von Frauen und Männern, das den Diskriminierungsgrund Geschlecht abdeckt, genannt wird.
- Die administrativen Sanktionen der Ombudsperson für Chancengleichheit richten sich an die Führungsstelle juristischer Personen (Direktoren usw.), jedoch nicht an deren Mitarbeiter. Nach Einschätzung der Ombudsperson lässt der aktuelle Wortlaut des Gleichbehandlungsgesetzes die breite Anwendung des Gesetzes auf alle Akteure nicht zu. Weder Mieter, noch Kunden oder Arbeitnehmer können haftbar gemacht werden.
- Seit Juni 2008 enthält das Gleichbehandlungsgesetz eine Ausnahmeregelung bei der Einstellung und Beschäftigung durch Arbeitgeber, deren Ethos sich auf Religion oder Weltanschauung gründet. Die erste Fassung des Gesetzes enthielt keine entsprechende Regelung und es liegt noch keine Rechtsprechung zu diesem Thema vor. Auch sind keine Daten darüber verfügbar, ob es in Litauen vor der



Verabschiedung der Richtlinie derartige Verfahren gab, welche Organisationen sie nutzten und in welchem Umfang. Es bleibt unklar, welche Organisationen diese Ausnahmeregelung geltend machen können. Der Wortlaut der litauischen Bestimmungen ist sehr allgemein gefasst und kann entsprechend ausgelegt werden, beispielsweise zugunsten einer Diskriminierung von LGBT-Personen (dies wurde bei der Verabschiedung des Gesetzes im Parlament auch angesprochen). Derart vage Bestimmungen in einzelstaatlichen Rechtsvorschriften entsprechen wohl kaum der Zielsetzung der Richtlinie.

Andererseits sind 2016 auch einige positive Beispiele zu nennen. Zu einem besonders erfolgreichen Verfahren gehört eine Aufklärungskampagne mit dem Titel „Nationaler Preis für Gleichstellung und Vielfalt“, die gemeinsam von der Ombudsperson für Chancengleichheit und einer Gruppe von NROs durchgeführt wurde, die sich für besonders gefährdete soziale Gruppen einsetzen. Diese Kampagne findet seit 2014 statt. Im April 2016 wurden die Gewinner verschiedener Kategorien (Journalist des Jahres, Bürgerrechtsaktivist des Jahres, Ethno-Dialog-Förderer, Golden Age Award usw.) für ihre Verdienste um die Förderung von Gleichstellung und den Schutz von Menschen vor Diskriminierung ausgezeichnet. Der Wettbewerb wurde in den Medien ausführlich behandelt und zahlreiche Organisationen waren bei der Nominierung von Kandidaten, der Abstimmung und der Preisverleihung beteiligt. Die Preisverleihung war eine Möglichkeit, über das Thema aufzuklären, bewährte Verfahren bekannter zu machen und diejenigen, die sich in diesem Bereich engagieren, zu ermutigen. Die Organisatoren wollen das Projekt auch im nächsten Jahr durchführen.



## INTRODUCTION

### The national legal system

The Republic of Lithuania is a unitary state. The Constitution of the Republic of Lithuania<sup>40</sup> was adopted by referendum on 25 October 1992 and entered into force on 2 November 1992. Lithuania is party to a number of international agreements that guarantee protection against discrimination on various grounds. Article 138(3) of the constitution stipulates that international agreements that have been ratified by the Parliament form a constituent part of the legal system. The Law on International Agreements asserts that if an international agreement that 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 by 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 constitution stipulates that constitutional review in Lithuania is exercised by the Constitutional Court. 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* (Parliament) 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;
- (3) groups consisting of at least one fifth of all *Seimas* members, the courts, and the President of Lithuania, for cases concerning governmental acts.

Neither individuals, nor the Ombudsperson institutions enjoy the right to lodge petitions with the Constitutional Court.

Essentially, in Lithuania there are two options for imposing sanctions for discriminatory behaviour: (1) judicial procedure in criminal (in case of severe discrimination cases), administrative or civil courts (mostly for claiming compensation as the national law does not accept the concept of punitive damages) or (2) through quasi-judicial procedure at the Equal Opportunities Ombudsperson (who investigates complaints and imposes binding sanctions, but does not in any way compensate the victim).

### List of main legislation transposing and implementing the directives

National anti-discrimination law in Lithuania consist of two major enactments, which were specifically designed to implement the anti-discrimination directives:

- Law on Equal Treatment (abbreviation: LET).<sup>41</sup> Date of adoption: 18.11.2003; entry into force 01.01.2005; latest amendments: 08.11.2016. Grounds covered: gender, race, nationality, language, origin, social status, belief, convictions or views, age,

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<sup>40</sup> Lithuania, Constitution of the Republic of Lithuania (Lietuvos Respublikos Konstitucija), 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

<sup>41</sup> Lithuania, Law on Equal Treatment (*Lietuvos Respublikos Lygių galimybių įstatymas*), 2003, No.114-5115. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/KelaXtCsAE>.

sexual orientation, disability, ethnic origin and religion. Material scope of the law covers employment, access to goods or services, education.

- Law on Equal Opportunities for Women and Men (abbreviation: LEOWM).<sup>42</sup> Date of adoption: 01.12.1998; entry into force: 01.03.1999; latest amendments: 08.11.2016. Material scope: The law not only established the concept of discrimination on the ground of sex, but also created the Office of the Equal Opportunities Ombudsperson, which, according to the Law on Equal Treatment, supervises the implementation of equal opportunities on all grounds covered by the directives in Lithuania.

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<sup>42</sup> Lithuania, Law on Equal Opportunities for Women and Men (*Moterų ir vyrų lygių galimybių įstatymas*), 1998, No.112-3100. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/udzdOfTUTe>.

## 1 GENERAL LEGAL FRAMEWORK

### **Constitutional provisions on protection against discrimination and the promotion of equality**

The Constitution of the Republic of Lithuania includes the following articles dealing with non-discrimination:

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'.

This is the general equality clause embodied in Chapter 2 of the Constitution under the heading 'The Individual and the State'. The wording of the Article thus covers religion (beliefs) as well as political views. According to the Constitutional Court,

'Convictions are a broad and diverse constitutional notion, including political, economic convictions, religious feelings, cultural disposition, ethical and esthetical views etc.'<sup>43</sup>

Although disability, age and sexual orientation are not explicitly mentioned in the text of the constitution that does not necessarily imply that rights may be restricted on the basis of disability, age or sexual orientation. Although the author of this report is not aware of any constitutional case law where the Constitutional Court elaborated on those equality grounds, the court has stated in many of its rulings that the constitution is an integral enactment that cannot be interpreted literally.

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,<sup>44</sup> is binding on all governmental institutions, companies, and organisations, as well as officials and citizens. In its Ruling of 11 November 1998, the Constitutional Court, commenting on Article 29 of the constitution, stated:

'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.'<sup>45</sup>

Other constitutional clauses relating to equality and non-discrimination are the following:

- 1) 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

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<sup>43</sup> Ruling of the Constitutional Court of the Republic of Lithuania of June 13, 2000. Available in English at: <http://www.lrkt.lt/en/court-acts/search/170/ta1161/content>.

<sup>44</sup> Lithuania, Law on the Constitutional Court (*Lietuvos Respublikos Konstitucinio Teismo įstatymas*). 1993, No. 6-120, available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=460460](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=460460).

<sup>45</sup> Ruling of the Constitutional Court of Lithuania, No. 100-2791, 1998 (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), <http://www.lrkt.lt/en/court-acts/search/170/ta1134/content>.

slander or misinformation. Article 26 proclaims freedom of thought, conscience and religion.

2) Article 48 states that,

'each human being may freely choose a job or business, and shall have the right to have proper, safe and healthy conditions at work, to receive fair pay for work and social security in the event of unemployment.'

However, some of the constitutional clauses outline rights solely to citizens of the country.

3) Article 33 states that,

'citizens shall have the right to participate in the governance of their State both directly and through their democratically elected representatives as well as the right to enter on equal terms in the State service of the Republic of Lithuania.'

4) According to Article 37,

'citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.'

These provisions do not apply to all areas covered by the directives. Their material scope is not broader than those of the directives.

According to Article 6 of the Constitution, 'The Constitution shall be an integral and directly applicable act. Anyone may defend his rights by invoking the Constitution.' Therefore these provisions are directly applicable. The Constitutional Court has stated on many occasions that constitutional provisions and the constitution itself are directly applicable and that each individual may defend his or her rights on the basis of the Constitution. Nevertheless, cases where claimants base their demands directly and solely on the relevant provisions of the Constitution are rare in practice.

These provisions cannot be enforced against private actors (in addition to against the State). The constitutional equality clause is embodied in the chapter headed, 'The Individual and the State', and the jurisprudence of the Constitutional Court on Article 29 of the constitution is rather limited. 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 therefore doubtful whether it could be enforced against private persons.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in national law:

The Law on Equal Treatment covers gender, race, nationality,<sup>46</sup> language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion. The Equal Opportunities Ombudsperson recommended 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 LET).<sup>47</sup>

However, 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 Labour Code<sup>48</sup> lists the following grounds of equality of persons involved in employment relationships: gender, sexual orientation, race, ethnicity, language, origin, citizenship, social status, belief,<sup>49</sup> marital and family status, intention to have a child (children), 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 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.'<sup>50</sup>

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.'

The Law on the Provision of Information to the Public prohibits the publishing of information that

'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

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<sup>46</sup> The term used in the LET is *tautybė*, which refers to belonging to a national minority and is not used in the meaning of 'citizenship'.

<sup>47</sup> Lithuanian Equal Opportunities Ombudsperson (2014) *Annual Report for 2014*. Available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>48</sup> Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2002 No. 64-2569. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=311264](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264).

<sup>49</sup> The term 'belief' should be understood as covering religion as such.

<sup>50</sup> Lithuania, Criminal Code (*Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas*), 2000, No. 89-2741. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=314141](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141).

gender, sexual orientation, race, nationality, language, origins, social status, religion, beliefs or convictions' (Article 19).<sup>51</sup>

### **2.1.1 Definition of the grounds of unlawful discrimination within the directives**

#### **Social status**

The general rule is that national legislation avoids providing definitions of equality grounds, with the exception of 'social status' and 'disability', which are defined in different laws. According to Article 2(6) of the Law on Equal Treatment, 'social status' is defined as the level of education, attained by a natural person, his or her qualification as well as characteristics related to that person's financial (economic) situation (such as income, property ownership, etc.).

#### **Disability**

The only available legal definition of disability is provided in the Law on the Social Integration of Persons with Disabilities:<sup>52</sup>

'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 detrimental environmental factors'.<sup>53</sup>

The definition does not explicitly make reference to physical, mental or psychological impairments, although in practice all of these are adequately addressed. Although mentioning environmental factors adds an element of a 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) and the extent to which that limits a person's activity as well as his or her ability to fully participate in public life. In addition to this, the worsening of the state of health must be 'long term'. Such a definition goes beyond the definition given by the European Court of Justice and is in line with the reasoning of the ECJ in the joined cases C-335/11 and C-337/11 *Skouboe Werge and Ring*.<sup>54</sup>

In addition to this, however, the Law on the Social Integration of Persons with Disabilities gives a definition of a 'disabled person', stating that it is 'a person, who according to this law has been assessed to have a set level of disability or a level of 55 % (or less) of working efficiency'. Thus in order for a person to be considered disabled for the purpose of getting certain benefits, this must be officially recognised by a competent institution.

Such recognition leads to the allocation of particular aid and social benefits to people with disabilities, but 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 an exact definition of disability. In practice, the Office of the Equal Opportunities Ombudsperson interprets disability more widely and does not limit itself to the provisions of the Law on the Social Integration of Persons with Disabilities.

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<sup>51</sup> Lithuania, Law on the Provision of Information to the Public (*Lietuvos Respublikos Visuomenės informavimo pakeitimo įstatymas*), 2006, No. 82-3254. Text in English available at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=478453](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478453).

<sup>52</sup> The Law on Social Integration of Persons with Disabilities has not been designed to implement EU non-discrimination directives into national legislation.

<sup>53</sup> Lithuania, Law on the Social Integration of Persons with Disabilities (*Lietuvos Respublikos Neįgalųjų socialinės integracijos įstatymas*), 2004, No. 83-2983. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.199156E4E004/vpJLLKhZKK>.

<sup>54</sup> European Court of Justice, *Skouboe Werge and Ring*, joined cases C-335/11 and C-337/11, 11 April 2013, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-335/11>.

It should also be mentioned that Lithuania has ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and, according to the Article 138 of the Constitution, ratified international treaties are an integral part of the national system. Moreover, the Law on International Agreements specifies (Article 11(2)) that if an international agreement that has been ratified and enforced by the Republic of Lithuania establishes norms other than those established by the laws of the Republic of Lithuania, the provisions of the international agreement shall apply.<sup>55</sup> Hence in theory, the concept of disability provided for in the UN Convention on the Rights of Persons with Disabilities should be applicable. Article 1 of the convention states that,

'persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'

In 2015 a group of NGOs working in the field of disability submitted an *Alternative Report on Implementation of UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania*.<sup>56</sup> According to this report, since medical definitions and a negative understanding of disability is deeply rooted in the mindset of Lithuanian society, the inconsistencies in definitions in different national laws are not beneficial and should be brought fully in line with the concept that is provided for in the CRPD.<sup>57</sup>

Concerning religion, the Law on Equal Treatment states that religion, beliefs or convictions are among protected grounds, but it does not provide definitions of these concepts. The right to freedom of religion is described in the Law on Religious Communities and Associations.<sup>58</sup> However, this law also does not provide definitions of religion, beliefs or convictions. This leaves room for interpretation, because in the Lithuanian language these concepts are often treated as synonymous. On the other hand, the Constitutional Court has elaborated on the concepts and reached the following view:

'convictions are a broad and diverse constitutional notion, including political, economic convictions, religious feelings, cultural disposition, ethical and esthetical views etc.'<sup>59</sup>

Therefore, it can be argued that a wide spectrum of non-religious beliefs is covered by the Law on Equal Treatment.

Neither the Law on Equal Treatment, nor any other law provides definitions of race or ethnic origin. The Equal Opportunities Ombudsperson, investigating such complaints refers to the definition provided by the UN Convention on Elimination of All Forms of Racial Discrimination, which was ratified in Lithuania in 1998.<sup>60</sup> In 2016, the Equal Opportunities Ombudsperson started 32 investigations with regards to discrimination on

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<sup>55</sup> Lithuania, *Tarptautinių sutarčių įstatymas* (Law on International Agreements), 1999, No. 60-1948. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=437697](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=437697).

<sup>56</sup> Lietuvos Neįgaliųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, (Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania), available in Lithuanian at [http://www.lnf.lt/images/Dokumentai/Ataskaitos/JT\\_Neigaliuju\\_teisiu\\_konvencijos\\_Alternatyvioji\\_ataskaita.pdf](http://www.lnf.lt/images/Dokumentai/Ataskaitos/JT_Neigaliuju_teisiu_konvencijos_Alternatyvioji_ataskaita.pdf).

<sup>57</sup> Lietuvos Neįgaliųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, (Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania), p. 12.

<sup>58</sup> Lithuania, Law on Religious Communities and Associations (*Religinių bendruomenių ir bendrijų įstatymas*), 1995, No. 89-1985. Available in Lithuanian at: [https://www.e-tar.lt/portal/lt/legalAct/TAR.B4DBBD7C388A/TAIS\\_363706](https://www.e-tar.lt/portal/lt/legalAct/TAR.B4DBBD7C388A/TAIS_363706).

<sup>59</sup> Ruling of the Constitutional Court of the Republic of Lithuania, No. 23/98, 13 June 2000. Available in English at: <http://www.lrkt.lt/dokumentai/2000/r000613.htm>.

<sup>60</sup> Lithuanian Equal Opportunities Ombudsperson (2015), *Annual Report for 2015*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.



the grounds of race, nationality, ethnicity and language, but only two of those investigations concerned race.<sup>61</sup>

There has not been any court case law with regard to discrimination on the ground of race, while the majority of cases at the Equal Opportunities Ombudsperson concern ethnicity, or ethnic origin. According to the understanding of the Ombudsperson, race, nationality, language and ethnic origin are interrelated concepts, which could not be dealt with separately. Due to the lack of jurisprudence, it is too early to identify a pattern in the interpretation of these grounds by courts in practice.

National law does not provide definitions of any other equality grounds (including 'sexual orientation', 'age', 'religion' or 'belief', 'race', 'racial or ethnic origin', etc.) and these concepts have also not been elaborated upon in courts.

### **2.1.2 Multiple discrimination**

In Lithuania, prohibition of multiple discrimination is not included in the law. There is no case law dealing with multiple discrimination either.

In its annual reports from previous years, the Ombudsperson mentioned a few examples of the combination of gender and age, and of religion and ethnicity (there was a case of a pre-school educational establishment, which was giving preference to pupils of Jewish origin).<sup>62</sup> In 2016 the Ombudsperson reported that the combination of gender and age discrimination is a widespread phenomenon, giving the example of job vacancy advertisements favouring women who are younger than a certain age (usually younger than 35). According to the situation overview, provided by the Ombudsperson, 30 % of all age-based discrimination cases had a gender element as well. Most of these cases concerned discriminatory job vacancy announcements, preferring women of a particular age group. However, there are no special rules or procedures regarding the investigation of such cases by the Ombudsperson, nor are there more severe sanctions. In 2015, the Ombudsperson acting on its own initiative distributed a short memo to the major job search web platforms about discriminatory advertisements with recommendations on how to advertise job vacancies in a correct way.<sup>63</sup>

The issue of multiple discrimination in Lithuania was raised in 2014 by the UN Committee on the Elimination of Discrimination against Women, which stated that the committee was concerned,

'that the laws on equal treatment and equal opportunities for women and men do not adequately protect women against multiple or intersecting forms of discrimination based on ethnicity, age, disability or other ground. The Committee is particularly concerned about the absence of court cases involving multiple or intersecting forms of discrimination.'<sup>64</sup>

The committee urged the Lithuanian Government to amend its anti-discrimination and equal opportunities laws to ensure that they explicitly protect women from multiple or intersecting forms of discrimination. However, no specific actions were taken in this regard and in the view of the author of this report, there are no plans in Lithuania for the

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<sup>61</sup> Lithuanian Equal Opportunities Ombudsperson (2016), *Annual Report for 2016*.

<sup>62</sup> Lithuanian Equal Opportunities Ombudsperson annual reports, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>63</sup> Available in Lithuanian at: <http://www.lygybe.lt/lt/atmintinedarbdaviams>.

<sup>64</sup> UN Committee on the Elimination of Discrimination against Women (2014), 'Concluding observations on the fifth periodic report of Lithuania' (CEDAW/C/LTU/5), adopted by the Committee at its 58th session (30 June-18 July 2014) available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en).



adoption of rules in the field of anti-discrimination that deal with cases of multiple discrimination.

### **2.1.3 Assumed and associated discrimination**

#### **a) Discrimination by assumption**

In Lithuania, the following national law could be interpreted to prohibit discrimination based on perception or assumption of what a person is: the Law on Equal Treatment, Article 2(7).

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

'Direct discrimination means any situation where one person is treated less favourably than another is, has been or would be treated in a comparable situation on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, except for the following cases:'

This definition corresponds to the wording of the directives and could be interpreted to include assumed discrimination as well. However, this issue has not yet been raised either in the courts or at the Equal Opportunities Ombudsperson, according to the current information available to the author of this report.

Although the definition contains the singular (person), the interpretation of the national wording (both by the Ombudsperson or courts) does not imply that groups of persons would not fall under protection of the law.

#### **b) Discrimination by association**

In Lithuania, the national law does not explicitly prohibit discrimination based on association with persons with particular characteristics, therefore judicial interpretation is required on the Law on Equal Treatment, Article 2(7). The current definition of direct discrimination corresponds to the wording of the directives and could be interpreted in the light of Case C-303/06 *Coleman v Attridge Law and Steve Law*.<sup>65</sup>

However, in the past the Equal Opportunities Ombudsperson did not consider this wording to be sufficient, since in 2012 it proposed adding the definition of 'associated discrimination' to the Law on Equal Treatment, stating that a person should not be discriminated against because of a certain characteristic of his or her parents or children, foster-child or foster-parent, other family members or other legal representatives.<sup>66</sup> The Ombudsperson did not elaborate on any proposed wording. This proposal has not been registered as a draft law in the Parliament and therefore it is uncertain whether it will be adopted in the near future.

The author of this report is not aware of any cases of discrimination by association that have been investigated by the Equal Opportunities Ombudsperson or by the courts in Lithuania.

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<sup>65</sup> European Court of Justice, *Coleman v Attridge Law and Steve Law*, Case C-303/06, 17 July 2008, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

<sup>66</sup> Lithuanian Equal Opportunities Ombudsperson (2012), *Annual Report of the Equal Opportunities Ombudsperson for 2012*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

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

### a) Prohibition and definition of direct discrimination

In Lithuania, direct discrimination is prohibited in national law. Article 2(7) of the Law on Equal Treatment, defines direct discrimination as follows:

'Direct discrimination means any situation where one person is treated less favourably than another is, has been or would be treated in a comparable situation on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, except for the following cases: ...'

Although the definition mentions 'a person', this does not imply that it could be interpreted as excluding groups of persons from protection. 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'). Therefore, the definition contained in the Law on Equal Treatment is in conformity with the definition in the directives, as are the grounds that are covered: a person's age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.

Article 11 of the Law on Equal Treatment under the heading 'Discriminatory Advertisements', explicitly states that announcements that advertise job vacancies or civil service or education opportunities, which give preference to candidates of a particular gender, age, sexual orientation, disability, racial or ethnic origin, language, social status, religion or belief constitute a breach of equal treatment, with the exception of those situations set out in Article 2 (a general clause on genuine occupational requirements).

The Equal Opportunities Ombudsperson monitors advertisements on regular basis. Most of the investigations conducted on the initiative of the Ombudsperson in 2016 concerned discriminatory job vacancy announcements and a significant part of those investigations were started on the basis of information provided by NGOs. 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 the discriminatory practice and, according to the Ombudsperson, the recommendations are usually followed without dispute. However, a breach in such cases is not explicitly categorised as direct discrimination. In its 2016 annual report the Ombudsperson emphasised that it sometimes encounters difficulties in pursuing cases against discriminatory job vacancy advertisements placed online. Usually these advertisements are placed on online jobseekers platforms and the administrators of such platforms claim they have no control over the content of particular advertisements. The Ombudsperson suggested that national legislation should be amended to provide for their liability for the discriminatory content.<sup>67</sup>

In addition, during recent years, the Ombudsperson has emphasised the increase of more sophisticated discriminatory advertisements, which possibly indirectly discriminate against older people (for instance, companies looking for 'energetic people' or offering a 'dynamic and vibrant working atmosphere' etc.).<sup>68</sup> When it comes to defending ones right in court, the situation is different. In 2013, the Supreme Administrative Court of Lithuania upheld its reasoning in former case law, that only those persons whose rights

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<sup>67</sup> Equal Opportunities Ombudsperson (2016), *Annual Report for 2016*, available at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>68</sup> Lithuanian Equal Opportunities Ombudsperson (2013), *Annual Report for 2013*, available at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

are or have been directly affected have a right to initiate proceedings in the court.<sup>69</sup> Therefore a discriminatory job advertisement could only be challenged in court by a person who directly suffered discrimination; associations or other non-governmental actors cannot challenge such advertisements, because the law does not allow them to act in defence of public interest.

However, apparently, not all public discriminatory announcements or statements can be considered illegal. According to previous case law, general discriminatory oral statements would not fall under the scope of the Law on Equal Treatment. In 2008 during the 'For Diversity. Against Discrimination' campaign, a visit by the anti-discrimination truck as part of an LGBT event was not given permission by the former mayor of Vilnius city, who publicly stated that while he remained in the office 'there will be no advertisements of sexual minorities'. A month in advance, the Council of the Municipality of Vilnius had amended the Rules on Disposal and Cleanness, adding broad provisions enabling it to prevent any event that might be opposed by part of the community. An LGBT organisation filed a complaint with the Equal Opportunities Ombudsperson, which refused to investigate the matter. The organisation challenged its decision at the 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. The case was later brought to the Supreme Administrative Court, which stated that the mayor of the city cannot be considered a 'municipal institution or agency' within the meaning of the Law on Equal Treatment and thus a mayor's oral statements do not fall under the scope of the national anti-discrimination law. In addition, the court also upheld the reasoning of the lower court that only persons whose rights have been directly affected by particular actions or inactions of state or municipal institutions or agencies have a right to complain to the Equal Opportunities Ombudsperson.<sup>70</sup>

The courts took a very formal and narrow approach and did not go into the substance of the statements. No references to the jurisprudence of the ECJ were made and the courts mainly focused on the issue of whether a mayor can be considered 'a municipal agency or institution' within the meaning of the Law on Equal Treatment and within administrative law. However, in previous years the Ombudsperson has investigated oral statements by civil servants (particularly on the ground of gender) and found them to be discriminatory.<sup>71</sup> Therefore in that respect national jurisprudence is potentially non-compliant with the directives and needs to be clarified, especially taking into account clarifications of the EU anti-discrimination provisions in more recent case law of the ECJ.<sup>72</sup>

#### b) Justification of direct discrimination

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 Article 2 of the Law on Equal Treatment, the following are not considered direct discrimination:

- 1) Restrictions on the grounds of age, as 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.

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<sup>69</sup> Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, Administrative case No. A<sup>492</sup>-2078/2013, 7 November 2013.

<sup>70</sup> Supreme Administrative Court of Lithuania, No. A<sup>662</sup>-665/2010, 19 April 2010.

<sup>71</sup> Lithuanian Equal Opportunities Ombudsperson (2008), *Annual Report of the Equal Opportunities Ombudsperson 2008*, available in Lithuanian at <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>72</sup> European Court of Justice, *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, C-81/12, 25 April 2013. Available at: <http://curia.europa.eu/juris/liste.jsf?num=C-81/12>.

- 2) A requirement to know the official state language, as set out by law.
- 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.
- 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.<sup>73</sup>
- 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) Where the legal regulation of restrictions, special requirements or conditions with regards to a person's social status are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.  
(According to Article 2(6), '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 people with disabilities.

In addition to this list, Article 3 of the Law on Equal Treatment also states that the Law does not apply to a wide range of activities in relation to ethos-based organisations (membership, employment, educational activities).

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 that the means of achieving that aim must be appropriate and necessary.

### 2.2.1 Situation testing

#### a) Legal framework

In Lithuania, situation testing is implicitly permitted in national law.

There are no explicit legal provisions permitting or prohibiting situation testing in national law on civil or administrative procedure. The Law on Equal Treatment does not specifically mention it as a possibility nor does it set out conditions for the admissibility of situation testing.

According to the Code of Civil Procedure (Article 177), evidence is considered to be any factual data, lawfully collected and accepted by the court, that have the capacity to prove or disprove each party's arguments.<sup>74</sup> The same concept is applied in administrative procedures. As was proven by case law,<sup>75</sup> 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) Practice

<sup>73</sup> 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).

<sup>74</sup> Lithuania, Code of Civil Procedure (*Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas*), 2002, Nr. 36-13640 Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454/LdHBgHfrhz>.

<sup>75</sup> Vilnius Regional Court Lithuania, *S. Marinkevici v. UAB Disona*, case No. 2-1189-545/2008, 30 June 2008.

In Lithuania, situation testing is used in practice.

However, the use of situation testing is rare and there have been only a couple of cases. The latest example comes from 2015, when an LGBT organisation was attempting to rent a bus for a Pride event.<sup>76</sup> A private company refused to rent out a bus to an LGBT organisation, claiming that all buses were rented out for the upcoming months. A representative of the organisation called 10 days later, posing as a private person, inquiring about the possibility of renting the same bus for a full day and received immediate confirmation that the bus was available for service. The LGBT organisation filed a complaint with the Ombudsperson, who accepted the situation testing results as evidence of discrimination and issued an administrative sanction (warning) to the perpetrator. The decision of the Ombudsperson has not been taken to court by either side of the dispute.

So far there has been only one case of discrimination brought to court with the use of situation testing.<sup>77</sup> 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 occurred 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 and provided its findings in the case.

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 the capacity to carry out such exercises on a regular basis. The lack of case law as well as of legal certainty regarding procedural conditions and methodology might hinder the 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 being proposed.

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

#### **a) Prohibition and definition of indirect discrimination**

In Lithuania, indirect discrimination is prohibited in national law. It is defined.

The definition of indirect discrimination for the grounds covered by the Racial Equality Directive and the Employment Equality Directive is provided in Article 2(4) of the Law on Equal Treatment, where indirect discrimination is defined as follows:

‘Indirect discrimination means any act or omission, legal provision or assessment criterion, apparently neutral provision or practice that formally are the same but their implementation or application results or would result in de facto restrictions on the exercise of rights or extensions of privileges, preferences or advantages on the grounds of gender, race, nationality, language, origin, social status, belief,

<sup>76</sup> Decision of the Equal Opportunities Ombudsperson, No. (15)SN-136)SP-72, 14 May 2015. (Lygių galimybių kontrolieriaus pažyma dėl galimos diskriminacijos lytinės orientacijos pagrindu teikiant autobuso nuomos paslaugas), ( Available in Lithuanian at <http://www.lygybe.lt/data/public/uploads/2015/11/pazyma-del-galimos-diskriminacijos-lytines-orientacijos-pagrindu-teikiant-autobuso-nuomos-paslaugas.pdf>.

<sup>77</sup> Vilnius Regional Court Lithuania, *S. Marinkevic v. UAB Disona*, case No. 2-1189-545/2008, 30 June 2008.

convictions or views, age, sexual orientation, disability, ethnic origin or religion, unless that act or omission, legal provision or assessment criterion, provision or practice is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'

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 (for example, the Law on Education, the Law on the Public Service or the Law on the State Defence Service, etc.), it is also not clear how the provision in the Law on Equal Treatment will be interpreted in courts, since there is still very little case law on indirect discrimination.

#### b) Justification test for indirect discrimination

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'.<sup>78</sup> However, this interpretation did not consider the wording of the Law on Equal Treatment, which was not enacted at the time of the ruling.

It must also 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 the case of direct discrimination, where a requirement to know the official state language is enshrined in other laws. Where particular language requirements set by law could potentially have an 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.

So far, no cases of indirect discrimination regarding language have been adjudicated in courts. However, the Equal Opportunities Ombudsperson clearly states the link between requirements to know a particular language and indirect discrimination based on ethnic origin.<sup>79</sup> In the past, the Ombudsperson investigated a couple of such cases, 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.

#### c) Comparison in relation to age discrimination

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

### 2.3.1 Statistical evidence

#### a) Legal framework

In Lithuania, there are national rules permitting data collection.

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<sup>78</sup> Ruling of the Constitutional Court Lithuania, 13 December 2004, (*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“*).

<sup>79</sup> Lithuanian Equal Opportunities Ombudsperson (2016), *Annual Report of the Equal Opportunities Ombudsperson of 2016*, available in Lithuanian at <http://www.lygybe.lt/lt/metines-ataskaitos/405>.



There are no particular legal provisions permitting or prohibiting the collection of data for the purpose of establishing discrimination or designing positive action measures. However, in general, personal data collection must proceed under the requirements of the Law on the Legal Protection of Personal Data.<sup>80</sup>

In order to collect data legally, as a general rule, the consent of the person concerned is required. 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 are considered to be personal data and therefore must be protected (Article 2 (1)). 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, health and sexual life as well as information about previous criminal convictions (Article 2 (8)). Such data can only be processed with a person's written or equivalent consent, and as a general rule, it is forbidden to collect and process such data. However, the Law explicitly provides an exception for litigation, if needed for a particular case.

According to Article 13 of the Law on the Legal Protection of Personal Data, 'special data' can also be used for statistical purposes, although only when strict anonymity is ensured.

There are no particular provisions in the Law on the Legal Protection of Personal Data concerning the use of ethnic data with the purpose of designing positive action measures. However, the Law on Population Registrars, which regulates the conditions and rules for the use of personal data managed by various state registrars (civil metrication offices and other state and municipal registrars) does restrict the use of certain data. Article 11(7) of the Law states that information about ethnic origin, legal capacity of a person or restriction of it can be provided for use in accordance with explicitly outlined functions in particular laws or other enactments.<sup>81</sup>

Therefore, in the opinion of the author of this report, the collection of certain data for the purpose of proving indirect discrimination or designing positive action measures is restricted in practice. Although there are no special restrictions on the use of data on gender, the use of data on ethnicity seems to be allowed only for certain authorised public agencies that are exercising particular functions as established by law.

In Lithuania, statistical evidence is permitted by national law in order to establish indirect discrimination. 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 the use of such evidence would be advantageous or not.

## b) Practice

In Lithuania, statistical evidence in order to establish indirect discrimination is not used in practice.

As 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 relatively small amounts of data, mostly taken from public opinion surveys. Such surveys are usually performed by private companies, on the basis of service contracts. The

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<sup>80</sup> Lithuania, Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*), 1996, No. 63-1479, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.5368B592234C/XSpzxvEjIq>.

<sup>81</sup> Lithuania, Law on Population Registrars (*Lietuvos Respublikos gyventojų registro įstatymo pakeitimo įstatymas*), 2014, No. I-2237. Available in Lithuanian at <https://www.e-tar.lt/portal/lt/legalAct/TAR.DCBDC82E26CD/buRaninnmh>.

competent institutions (such as the Department of Statistics) lack the capacity and financial resources to manage large-scale equality data collection.

There is no information that would indicate a reluctance to use statistical data as evidence in court. As mentioned above, 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 in addition to the rather scarce statistical data sources that are currently available. The Ombudsperson recommended that the Government produce a national action plan for the collection of equality data 2011-2014.<sup>82</sup> However, since the plan was eventually 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 EU PROGRESS funding. It implemented a project, one outcome of which was an analysis of the statistical indicators in Lithuania. As a result, the Ombudsperson also made some recommendations.<sup>83</sup> The research once again highlighted the fact that an equality data collection system in Lithuania is not yet established and the data sets that are managed by the Department of Statistics are insufficient. The research recommended the establishment of an inter-institutional plan for the collection of equality data as well as a working group. It also emphasised the need for proper financing as well as the need to involve both NGOs and scientists in developing an equality data collection system in Lithuania.

On January 28 2015, the Government of the Republic of Lithuania approved a new version of the Inter-institutional Action Plan for the Promotion of Non-discrimination.<sup>84</sup> The plan covers 2015 to 2020, however no particular data collection activities were planned for 2015. The plan does have a few measures (research on the situation of particular vulnerable groups, including transgender people, national minorities), set out for 2016–2017.

## **2.4 Harassment (Article 2(3))**

### **a) Prohibition and definition of harassment**

In Lithuania, harassment is prohibited in national law. It is defined.

The Law on Equal Treatment explicitly states that harassment is a form of discrimination. In addition, the definition of harassment provided in the LET is compatible with the definition outlined in the directives (covering all five grounds of discrimination):

‘Harassment means any unwanted conduct which occurs with the purpose, or effect, of violating the dignity of a person, and of creating an intimidating, hostile, humiliating or offensive environment on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.’

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<sup>82</sup> Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>83</sup> Lithuanian Equal Opportunities Ombudsperson (2011), *Statistikos rodiklių apie lygybę ir klasifikatorių diskriminacijos apraiškoms parengimas ir vertinimas (įgyvendinta remiant PROGRESS programai (projekto nr. VS/2010/0555))* (Preparation and assessment of equality statistics and discrimination classification). Available in Lithuanian at [www.lygybe.lt](http://www.lygybe.lt).

<sup>84</sup> Lithuania, Decision of the Government of the Republic of Lithuania No. 46 of 28 January 2015 on the approval of the Inter-Institutional Action Plan for the Promotion of Non-discrimination (*Lietuvos Respublikos 2015 m. sausio 28 d. nutarimas Nr. 46 Dėl Nediskriminavimo skatinimo tarpinstitucinio veiklos plano patvirtinimo*), available in Lithuanian at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=1006990&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1006990&p_tr2=2).



Although the definition contains the singular (person), the interpretation of the national wording (both by the Ombudsperson or courts) does not imply that groups of persons would not fall under protection of the law. Therefore, in Lithuania, harassment does constitute a form of discrimination. Article 2(1) of the LET explicitly states that harassment is a form of discrimination.

There are no other sources on the concept of harassment. Codes of practice are not widespread in Lithuania. Some government agencies (particularly those dealing with the implementation of EU funded programmes) as well as larger companies operate under codes of conduct in their work. However, in most cases such 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, which are embodied in the codes. In some instances sexual harassment is mentioned but not defined.

There is no case law with regard to harassment on the grounds covered by the Directives 2000/43/EC and 2000/78/EC. The practice of the Equal Opportunities Ombudsperson is also limited in this respect.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Lithuania the employer is not liable.

No discrimination case law is available concerning service providers or third parties (clients, tenants, costumers, etc.). The scope of liability would depend on the situation and the law through which it is addressed. If discrimination is addressed via provisions of criminal law, the liability is personal – only a direct perpetrator (a natural and legal person) could be liable. In contrast, civil law provides for vicarious liability. For example, the Civil Code would allow a claim for damages against the employers for the actions caused by its employees (Article 6.264).

When applying administrative sanctions, the Equal Opportunities Ombudsperson issues them to the executive body of a legal person (a director, for example) but not to 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.<sup>85</sup> The same would apply for actions of members of particular associations or trade unions – according to the Ombudsperson, the current wording does not suggest that individual members could be held liable.<sup>86</sup>

## **2.5 Instructions to discriminate (Article 2(4))**

a) Prohibition of instructions to discriminate

In Lithuania, instructions to discriminate are prohibited in national law. In Lithuania, instructions do explicitly constitute a form of discrimination. Instructions are not defined.

The LET (Article 2(7)) defines discrimination as follows:

‘Discrimination means any direct or indirect discrimination, harassment, instruction to discriminate on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.’

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<sup>85</sup> Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>86</sup> Lithuanian Equal Opportunities Ombudsperson (2010), *Annual Report for 2010*, available in Lithuanian at <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

In addition, Article 2(8) of the LET explicitly states that instructions to discriminate are considered to be discrimination, as defined in Article 2(4) on indirect discrimination and Article 2(7) on direct discrimination. Therefore, instructions to discriminate directly or indirectly are considered discrimination, although the LET does not elaborate on or provide explanation of what particular actions could be considered as instruction.

b) Scope of liability for instructions to discriminate

In Lithuania, the instructor is liable.

As mentioned in section 2.4 above, there is both a lack of clarity as well as inconsistency in the case law. The Equal Opportunities Ombudsperson, when applying administrative sanctions, issues them to the executive body of a legal person (a director, for example) but not to 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.<sup>87</sup> Therefore it appears that an individual employee or representative of a service provider who received an instruction to discriminate could not be held liable under the application of the Law on Equal Treatment, and the liability would fall on the employer (or service provider) or its representatives.

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

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Lithuania, the duty to provide reasonable accommodation is included in the law. It is not defined.

The duty to provide reasonable accommodation is embodied only in the Law on Equal Treatment. However, the wording lacks precision and is somewhat 'softer' than that of the directive. Article 7 of the LET 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.'

The law does not provide any criteria for assessing the duty of employers or to evaluate whether it might be disproportionate. Financial assistance from the state in this respect is not taken into account in the Law on Equal Treatment. In addition, the Law on Equal Treatment neither defines disability nor provides an explanation for 'reasonable accommodation'. The only occasion when some sort of reference to 'reasonable accommodation' is made is in the previously mentioned obligation to employers to 'take appropriate measures to provide conditions for disabled people [...] including adapting premises, provided that the employer would not be disproportionately burdened with duties as a result' (Article 7 of the LET). The term 'reasonable accommodation' is not explicitly defined in the Law on Equal Treatment.

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<sup>87</sup> Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

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. Since there is neither a definition of 'disability', nor 'reasonable accommodation' in the Law on Equal Treatment, there is a risk that too narrow an interpretation of the duty could mean that only in cases where the definition of disability provided in the Law on the Social Integration of Persons with Disabilities applies would a person benefit from an employer making 'reasonable accommodation'. In other words, employers would have no duty to make 'reasonable accommodation' for people with minor disabilities. However, as yet, there is no case law clarifying the matter.

The same can be said about the provisions of the UN Convention on the Rights of Persons with Disabilities, which is considered to be an integral part of the national legal system. Article 5 of the convention states that 'in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.' However, in the opinion of the author of this report, as such this provision lacks precision for the practical application in courts in particular cases. In this respect it is very similar to the national provision of the Law on Equal Treatment.

b) Practice

Since neither the Law on Equal Treatment, nor other legislation provides more details on how reasonable accommodation should be implemented in practice, there is no mechanism in place. The lack of case law also contributes to the lack of legal certainty.

c) Definition of disability and non-discrimination protection

There is no specific definition of a disability for the purpose of claiming a reasonable accommodation.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Lithuania, there is no duty to provide reasonable accommodation for people with disabilities outside the employment field, according to the Law on Equal Treatment.<sup>88</sup> The concept of 'disproportionate burden' with regards to providing reasonable accommodation is not known outside the field of employment.

However, the Law on Education imposes a duty on state and municipal institutions to ensure opportunities to accommodate 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 used in this context.

e) Failure to meet the duty of reasonable accommodation for people with disabilities

In Lithuania, failure to meet the duty of reasonable accommodation does count as discrimination. Case law allows this conclusion (a detailed description of the case is provided below). However, in that particular case, the courts did not elaborate on the concept of what is 'reasonable', or on the proportionality of the burden, or give any reasoning behind the qualification of direct discrimination.

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<sup>88</sup> Although Lithuania has ratified UN Convention on the Rights of Persons with Disabilities, no cases have been brought before the courts for the violation of the Convention, nor there has been any other mechanism of enforcement established.

There is no clear mechanism provided in national law for the enforcement of such a duty in practice. The law does not provide any criteria for assessing an employer's duty or evaluating if it might be disproportionate. A more precise wording, explicitly stating that failure to provide reasonable accommodation is discrimination under the Law on Equal Treatment, is needed and would be beneficial to the victims. In its 2013 report, the Equal Opportunities Ombudsperson made a recommendation to the legislature to introduce amendments to the Labour Code, explicitly obliging the employer to adjust the working environment and conditions to the needs of people with disabilities (provided that the employer is not disproportionately overburdened) according to an assessment by the Disability and Working Capacity Assessment Office at the Ministry of Social Security and Labour, in individual cases.

In 2014 the first case explicitly concerning a failure to provide reasonable accommodation was adjudicated in court.<sup>89</sup> Although the reasoning of the court did not elaborate on the concept extensively, it acknowledged that failure to provide reasonable accommodation is direct discrimination.

The complainant was dismissed from his position as a choir performer, by the administration of the ensemble, due to his state of health in 2013. After a period of sick leave he returned to the employer with a note from the Disability and Working Capacity Assessment Office at the Ministry of Social Security and Labour, which outlined the state of health of the complainant and stated potential risk factors that might have an effect on the state of the worker's health. According to the assessment, among other factors the person was not allowed to work at a job in a position where permanent standing or walking was required as well as where leaning, weightlifting of more than 15 kg and certain other motions were necessary.

Given that, according to Article 136 of the Labour Code as well as Article 38(2) of the Law on Health and Safety of Workers, the decisions of the Disability and Working Capacity Assessment Office at the Ministry of Social Security and Labour are binding to the employer, the choir administration dismissed the complainant on the ground that he was unable to work due to his state of health. However, when V.J. filed a complaint at the Equal Opportunities Ombudsperson, it appeared that the position of the choir performer did not require constant (full-time working day) standing and the employer did not even consider possible adjustment of the working conditions for the complainant. The Ombudsperson stated that the employer failed in its duty to provide reasonable accommodation and therefore found a breach of the Law on Equal Treatment as well as violation of the Article 27 of the UN Convention on the Rights of Persons with Disabilities. The Ombudsperson admonished the employer for the violation and suggested that the victim file a court complaint.

V.J. applied to the regional court, which found the dismissal to be direct discrimination. The case was then brought to Vilnius County Court.<sup>90</sup> The court of appeal upheld the decision of the first instance court and ruled that V.J. was discriminated against on the basis of disability.<sup>91</sup> The court upheld the reasoning of the court of first instance, stating that although the decisions of the Disability and Working Capacity Assessment Office at the Ministry of Social Security and Labour are binding on the employer, in this particular case the decision did not state that V.J. was not fit to work in that particular position. The decision provided information about the state of health of the person as well as potential

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<sup>89</sup> Vilnius County Court decision, case No. 2A-557-640/2014, of 27 February 2014, (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*), available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaiska/tekstas.aspx?id=88b49cea-b30b-4a64-9fd8-fbcb2dc1efe4>.

<sup>90</sup> Vilnius County Court decision, case No. 2A-557-640/2014, 27 February 2014, (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*), available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaiska/tekstas.aspx?id=88b49cea-b30b-4a64-9fd8-fbcb2dc1efe4>.

<sup>91</sup> The author of this report was not able to access the decision of the first instance in the public court case law search database; the decision is not publicly available.

health risk factors, while it is the duty of the employer to properly assess whether those factors are present for a particular job. The employer did not provide any proof that it had tried to realistically evaluate the possibilities of working or considered adjusting the working conditions for V.J. to continue his work as a choir performer. Therefore the dismissal breached the requirements of the Law on Equal Treatment, as well as the requirements of the Law on the Social Integration of People with Disabilities, and discriminated against V.J. on the basis of disability.

However, in the view of the author of this report, national provision that transposes the directive's requirement is phrased less explicitly than the wording of the original provision of the directive and therefore it causes practical application difficulties and legal uncertainty. Up until 2014 no cases with regard to reasonable accommodation were brought to the court. Failure to provide reasonable accommodation might be considered to be a breach of equal opportunities, however, a more explicit and precise wording, stating that it is direct discrimination would be much more beneficial to victims of discrimination on the ground of disability and possibly encourage more victims to defend their rights.

f) Duties to provide reasonable accommodation in respect of other grounds

In Lithuania, there is no duty to provide reasonable accommodation in respect of other grounds in the public and the private sector.

g) Accessibility of services, buildings and infrastructure

In Lithuania, national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way. However, this requirement applies only to new buildings or buildings that are undergoing major reconstruction. According to NGO estimates, in 2015 about 50 % of public buildings in Lithuania (administrative premises, hospitals, educational institutions, etc.) were not accessible.<sup>92</sup>

The Law on the Social Integration of Persons with Disabilities 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 whether 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. In the past there were a few cases investigated by the Equal Opportunities Ombudsperson regarding the accessibility of public buildings (such as polyclinics, hospitals, police stations and so on). In those cases the Ombudsperson simply identified that, due to a lack of funds, the institutions were unable to reconstruct their buildings and make them accessible for people with disabilities and issued recommendations that the institutions should make adjustments in the near future, without explicitly stating that such a situation amounts to discrimination. It is estimated that there are more than 30 000 public buildings (hospitals, schools, libraries, post offices, etc.) that need to be made accessible to people with disabilities.<sup>93</sup>

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<sup>92</sup> Lietuvos Neįgaliųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, p.13. Available in Lithuanian at [http://www.lnf.lt/images/Dokumentai/Ataskaitos/JT\\_Neigaliuju\\_teisiu\\_konvencijos\\_Alternatyvioji\\_ataskaita.pdf](http://www.lnf.lt/images/Dokumentai/Ataskaitos/JT_Neigaliuju_teisiu_konvencijos_Alternatyvioji_ataskaita.pdf).

<sup>93</sup> Lithuania, Government decision to implement the National programme for Social Integration of People with Disabilities 2013 – 2019 (*LR Vyriausybės nutarimas Dėl Nacionalinės neįgaliųjų socialinės integracijos 2013-2019 metų programos patvirtinimo, 2012 m. Lapkričio 21 d.*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.46B1FA2B9435>.

The Law on Construction<sup>94</sup> as well as an order from the Ministry of Environment set the standards for newly designed and built buildings and infrastructure.<sup>95</sup> These requirements only apply to newly built infrastructure or in cases of major renovation. However, most public buildings were built during Soviet times and so in many cases they remain inaccessible (due to the lack of finance the process of renovation is very slow). There are no laws or regulations that set the framework for the adaptation of such buildings for the needs of people with disabilities. However, according to NGOs, loopholes in national regulation sometimes allow even newly built infrastructure to be legalised while not fully implementing accessibility requirements.<sup>96</sup>

In 2010 the Ombudsperson investigated a complaint on the matter (a woman complained about lack of accessibility at one of Vilnius's city clinics). The Ombudsperson found, that the public building was not accessible for wheelchair users, but it did not explicitly find this to be discrimination and issued a recommendation that Vilnius city municipality should allocate other premises for the clinic, which should be accessible.<sup>97</sup> In 2014, a similar decision was made with regard to police and post office buildings – the Ombudsperson completed the investigation by recommending that the institutions find financial resources in order to make appropriate renovations to the buildings. In one of its annual activity reports, the Ombudsperson emphasised that ensuring the accessibility of public buildings to people with disabilities is a long-term process, suggesting that the Government should prioritise making healthcare and education buildings accessible in the process of renovations to all public buildings.<sup>98</sup>

There has been a 100 % increase in the number of complaints with regards to disability discrimination at the Equal Opportunities Ombudsperson office in 2016 and a significant number of these complaints concerned accessibility of buildings and infrastructure.<sup>99</sup> In many instances the Ombudsperson found a violation of the Law on Equal Treatment and recommended the allocation of resources to ensure accessibility. However in no case was it explicitly categorised as direct discrimination.

The author of this report is not aware of court case law on the accessibility of public buildings, however the practice of the Office of the Equal Opportunities Ombudsperson presupposes that failure to comply with legislation that sets accessibility standards cannot be relied upon in a discrimination case based on the legislation transposing Directive 2000/78.

In Lithuania, national law contains a general duty to provide accessibility by anticipation for people with disabilities. The previously mentioned Law on the Social Integration of Persons with Disabilities sets out the 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

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<sup>94</sup> Lithuania, Law on Construction (*Lietuvos Respublikos Statybos įstatymas*). Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.F31E79DEC55D/RHuVZMouQS>.

<sup>95</sup> Lithuania, Order of the Minister of Environment No. 53-1898 of 14 June 2001 on Setting of accessibility standards (*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: <https://www.e-tar.lt/portal/lt/legalAct/TAR.3C24C4CAE7B1>.

<sup>96</sup> Lietuvos Neįgalųjų forumas (2015), Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania (*Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*), p.14. Available in Lithuanian at [http://www.lnf.lt/images/Dokumentai/Ataskaitos/JT\\_Neigaliuju\\_teisiu\\_konvencijos\\_Alternatyvioji\\_ataskaita.pdf](http://www.lnf.lt/images/Dokumentai/Ataskaitos/JT_Neigaliuju_teisiu_konvencijos_Alternatyvioji_ataskaita.pdf).

<sup>97</sup> Lithuanian Equal Opportunities Ombudsperson (2010), *Annual Report 2010*. Available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>98</sup> Lithuanian Equal Opportunities Ombudsperson (2012), *Annual Report 2012*. Available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>99</sup> Lithuanian Equal Opportunities Ombudsperson (2017), *Annual Report 2016*. Available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>



(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 the principles should be implemented in practice. Generally speaking, due to the poor economic situation, as well as the fact that a significant amount of the infrastructure dates from Soviet times, authorities do not vigilantly pursue accessibility requirements. Only in cases of newly built infrastructure are the requirements monitored more efficiently, while the remodelling of older buildings and other infrastructure is taking place at a slow pace due to the lack of financial resources and timeframe.

Although the Law on Equal Treatment explicitly obliges service providers to ensure equal access to goods and services, because LET does not contain explicit requirement for goods and service providers to adjust infrastructure, in practice a significant share of service providers do not provide accessibility. Therefore, in practice, many service providers (both private and public) would blame the current lack of infrastructure (many buildings that were built in Soviet times are not accessible) and would not make any efforts themselves to ensure accessibility. In practice, the Equal Opportunities Ombudsperson would find a violation of the Law on Equal Treatment and without explicitly categorising the issue as direct discrimination would recommend ensuring accessibility of services in the future.<sup>100</sup>

Unfortunately, the author of this report was not able to gain access to the annual report of the Ministry of Social Security and Labour by the time of the completion of this report. Furthermore, the report has not been made public and nor it was given to the author upon request.<sup>101</sup> Therefore, it is hard to estimate the progress made in 2016 and the latest information comes from previous year. In 2015 there had been some progress in comparison to the previous year, in relation to housing accessibility project funding. According to the interim implementation report<sup>102</sup> of the National Programme of the Integration of Persons with Disabilities 2013 – 2019,<sup>103</sup> 2 006 public buildings were made accessible (33.7 % more than initially planned). There was also an increase in the finance allocated to making private premises more accessible (EUR 1 013 000, which is EUR 107 000 more than planned). However, only 42 % of applications from private individuals were granted funding.

According to NGOs working in the field of disability, public transport infrastructure remains a significant area of concern.<sup>104</sup> The existing requirements of the Ministry of Transport and Communication are not being enforced and monitored; as of 2015, there was not a single intercity bus that is suitable for wheelchair users, the variety of railway routes that are accessible for people with disabilities is poor and involves only the major cities. Municipal public transport also remains an issue because due to the decrease in users of public transport, in many municipalities larger buses have substituted by minibuses, which are rarely accessible. Throughout the country, there is only one private

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<sup>100</sup> The decision of the Equal Opportunities Ombudsperson No. (16)SN-98)SP-85 of 1 August 2016, available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2016/08/nr.-16sn-98sp-85.pdf>.

<sup>101</sup> The annual report of the Ministry of Social Security and Labour for 2016 was not made public by 31 March 2017. The author of this report was also unable to gain access to the document in other ways.

<sup>102</sup> Lithuanian Ministry of Social Security and Labour (2015), *2015 Annual Activity Report of the Ministry of Social Security and Labour*, available in Lithuanian at: <http://www.socmin.lt/lt/ataskaitos/ministerijos-veiklos-ataskaitos.html>.

<sup>103</sup> Lithuania, Decision of the Government on the adoption of national social integration programme for persons with disabilities 2013 – 2019 (*Lietuvos Respublikos Vyriausybės nutarimas Dėl Nacionalinės neįgaliųjų socialinė integracijos 2013 – 2019 metų programos patvirtinimo, 2012 m. lapkričio 21 d. Nr. 1408*). Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437985&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437985&p_query=&p_tr2=2).

<sup>104</sup> Lietuvos Neįgaliųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, p.22. Available in Lithuanian at [http://www.inf.lt/images/Dokumentai/Ataskaitos/JT\\_Neigaliuju\\_tesiu\\_konvencijos\\_Alternatyvioji\\_ataskaita.pdf](http://www.inf.lt/images/Dokumentai/Ataskaitos/JT_Neigaliuju_tesiu_konvencijos_Alternatyvioji_ataskaita.pdf).

taxi company that provides a service for wheelchair users and that operates in just four cities.

#### h) Accessibility of public documents

The Law on the Social Integration of Persons with Disabilities sets out principles for the integration of people with disabilities and access to information is one of them. According to Article 6, the Government must appoint an institution that is responsible for the adjustment of information systems to the needs of people with disabilities. The Government appointed the Information Society Development Committee (ISDC) under the Ministry of Transport and Communications<sup>105</sup> as the main institution in this respect. However, the ISDC's main area of work is the supervision of the use of ICT-based opportunities for people with disabilities to allow them to participate fully in economic, social and community activities (adapting the online environment for people with disabilities). The ISDC has prepared the mandatory requirements, approved by the Lithuanian Government, for all public administration offices, state enterprises and state-owned public institutions to adapt their websites for people with disabilities, and has prepared methodological recommendations<sup>106</sup> for the development, testing and assessment of the websites adapted for people with disabilities.

However, according to the *Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania*,<sup>107</sup> despite the existing requirements, although most public websites are made accessible in a formal way, in practice they are unusable for blind people, and the enforcement mechanism is inadequate.

Although obligatory translation of documents into Braille is not required by national legislation, the Ministry of Social Security and Labour each year issues an order that sets the conditions for the support of periodical publications for disabled people and the requirements of institutions and organisations willing to participate in Government tenders for such publications.<sup>108</sup> Unfortunately, the author of this report was not able to gain access to the annual report of the Ministry of Social Security and Labour by completion of this report<sup>109</sup> and therefore, it is hard to estimate the progress made in 2016.

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<sup>105</sup> Official website of the institution: <http://www.ivpk.lt/>.

<sup>106</sup> Lithuania, Order of the director of the Information Society Development Committee under the Ministry of Transport and Communications of May 23, 2013 No. T-72 on the Approval of methodological recommendations for testing and developing accessible websites (*Informacinės visuomenės plėtros komiteto prie Susisiekimo ministerijos direktoriaus 2013 m. gegužės 23 d. įsakymas Nr. T-72 Dėl Informacinės visuomenės plėtros komiteto prie Lietuvos Respublikos Vyriausybės direktoriaus 2004 m. kovo 31 d. įsakymo Nr. T-40 "Dėl Neįgaliesiems pritaikytų interneto tinklalapių kūrimo, testavimo ir įvertinimo metodinių rekomendacijų patvirtinimo" pakeitimo*), available in Lithuanian at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=450397&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450397&p_query=&p_tr2=2).

<sup>107</sup> Lietuvos Neįgalųjų forumas (2015), *Alternative Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania* (Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje), available in Lithuanian at [http://www.inf.lt/images/Dokumentai/Ataskaitos/JT\\_Neigaliuju\\_tesiu\\_konvencijos\\_Alternatyvioji\\_ataskaita.pdf](http://www.inf.lt/images/Dokumentai/Ataskaitos/JT_Neigaliuju_tesiu_konvencijos_Alternatyvioji_ataskaita.pdf).

<sup>108</sup> Lithuania, Order of the Minister of Social Security and Labour (Socialinės apsaugos ir darbo Ministro įsakymas Dėl Periodinių leidinių neįgaliesiems leidybos ir platinimo finansavimo 2015 metais tvarkos aprašo patvirtinimo, 2014 m. gruodžio 19 d. Nr. A1-656) available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=492881&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=492881&p_tr2=2).

<sup>109</sup> The annual report of the Ministry of Social Security and Labour for 2016 was not made public by 31 March 2017. The author of this report was also unable to gain access to the document in other ways.



### **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)**

In Lithuania, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

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

###### **a) Protection against discrimination**

In Lithuania, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against 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 by other provisions under the LET and available case law. For instance, the provision on the shift of the burden of proof (Article 4 of the LET) states that it should be applied while investigating complaints of discrimination lodged by natural and legal persons.

###### **b) Liability for discrimination**

In Lithuania, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination. Both natural and legal persons are liable for discriminatory acts. Natural persons can have administrative and criminal responsibility. Legal persons bear administrative liability (the 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.

When it comes to the scope of liability, there is a lack of clarity. The only available case law on the matter concerns the scope of liability for sex discrimination in employment relations and the decisions of the Equal Opportunities Ombudsperson (although its outcome may also be applied to other grounds of discrimination). Two previous decisions contradicted each other: in one case the Vilnius district administrative court stated that only employers, not their representatives, can be held liable;<sup>110</sup> while a month later, the Supreme Administrative Court of Lithuania ruled that although the Law on Equal Opportunities does not *expressis verbis* provide the list of subjects who can be admonished, systematic analysis of the Law on Equal Opportunities for Women and Men, as well as of jurisprudence of the Supreme Court, led the court to believe that not only employers, but also their representatives could be held accountable for discrimination and could be admonished by the Equal Opportunities Ombudsperson.<sup>111</sup> This means that managers or heads of administration and other personnel that have the legal capacity to represent the employer can be held accountable according to the Law on Equal Opportunities. The decision of the Supreme Administrative Court is definitely of greater importance, but this example demonstrates that the lack of clarity in national legislation might lead to inconsistencies in almost identical situations.

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<sup>110</sup> Vilnius district administrative court, case No. I-1278-624/2012, decision of 1 March 2012.

<sup>111</sup> Supreme Administrative Court of Lithuania, Administrative Case No. A<sup>858</sup>-403/2012, decision of 2 April 2012.

### **3.1.3 Private and public sector including public bodies (Article 3(1))**

#### **a) Protection against discrimination**

In Lithuania, national law covers private and public sector including public bodies for the purpose of protection against discrimination.

#### **b) Liability for discrimination**

The Law on Equal Treatment was designed particularly with the purpose of transposing the requirements of the EU anti-discrimination directives into national legislation. Currently the law protects persons from discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion in the fields of employment, access to goods and services, and education. The law does not make a distinction between public and private sectors in the fields of employment, education or goods and services. In addition, it has a separate provision – Article 5 – with regard to public entities, which states that:

‘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, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion’.

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 court case law on these issues yet.

## **3.2 Material scope**

### **3.2.1 Employment, self-employment and occupation**

In Lithuania, national legislation applies to all sectors of private and public employment, including contract work, military service, holding statutory office, for the five grounds. Judicial interpretation is required for self-employment.

The situation is not precisely clear regarding self-employment given the fact that it is not explicitly mentioned in the Law on Equal Treatment and that 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 in decisions made by the Equal Opportunities Ombudsperson.

### **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))**

In Lithuania, national legislation prohibits discrimination in the following areas: conditions for access to employment, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives. However, judicial interpretation is required with regard to self-employment or occupation.

Article 7 of the Law on Equal Treatment has a general provision that all employers are bound by the principle of equality of persons, followed by a list of obligations. However, it does not explicitly elaborate on self-employment or access to occupation. Therefore, the Law on Equal Treatment could be interpreted to cover that as well. The Law on Income Tax,<sup>112</sup> which provides a list of activities related to self-employment or occupation (artists, performers, designers, etc.), does not have any references to anti-discrimination.

The laws relating to specific professions, such as the Attorney Law,<sup>113</sup> the Law on the Healthcare System,<sup>114</sup> the Accountancy Law,<sup>115</sup> the Audit Law<sup>116</sup> and the Dentistry Law<sup>117</sup> and others, do not contain non-discrimination clauses, definitions of discrimination or any regulations on protection against discrimination and lack direct prohibition of discrimination on the grounds covered by the directives.

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.

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

In Lithuania, national legislation prohibits discrimination in the following areas: working conditions including pay and dismissals, for all five grounds and for both private and public employment.

According to the Article 7 of the Law on Equal Treatment, the actions of an employer shall be deemed discriminatory if he or she applies to one employee less (or more) favourable terms of employment or payment for work than to another. Employment contracts must be based on the conditions set by law. According to Article 95 of the Labour Code, the conditions of remuneration for work (the 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, therefore 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 particular 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.

#### **3.2.3.1 Occupational pensions constituting part of pay**

Occupational pensions are a relatively new phenomenon - the Law on the Accumulation of Occupational Pensions<sup>118</sup> was only introduced in 2006 and the occupational pension system has not been established in practice. In November 2011, a new and significantly

<sup>112</sup> Lithuania, Law on Income Tax (*Lietuvos Respublikos Gyventojų pajamų mokesčio įstatymas*), 2002, No. 73-3085. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.C677663D2202/mpStJtiAxQ>.

<sup>113</sup> Lithuania, Attorney Law (*Lietuvos Respublikos Advokatūros įstatymas*), 2004, No. 50-1632. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9F4371AB03A3/YThIBEDHse>.

<sup>114</sup> Lithuania, Law on the Healthcare System (*Lietuvos Respublikos Sveikatos sistemos įstatymas*), 1994, No. 63-1231. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.E2B2957B9182/DzJApLsfZr>.

<sup>115</sup> Lithuania, Accountancy Law (*Lietuvos Respublikos Buhalterinės apskaitos įstatymas*), 2001, No.99-3515. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.43178AA9832E/eGHQNZASDS>.

<sup>116</sup> Lithuania, Audit Law (*Lietuvos Respublikos Finansinių ataskaitų audito įstatymas*), 1999 m. Nr. VIII-1227. Available in Lithuanian at <https://www.e-tar.lt/portal/lt/legalAct/TAR.9845F775C518/npJADmsHoX>.

<sup>117</sup> Lithuania, Dentistry Law (*Lietuvos Respublikos Stomatologinės priežiūros (pagalbos) įstatymas*) 2004, No. 4-36. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D9F7AA1AE41F/ORZTZCmqKw>.

<sup>118</sup> Lithuania, Law on the Accumulation of Occupational Pensions (*Lietuvos Respublikos Profesinių pensijų kaupimo įstatymas*), 2006, N. 82-3248. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.103565D95E60/BwYiAogwWj>.

improved version of the law was passed. Article 23 of the law forbids differential treatment of pension scheme participants on the ground of sex. Article 22(5) of the law allows the setting of a minimum age for accessing occupational pension schemes, however, this age cannot be higher than 21 years old. There are no other explicit provisions regarding equality on any other grounds in the application of non-discrimination law to occupational pensions. In addition, the author of this report is not aware of any occupational pension funds functioning in Lithuania.

Moreover, the wording of Article 7 of the Law on Equal Treatment obliges employers to 'pay equal pay for the same work or for work of equal value' and to 'provide equal working and civil service conditions and opportunities for vocational training, advanced vocational training, retraining, practical work experience, as well as provide equal benefits'. It does not explicitly mention occupational pensions, therefore judicial interpretation would be required in order to establish whether they constitute part of pay.

### **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))**

In Lithuania, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

Article 7 of the Law on Equal Treatment obliges employers to 'provide equal working and civil service conditions and opportunities for vocational training, advanced vocational training, retraining, practical work experience, as well as provide equal benefits', however, the law does not provide explanations as to what the concepts 'vocational training' or 'advanced vocational training' mean. It can be argued that those provisions mean training that is closely related to the working functions of an employee. The Labour Code also does not elaborate on this in detail. 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). Therefore, judicial interpretation of the LET norms should clarify this.

### **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 Lithuania, national legislation prohibits discrimination in the following areas: membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

Article 9 of the Law on Equal Treatment 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. In addition, the Labour Code also provides protection from discrimination concerning involvement in workers or employers' associations.

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

In Lithuania, national legislation does not prohibit discrimination in the following area: social protection, including social security and healthcare as formulated in the Racial Equality Directive.

The existing Law on Equal Treatment, in contrast to the Law on Equal Opportunities for Women and Men,<sup>119</sup> does not explicitly state that social protection, including social security and healthcare, fall under the scope of this law. There are no particular provisions on this in the LET with the exception of a general duty to implement equal opportunities (Article 5), which reads as follows:

‘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, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.’

However, the position of the Ombudsperson in this respect is not clear and consistent. In the past the Ombudsperson considered that social security and social protection would not fall under the scope of the Law on Equal Treatment while healthcare did, since the wording of the law regarding goods and services is broad enough to include health services.<sup>120</sup> Until 2014 the Ombudsperson had not investigated any social security cases with regard to grounds other than gender. However, in 2014, a group of 35 state-pension recipients (former statutory officials and military personnel) applied to the Ombudsperson with a general claim that they have been discriminated against because during the period of 2010 – 2013 (the financial crisis) the Government reduced their state-pension payments.<sup>121</sup> The group claimed that they were discriminated against in comparison to another group, that is, old-age pensioners, whose pensions remained unchanged. In spite of the fact that they based their claim on constitutional equality clauses and did not rely on the provisions in the Law on Equal Treatment, the Ombudsperson started the investigation procedure on the basis of alleged discrimination on the ground of social status and did not reject the complaint with reference to material scope. Eventually the Ombudsperson closed the investigation without clearly stating that the regulation was discriminatory and issued a recommendation to the Parliament to start legislative initiatives that would compensate state-pension recipients for the loss of income because of reduced pensions.

This leads to the conclusion that the lack of clarity in the Law on Equal Treatment in this respect causes inconsistencies and problems in the practical application of the law. Since there is no court case law interpreting the Law on Equal Treatment in this context, it is hard to predict how it might be viewed by courts and applied in practice. As mentioned above, this contrasts with the Law on Equal Opportunities for Women and Men, which prohibits discrimination based on sex and explicitly states that the law covers the social protection system. Therefore uncertainty regarding race, ethnic origin and other equality grounds remains.

In addition to this, social protection is mainly regulated by the Law on State Social Security Insurance.<sup>122</sup> However, this law does not have any 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 healthcare are governed by a number of other special laws that cover areas such as social state

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<sup>119</sup> Lithuania, Law on Equal Opportunities for Women and Men, Article 9, explicitly states that discrimination on the ground of sex is prohibited in the field of social protection.

<sup>120</sup> Equal Opportunities Ombudsperson (2010), *Annual Report for 2010*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>121</sup> The overview of the case is provided in the Equal Opportunities Ombudsperson (2014), *Annual Report for 2014* (pp. 74 – 82), available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>. The decision is not available in the case law section of the Ombudsperson’s website.

<sup>122</sup> Lithuania, Law on State Social Security Insurance (Lietuvos Respublikos valstybinio socialinio draudimo įstatymas), available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0F9036415DBD/ELRCdZtQWA>.

benefits,<sup>123</sup> health insurance and healthcare,<sup>124</sup> etc. but these laws also lack non-discrimination provisions.

#### 3.2.6.1 Article 3.3 exception (Directive 2000/78)

National law does not seek to explicitly rely on the exception in Article 3(3), Directive 2000/78 in relation to particular grounds.

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

In Lithuania, national legislation does not prohibit discrimination in the following area: social advantages as formulated in the Racial Equality Directive.

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. In contrast, the Law on Equal Opportunities for Women and Men, which prohibits discrimination based on sex, explicitly states in Article 9 that the law covers the social protection system. The previously mentioned general 'duty to implement equal opportunities' as it is formulated by Article 5 of the Law on Equal Treatment 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.

In Lithuania, the lack of definition of social advantages raises problems.

National anti-discrimination law neither defines social advantages, nor addresses them in any way and the Law on Equal Treatment does not explicitly state that social benefits fall under the scope of the law. Although the Equal Opportunities Ombudsperson has, on a few occasions, stated that social advantages do 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.<sup>125</sup> In 2015, the Equal Opportunities Ombudsperson investigated a few complaints regarding kindergarten benefit schemes.<sup>126</sup> The municipalities of three major cities decided to solve the problem of a lack of public kindergartens by compensating with a certain amount of money parents who sent their children to private kindergartens (which are generally more expensive than public ones). The Ombudsperson received a few complaints that such schemes discriminate on the basis of social status (which covers the same material scope as other grounds). The Ombudsperson accepted the complaints and, without explicitly identifying direct/indirect discrimination, the Ombudsperson issued a recommendation that municipalities should follow the general 'duty to implement equal opportunities' as formulated by Article 5 of the Law on Equal Treatment and should amend the schemes.

This leads to the conclusion that the lack of clarity in the Law on Equal Treatment in this respect causes inconsistencies and problems in the practical application of the law regarding race, ethnic origin and other equality grounds.

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<sup>123</sup> Lithuania, Law on Social State Benefits (*Valstybinių šalpos išmokų įstatymas*), 1994, Nr. 96-1873. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f5ee93504a6e11e6b5d09300a16a686c/owltqajZOe>.

<sup>124</sup> Lithuania, Healthcare System Law, 1994.

<sup>125</sup> Equal Opportunities Ombudsperson (2011), *Annual Report for 2011*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>126</sup> Decisions of the Equal Opportunities Ombudsperson with regard to social status, available in Lithuanian at: <http://www.lygybe.lt/lt/socialine-padetis-pazymos>.

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

In Lithuania, national legislation prohibits discrimination in the following area: education as formulated in the Racial Equality Directive.

The law does not distinguish between citizens and third country nationals, therefore third country nationals/migrants, who have residence status in the country, benefit from prohibition of discrimination in the field of education as citizens. There has not been any major case law with regards to this and the author of this report is not aware of any investigations at the Equal Opportunities Ombudsperson.

In general, all educational institutions, schools, scientific and academic institutions (public and private) are obliged under Article 6 of 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 with regards to all the grounds listed in the Law on Equal Treatment. In addition, Article 5 (1) of the Law on Education states equal opportunities as one of the principles of the education system. Jurisprudence on equality in education remains scarce, since no cases regarding discrimination in this field have been brought to court in recent years.

One of the provisions of Article 3 of the LET 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 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 to the selection of personnel by these establishments. 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 could be used to 'protect' schools from homosexuals. The present wording is very broad, leaving room for interpretations that could breach the requirements of the Employment Equality Directive 2000/78/EC.

#### a) Pupils with disabilities

In Lithuania, the general approach to education for pupils with disabilities does raise problems.

The education of people with disabilities is mainly governed by the Law on Social Integration of Persons with Disabilities (which establishes the general right to education of people with disabilities) and by the Law on Education.<sup>127</sup> The principle, embodied in these laws, is to support an inclusive approach towards the education of people with disabilities, by partially or fully integrating children with disabilities into mainstream education. According to Article 14 of the Law on Education, the state has the responsibility to ensure that children with disabilities be given appropriate assistance at all levels of education. Articles 34 and 28(6) oblige municipalities to ensure the functioning of a sufficient and efficient network of institutions that provide assistance to children with special needs in preschool, basic and general education as well as to their teachers. In addition, under the Law on the Minimum and Average Care of the Child,

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<sup>127</sup> Lithuania, Law on Education (*Lietuvos Respublikos švietimo įstatymas*), 1991, No. I-1489 available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9A3AD08EA5D0/LLQooOuyjS>.



children who have socialisation problems can be placed into special educational socialisation institutions only in limited cases and for temporary periods only.<sup>128</sup>

The practical implementation of these principles does raise problems, due to various reasons, such as: a substantial lack of financial and human resources; a lack of specialists; and a lack of interest by mainstream education institutions to adapt to the new model of inclusive education.<sup>129</sup> Under the Law on Education, 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 that make a child's education in a mainstream school impossible, the child is placed in a special school or educated at home. However, in many cases education in general schools, is barely possible due to the fact that many mainstream schools lack either infrastructure or specialists (or both) to accommodate children who have special needs and are in need of specialist support.<sup>130</sup> According to the research implemented by the Children's Rights Ombudsman, more than one third of municipalities in the country did not provide socialising classes, 14 (out of 61) of the municipalities did not provide any type of further education opportunities for children with intellectual disabilities, who finish compulsory basic education (usually children finish basic education at the average age of 16 years).

Under-financing has remained very significant in recent years. The author of this report was not able to gain access to the annual report of the Ministry of Social Security and Labour by completion of this report<sup>131</sup> and therefore it is hard to estimate the progress made in 2016. However, in previous years the lack of financial resources, the lack of specialists in mainstream education institutions and the lack of accessibility for physically disabled persons were identified as the main obstacles to successful integration by the Children's Rights Ombudsman.<sup>132</sup> According to the interim implementation report<sup>133</sup> of the National Programme of the Integration of Persons with Disabilities 2013–2019,<sup>134</sup> the Ministry of Education has not implemented any measures towards improving the education of pupils with special needs in 2015, although it was initially planned that EUR 1.5 million would be allocated from the EU funding. NGOs also emphasise that although there is some progress in the integration of pupils with disabilities into mainstream education, when it comes to children with intellectual disabilities the situation has got worse in recent years, in particular due to a lack of attention by the Ministry of Education.<sup>135</sup> According to the report, one of the negative trends is also the abuse of home schooling - which should be an exceptional practice, rather than a common one - both by parents and because of the recommendations of specialists. This practice also distorts the statistical information about pupils with disabilities in

<sup>128</sup> Lithuania, Law on Minimum and Average Care of the Child (*Vaiko minimalios ir vidutinės priežiūros įstatymas*), 2007, No. X-1238, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.90D8CF4E3E9F/JqBRoNxXnm>.

<sup>129</sup> Lithuania, Government decision to implement the National programme for Social Integration of People with Disabilities 2013 – 2019 (*LR Vyriausybės nutarimas Dėl Nacionalinės neįgaliųjų socialinės integracijos 2013–2019 metų programos patvirtinimo, 2012 m. Lapkričio 21 d.*), available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437985&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437985&p_query=&p_tr2=2).

<sup>130</sup> According to the survey carried out in 2010, 78 % of schools said that they significantly lack educational materials for children with special needs.

<sup>131</sup> The annual report of the Ministry of Social Security and Labour for 2016 was not made public by 31 March 2017. The author of this report was also unable to gain access to the document in other ways.

<sup>132</sup> Children's Rights Ombudsman (2014), *Annual Report 2014*, available in Lithuanian at: <http://www3.lrs.lt/docs2/UDUEYYKQ.PDF>.

<sup>133</sup> Ministry of Social Security and Labour (2015), *2015 Annual Activity Report of the Ministry of Social Security and Labour*, available in Lithuanian at: <http://www.socmin.lt/lt/ataskaitos/ministerijos-veiklos-ataskaitos.html>.

<sup>134</sup> Lithuania, Decision of the Government (*Lietuvos Respublikos Vyriausybės nutarimas Dėl Nacionalinės neįgaliųjų socialinės integracijos 2013 – 2019 metų programos patvirtinimo, 2012 m. lapkričio 21 d.* No. 1408). Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437985&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437985&p_query=&p_tr2=2).

<sup>135</sup> Lietuvos Neįgaliųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, pp. 34–35, available in Lithuanian at [http://www.inf.lt/images/Dokumentai/Ataskaitos/JT\\_Neigaliuju\\_tesiu\\_konvencijos\\_Alternatyvioji\\_ataskaita.pdf](http://www.inf.lt/images/Dokumentai/Ataskaitos/JT_Neigaliuju_tesiu_konvencijos_Alternatyvioji_ataskaita.pdf).



mainstream education, since home schooling comes under the category of mainstream education (as opposed to education in special schools).

In 2016, the Institution of the Ombudsman for Children Rights initiated an investigation on its own initiative into the situation of pupils with disabilities in various municipalities across the country and published a comprehensive report.<sup>136</sup> In many cases the findings confirm the previously mentioned information, provided by NGOs. Although Article 16 of the Law on the Social Integration of Persons with Disabilities states that municipalities play a key role in implementing social integration measures, more than half (34 out of 60) of municipalities do not have comprehensive integration programmes in place. In many instances the concerns of people with disabilities are addressed by the staff of social benefits departments only and not a single municipality reported having dedicated staff who would cover disability issues across all fields of competence of the municipality. Very few municipalities established a commission or other collective body to specifically tackle a wide range of disability issues. The Ombudsman concluded that the right to education is not fully ensured at local level both in pre-school education<sup>137</sup> and in general education. According to the report, a significant share of pupils with disabilities do not attend pre-school education institutions, especially in rural areas. The attendance of pre-school education establishments is 67 % on average across the country, while the percentage of pupils with disabilities who attend pre-school education varies from 4 % to 47 % in different municipalities. The access to general (basic) education is also not fully ensured, mostly due to a lack of specialists and additional support services as well as the fact that significant numbers of schools are not accessible to pupils with special needs. Many municipalities were not able to provide comprehensive information on the state of accessibility in local schools. It is estimated that only a third of schools are made at least partially accessible (some municipalities provided information that schools are accessible, however, in reality the accessibility is ensured only on the first floor of school, no elevators for wheelchair users have been installed, etc).

In 2014, the Ombudsperson for Equal Opportunities investigated a complaint by a mental health disability NGO and an applicant, who claimed that the Ministry of Education had issued an order setting organisational rules for ensuring the education of persons with special needs, which discriminated against pupils whose special needs were caused by mental health issues. According to the order of the Minister of Education, after completing individualised basic education curriculum, these pupils could continue their further education in professional education establishments or social skills educational programmes (in special classes in regular schools or in special schools), eliminating their opportunity to continue education in regular secondary schools together in a class with regular children, using an adapted or personalised curriculum. After the investigation, the Ombudsperson recommended that the Ministry of Education form a working group, consisting of representatives of the Ministry of Education, the Ministry of Social Security and Labour, the Ombudsman for the Rights of the Child and representatives of municipalities and NGOs, which would discuss the issues and come up with solutions. In 2015 the Ombudsperson started to prepare an independent report on the education of pupils with intellectual disabilities in the city of Vilnius.<sup>138</sup>

When it comes to education at universities and colleges, although there has been significant progress, and each student who has a diagnosed working capacity of less than 45 % is given financial assistance, the percentage of students with disabilities is only about 0.5 % of the total number of students. Only a limited number of universities and higher education institutions are fully accessible to people with disabilities.

#### b) Trends and patterns regarding Roma pupils

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<sup>136</sup> The report of Institution of the Ombudsman for Children's Rights, 2016-03- Nr. (6.7.-2014-16)PR, available in Lithuanian at: <http://www3.lrs.lt/docs2/DFFLQRXU.PDF>.

<sup>137</sup> Pre-school education is not obligatory in Lithuania.

<sup>138</sup> The report had not been finished by the end of 2015.

In Lithuania, there have been situations in practice and in particular locations, which could be considered as having the effect of segregation in education in respect of Roma pupils. However, according to a nationwide investigation by the Institution of the Ombudsman for Children's Rights, nationwide segregation policies could not be identified.<sup>139</sup>

In relation to the issues surrounding the education of the Roma, the latest general census data indicated that half of Lithuanian Roma had not finished basic education. According to the research, which focused on the Roma community in the largest Roma settlement (Kirtimai) in the outskirts of Vilnius,<sup>140</sup> low expectations of all parties (schools, government institutions, NGOs and the Roma themselves) and the ethnic dimension were the prevailing elements of the educational experience of Roma children. The lack of human and financial resources and the lack of will to solve diverse social problems surrounding Roma, as well as prevailing negative attitude towards the Roma community (by all actors, including Roma themselves) are reproducing poverty and illiteracy in the next generation of Roma. 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 and negative stereotypes of Roma also persist in schools.

According to a report on Roma education in the Vilnius Kirtimai region, the main reasons for the Roma's lack of educational achievement are related to a lack of social skills, linguistic barriers (Romani spoken in the family) and poor school attendance.<sup>141</sup> According to the latest available country-wide research (2008) there were 579 Roma pupils attending schools in the country, most Roma children (69 %) did not attend either pre-school establishments or pre-school groups and participation in after-school activities was uncommon among Roma. Although a state-funded Roma Community Centre<sup>142</sup> is functioning in the Kirtimai Roma community and provides various activities, mostly focused on preserving the cultural heritage of the community, these are not sufficient for pupils to acquire the necessary social skills that would contribute to their adaptation to the school environment. In 2016, Vilnius city municipality adopted the Vilnius Kirtimai Roma Community Integration to Society Programme 2016–2019.<sup>143</sup> The programme sets out a number of measures aimed at providing educational assistance to Kirtimai pupils, various additional services for pre-school and informal education activities, etc. The total planned budget for these measures is EUR 352 500 and the programme will establish a constant monitoring process.

In 2014, the Ombudsman for the Rights of the Child, reacting to information in the media about two municipalities, launched an investigation aimed at evaluating possible segregation patterns when Romani children are placed in educational institutions for children with severe or substantially severe special educational needs (so called 'special schools').<sup>144</sup> The investigation discovered that at least 50 Romani children were being

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<sup>139</sup> Lithuania, Decision of Ombudsman for the Rights of the Child (LR Vaiko teisių apsaugos kontrolieriaus pažyma Dėl Romų tautybės vaikų teisės į mokslą užtikrinimo 2014-08-19 Nr. (6.1- 2013-329) PR-156), available in Lithuanian at: <http://www3.lrs.lt/docs2/VAQQPBJE.PDF>.

<sup>140</sup> Petrušauskaitė V. (2014), *Ankstyvas Romų pasitraukimas iš švietimo sistemos Vilniaus mieste: švietimo lauko analizė* (Early Withdrawal of Roma Children in the Educational System in Vilnius: An educational field analysis); doctoral thesis, published by Lietuvos socialinių tyrimų centras. Available in Lithuanian at: [http://vddb.library.lt/fedora/get/LT-eLABa-0001:E.02~2014~D\\_20140117\\_113027-98649/DS.005.0.01.ETD](http://vddb.library.lt/fedora/get/LT-eLABa-0001:E.02~2014~D_20140117_113027-98649/DS.005.0.01.ETD).

<sup>141</sup> Socialinių tyrimų instituto etninių tyrimų centras (Institution for Social Research, Centre for Ethnic Studies), 2008, *Romų padėties tyrimas: Romai švietimo ir darbo rinkos sankirtoje*, (Study on the Intersection of Roma Education and the Labour Market), Vilnius, 2008. Available in Lithuanian at: [http://www.ces.lt/wp-content/uploads/2008/06/STI\\_TMID\\_Romu-padeties-tyrimas-2008\\_ataskaita.pdf](http://www.ces.lt/wp-content/uploads/2008/06/STI_TMID_Romu-padeties-tyrimas-2008_ataskaita.pdf).

<sup>142</sup> Official website of the Roma Community Centre: [www.roma.lt](http://www.roma.lt).

<sup>143</sup> Lithuania / Vilnius Kirtimai Roma Community Integration to the Society Programme 2016 – 2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

<sup>144</sup> Lithuania, Decision of Ombudsman for the Rights of the Child (LR Vaiko teisių apsaugos kontrolieriaus pažyma Dėl Romų tautybės vaikų teisės į mokslą užtikrinimo 2014-08-19 Nr. (6.1- 2013-329) PR-156), available in Lithuanian at: <http://www3.lrs.lt/docs2/VAQQPBJE.PDF>.

schooled in such institutions across the country by the end of 2013, which amounts to almost 9 % of all Romani pupils in Lithuania. However, in two particular municipalities, which came under investigation, most of the Romani children were being schooled in educational institutions for children with severe or substantially severe special educational needs: in one municipality the percentage was 67 % of all Romani pupils within the territory of the municipality (10 out of 15 children); in the other the percentage was 92 % (out of 11 Roma children, 10 were schooled in the institution) – in many cases the children were members of the same family.

The investigation tried to identify possible patterns of segregation not only in these two municipalities, but in the whole country to provide a broader overview. According to the investigation, 84 % of Romani children placed in special schools come from the same families, and almost half of these families are registered in municipal child protection institutions as being at social risk. Although there are different reasons why parents of these children allowed their kids to be moved to special schools, certain additional benefits, identified by Roma themselves, play a role, such as the opportunity to get fully covered meals and the opportunity to live in the dormitory and return home only at weekends (36 % of all Romani children stay in school dormitories and return home during the weekends only). According to some of the Roma parents, they were satisfied with their choice because the lower number of pupils in the classes of special schools ensure greater attention from teachers (parents of Romani children are often illiterate and are unable to help their children with homework), the children experience less bullying due to their educational problems than they would do in regular schools, and the relationship between parents and the school administration is more cooperative.

The Ombudsman requested an expert evaluation, which concluded that one child out of 22 children who were placed in special schools in the two municipalities did not demonstrate severe special needs and there was no need for his placement in a special school. However, all the other children would have still been able to study in regular schools with an adjusted curriculum and special assistance and the final decision to move the children to special schools was made by their parents.

In its reasoning the Ombudsman made references to the case law of ECHR (*D.H. v. Czech Republic*, *Sampanis v. Greece*, *Oršuš and Others v. Croatia*) as well as citing the recommendations of international organisations. However, the Ombudsman concluded, that despite complex Roma education problems, patterns of systematic discrimination or segregation of Roma pupils on the basis of ethnicity cannot be identified in Lithuania. The Ombudsman also concluded, that national education should strive to live up to the principles of inclusion and ensuring that the individual needs of every child are met, and therefore education of Romani children should be on the priority list of relevant institutions and sufficient resources should be allocated to solve the complex issues surrounding Roma education problems.

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

In Lithuania, national legislation prohibits discrimination in the following area: access to and supply of goods and services as formulated in the Racial Equality Directive. Article 8 of the Law on Equal Treatment explicitly states that goods and service providers must ensure equal access to all customers and the prohibition of discrimination extends to all anti-discrimination grounds. National wording does not imply that manufacturers or service providers are obliged to make goods or provide services accessible to people with disabilities.

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.

However, the Law on Insurances<sup>145</sup> does allow 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 a particular risk level.

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 in providing goods and services when the purpose of this provision is of a religious character. The author of this report is not aware of situations when this exception has been applied in practice. However, since the wording of this provision is rather broad and vague, there is enough room for interpretations that 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 (such as the week before Easter). Theoretically, under the LET, they might try to refuse selling the food to an openly gay person, justifying their decision on the ground of religion.

### 3.2.9.1 Distinction between goods and services available publicly or privately

In Lithuania, national law does not 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).

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

In Lithuania, national legislation does prohibit discrimination in the following areas: housing as formulated in the Racial Equality Directive.

When it comes to housing, the Law on Equal Treatment does not explicitly say that housing falls under the scope of the law in the field of consumer protection. In addition, the wording of Article 8 (equal opportunities in the sphere of consumer rights protection), obliges providers of goods and services (including housing) to ensure equal opportunities to all.

The law does not distinguish between citizens and third country nationals therefore protection is applied to all. There has not been any major case law in 2016 with regards to this and the author of this report is not aware of any investigations at the Equal Opportunities Ombudsperson institution. However, the author has been informed about a number of instances when asylum seekers have been discriminated against by local property owners, when they tried to rent living premises in the small town of Rūkla, where an asylum seekers centre is located. On at least a few occasions, after seeing the dark-skinned asylum seekers, the landlords would say that the premises had already been rented. The cases have not been reported to the Ombudsperson. A number of refugees who have been given protection status in Lithuania have left the country for Germany or Scandinavian countries, due to a lack of sufficient support (housing, employment, etc.) and insufficient financial benefits.

The Law on Equal Treatment also includes a general duty to implement equal opportunities (Article 5), which could be interpreted to include housing, provided by local government institutions. It reads as follows:

'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, race, nationality,

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<sup>145</sup> Lithuania, Law on Insurance (*Draudimo įstatymas*), 2003, No. 94-4246. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=386840](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=386840).

language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.'

The latest case law by the Equal Opportunities Ombudsperson takes into account the field of housing – in 2016 it received a complaint regarding alleged discrimination on the basis of disability in the field of housing.<sup>146</sup> The claimant stated that the municipality failed to provide him with social housing because of his disability. Although no discrimination was eventually established, the Ombudsperson accepted the complaint and started an investigation on the basis of Article 8 (equal opportunities in the sphere of consumer rights protection). It is yet not clear if the court would accept the interpretation of Article 8 as also encompassing social housing. No court cases with regards to discrimination in the field of housing have been brought to court.

### 3.2.10.1 Trends and patterns regarding housing segregation for Roma

In Lithuania, there are patterns of housing segregation and discrimination against the Roma.

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.<sup>147</sup> Under the Roma Integration Action Plan for 2015–2020, approved by the Ministry of Culture in 2015,<sup>148</sup> a recent sociological research of Roma was carried out, which provides a fresh and more reliable overview of the housing situation.<sup>149</sup> More than 500 Roma participated in the research (close to 25 % of the general Roma population). In contrast to the general population, most Lithuanian Roma live in premises that they do not own (69 %, in comparison to a state average of only 9 %), and 38 % live in social housing (the state average is 1 %). About a fifth of the Lithuanian Roma population live in premises without paying rent (illegal housing, staying at relatives, etc.), in contrast to a state average of 4 %. Hence not surprisingly, living standards are much lower than state average: the Roma live in much more crowded premises (12.6 m<sup>2</sup> per person, in contrast to 26.2 m<sup>2</sup> state average) and more than half of their premises are not equipped with bathtub, shower or toilet (the state average is 15 %). Overall, 68 % of Roma residents complain about the quality of their housing (in comparison to 29 % of the general population).

The Roma community living in Kirtimai (a district of the Vilnius city municipality), is the most obvious example of segregation. Approximately 500 people live in this community in a slum-like settlement and residents face housing problems on a regular basis. The Kirtimai Roma community were forced to settle in the outskirts of Vilnius during the Soviet occupation and after independence, houses that the Roma built for themselves on state-owned land were not legalised. Most of the buildings therefore currently remain illegal and are constantly threatened with possible demolition. Standards of living, housing and sanitation in Kirtimai are unsatisfactory. A 2009 investigation by the Parliamentary Ombudsman found that the policies of social integration conducted by Vilnius City Municipality were neither effective nor properly funded or managed, thus increasing the

<sup>146</sup> Decision of the Equal Opportunities Ombudsperson, 2016-10-06, Nr. (16)SN-141)SP-114, available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2016/10/nr.-16sn-141sp-114.pdf>

<sup>147</sup> Socialinių tyrimų instituto etninių tyrimų centras (Institution for Social Research, Centre for Ethnic Studies), 2008, *Romų padėties tyrimas: Romai švietimo ir darbo rinkos sankirtoje*, available in Lithuanian at: [http://www.ces.lt/wp-content/uploads/2008/06/STI\\_TMID\\_Romu-padeties-tyrimas-2008\\_ataskaita.pdf](http://www.ces.lt/wp-content/uploads/2008/06/STI_TMID_Romu-padeties-tyrimas-2008_ataskaita.pdf).

<sup>148</sup> Lithuania, Order of the Minister of Culture No. IV-48 of 29 January 2015 on the Approval of Roma Integration Action Plan for 2015 – 2020 (*Lietuvos Respublikos Kultūros ministro 2015 m. sausio 29 d. įsakymas Nr. IV-48 Dėl romų integracijos į Lietuvos visuomenę 2015–2020 metų veiksmų plano patvirtinimo*), available in Lithuanian at <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682>.

<sup>149</sup> VšĮ Diversity Development Group (2015), *Sociologinio tyrimo 'Romų padėtis lyginant su kitais šalies gyventojais' tyrimo ataskaita* (Report on the situation of Roma in comparison to other residents of the country). Available in Lithuanian at <http://www.lygybe.lt/data/public/uploads/2015/12/romu-tautybes-asmenu-padetis-lyginant-su-kitais-salies-gyventojais.pdf>.

segregation of the Kirtimai Roma community and keeping their housing conditions unsatisfactory.<sup>150</sup>

The housing problem faced by the Kirtimai Roma settlement is very well known and has been raised by national and international organisations numerous times in the past. In 2014, the Kirtimai Roma situation was once again raised by the UN Committee on Economic, Social and Cultural Rights, which urged the Lithuanian Government:

'to proceed swiftly with its commitment to legalise the Kirtimai settlement in Vilnius without further delay, so as to ensure the right to adequate housing for the Roma population concerned.'<sup>151</sup>

In 2016, Vilnius city municipality adopted the Vilnius Kirtimai Roma Community Integration to Society Programme 2016–2019.<sup>152</sup> The programme sets out a number of measures aimed at providing social housing options to Kirtimai Roma community members. According to the representatives of the municipality, the aim of the programme's housing measures is to adopt a new approach, avoiding enforcing evictions (most buildings were built illegally), and instead offering incentives (financial support for rent or social housing options) to those who voluntarily agree to leave the settlement. An estimated 30 families who volunteer to leave the settlement should receive a planned EUR 44 160 in compensations/subsidies over a period of three years. It must be added that this particular policy was designed by Vilnius municipality to address the slum-like conditions (illegal buildings, lack of sanitary facilities, etc.) in Kirtimai settlement, which are not present in any other part of the country.

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<sup>150</sup> *Annual Report of the Seimas (Parliamentary) Ombudsman 2009*, available in Lithuanian at: <http://www.lrski.lt/lt/seimo-kontrolieriu-veikla/metines-seimo-kontrolieriu-veiklos-ataskaitos/76-metine-seimo-kontrolieriu-veiklos-ataskaita-2009.html>.

<sup>151</sup> UN Committee on Economic, Social and Cultural Rights (2014), 'Concluding observations on the second periodic report of Lithuania' (E/C.12/LTU/2), Adopted by the Committee at its fifty-second session (28 April–23 May 2014), available in English at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fLTU%2fC.O%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fLTU%2fC.O%2f2&Lang=en).

<sup>152</sup> Lithuania, Vilnius Kirtimai Roma Community Integration to Society Programme 2016–2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.



## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

In Lithuania, national legislation provides for an exception for genuine and determining occupational requirements.

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 (Article 2(7) of the Law on Equal Treatment). The national provision repeats the wording of the directive and does not elaborate on it. The provision has been considered neither by the courts nor by the Equal Opportunities Ombudsperson.

### **4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)**

In Lithuania, national law provides for an exception for employers with an ethos based on religion or belief.

According to Article 3 of the Law on Equal Treatment, 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 LET 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.

The first edition of the Law on Equal Treatment did not contain such an exception and 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. There are a few non-profit organisations directly established by the Catholic church (Caritas, the National Family Centre), and shelter houses, cultural and youth organisations, media portals, educational institutions (school and pre-school educational establishments) that are linked to the Catholic church or that claim to represent Christian values. The wording of national provision is very broad and can be interpreted widely. This is hardly compatible with the goals of the directive and could eliminate LGBT people from certain 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, stating 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.<sup>153</sup>

In 2012 the provision was also included in the Labour Code.<sup>154</sup> Articles on guarantees in access to employment (Article 96) and the termination of an employment contract under an employer's initiative without the employee's fault (Article 129) have been amended

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<sup>153</sup> Stenograph of the Parliamentary sitting of 18 September 2007. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=304466](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466).

<sup>154</sup> Lithuania, Amendment to Labour Code (*Darbo kodekso 2, 47, 96, 101, 108, 129, 136, 138, 147, 177, 183 straipsnių pakeitimo ir 116 straipsnio pripažinimo netekusiu galios įstatymas*), 6 November 2012.

with the aforementioned exception for ethos-based religious communities, associations and centres, provided that the ethos-based occupational requirements are genuine, legitimate and justified. It is unclear why the amendments, repeating the wording of the Law on Equal Treatment, took place. These particular provisions were not elaborated upon in detail during the Parliament sittings either.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

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 rather than on religion or belief. The Catholic church played a significant role in the introduction of the provisions.<sup>155</sup> Bearing in mind the openly negative attitude of the church to the LGBT community in Lithuania, there is a possibility that these broad provisions could be used to discriminate on grounds other than religion and belief.

- Religious institutions affecting employment in state funded entities

In Lithuania, religious institutions are permitted to select people (on the basis of their religion) for hire or for dismissal from a job when that job is in a state entity, or in an entity financed by the state.

According to the Article 31 of the Law on Education, in order to become a religious education teacher, a person must be approved by the religious community. This is an obligatory requirement. In the case of the Catholic church this is also regulated by an agreement with the Holy See,<sup>156</sup> 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. So far this issue has not been raised in courts.

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Lithuania, national legislation does not 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 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 concerning age and health requirements. According to the Law on Organisation of the National Defence System and Military Service,<sup>157</sup> minimum age of acceptance to the military service is 18 years. Retirement ages vary depending on the seniority status acquired by the servicemen (Article 45) from 35 to 58 years of age. In certain cases, the maximum service age can be extended by up to two years – twice for higher status servicemen (Article 46).

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<sup>155</sup> The Minister of Social Security 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 the Lithuanian Conference of Bishops. Stenograph of the Parliamentary sitting of 18 September 2007. The text in Lithuanian can be found at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=304466](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466).

<sup>156</sup> Lithuania, International Agreement between Lithuania and Holy See (*Lietuvos Respublikos ir Šventojo Sosto sutartis 'Dėl bendradarbiavimo švietimo ir kultūros srityje'*), 2000-08-09, No. 67-2024. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=106813&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=106813&p_query=&p_tr2=).

<sup>157</sup> Lithuania, Law on Organisation of the National Defence System and Military Service (*Krašto sistemos organizavimo ir karo tarnybos įstatymas*), 1998, No. 49-1325, Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.15C705E93776/UvKTZGiBug>.



Particular health requirements are set by an Order of the Minister of Defence and Minister of Health,<sup>158</sup> which sets out the principles and methodology for the evaluation of the state of health of persons willing to attend or continue working in the military service.

The same can be said about statutory institutions, in that there are other laws that provide special requirements for persons joining these institutions. According to the Law on Internal Service Statute,<sup>159</sup> the general age requirement for persons willing to join the internal service system (which, among others, includes the police and emergency services) is from 18 to 30 years (up to 35 years for persons with a university degree). However, the maximum age can be raised if the head of a particular institution identifies the need to accept people older than 30 or 35 years. Retirement ages vary from 50 to 65 years, depending on seniority (and this can be extended by up to five years).

In order to be accepted and serve in the internal service, persons must fulfil certain health requirements. An extensive list of health criteria (from a person's height and body index to particular diseases) is set by the order of the Minister of Health and the Minister of the Interior.<sup>160</sup> However, the Minister of the Interior or the head of a particular institution, acting on behalf of the minister, has the power to set additional requirements, relating to a person's physical or intellectual abilities or practical skills, which suit the needs of specific positions in a particular institution.

#### **4.4 Nationality discrimination (Article 3(2))**

##### **a) Discrimination on the ground of nationality**

In Lithuania, national law includes exceptions relating to difference of treatment based on nationality (citizenship).

Generally, the law provides protection from discrimination to every person within the jurisdiction of the country (notwithstanding nationality or statelessness, which the law does not elaborate on). The term 'nationality' (in the sense of citizenship, or *pilietybė* in Lithuanian) is not explicitly mentioned among other protected grounds. However, Article 2(7) of the Law on Equal Treatment provides an exception to direct discrimination with regard to nationality (citizenship). Discriminatory treatment must be justified and provided for by law. There are other laws that mention the requirement of nationality. For instance, Lithuanian nationality is required to join the civil service, intelligence services, police and armed forces, etc.

In Lithuania, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

##### **b) Relationship between nationality and 'race or ethnic origin'**

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<sup>158</sup> Lithuania, Order of the Minister of National Defence and Minister of Health of 24 November 2008, No. V-1142/V-1139 on the approval of methodology and principles, applicable to health assessment in the selection of persons who are being admitted to military or national defence service (*Lietuvos Respublikos Krašto apsaugos ministro ir Lietuvos Respublikos Sveikatos apsaugos ministro įsakymas Dėl Sveikatos būklės įvertinimo principų, metodikos ir tinkamumo karo ar civilinei krašto apsaugos tarnybai pagal sveikatos būklę kriterijų patvirtinimo*, 2008 m. lapkričio 24 d. Nr. V-1142/V-1139), available in Lithuanian at: <https://www.e-tar.lt/acc/legalAct.html?documentId=TAR.D17DE0C6B37F&lang=lt>.

<sup>159</sup> Lithuania, Law on Internal Service Statute (*Vidaus tarnybos statuto patvirtinimo įstatymas. Vidaus tarnybos statutas*), 29 April 2003, No. IX-1538.

<sup>160</sup> Lithuania, Order of the Minister of Interior and Minister of Health of 21 October 2003, No. 1V-380/V-618 on the approval of health requirements for persons, being admitted to interior statutory service (*Lietuvos Respublikos Vidaus reikalų ministro ir Lietuvos Respublikos Sveikatos apsaugos ministro įsakymas Dėl Sveikatos būklės reikalavimų asmenims, pretenduojantiems į vidaus tarnybą, pageidaujantiems mokytis vidaus reikalų profesinio mokymo įstaigose, kitose švietimo įstaigose Vidaus reikalų ministerijos siuntimu, bei vidaus tarnybos sistemos pareigūnams sąvado patvirtinimo*, 2003 m. spalio 21 d. Nr. 1V-380/V-618), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9C347611A274>.

The term nationality can have two meanings in the Lithuanian language. One meaning (*pilietybė*) refers to citizenship in the strictly legal sense of the word. Article 2(7) of the Law on Equal Treatment provides an exception to direct discrimination with regard to nationality (citizenship, *pilietybė*). The other term, *tautybė*, refers to belonging to a national minority and is listed among protected grounds, in addition to origin, *kilmė*. The relationship between 'nationality' in the sense of belonging to a national minority (*tautybė*) and 'origin' (*kilmė*) is not elaborated in national law and in many ways they are used as synonyms, which might cause some confusion. However, it must be said that since the absolute majority of the members of national minorities are citizens of the country, there is no overlap between discrimination based on nationality (citizenship) and ethnic origin. In practice, the equality body deals with discrimination on the ground of nationality as in citizenship.

According to the Equal Opportunities Ombudsperson, it interprets these definitions in the light of definition of the UN Convention on Elimination of All Forms of Racial Discrimination and treats race, nationality, language and ethnic origin as interrelated concepts.<sup>161</sup> The author of this report has not encountered a single decision by the Ombudsperson in which the concepts of 'origin' or 'nationality' (*tautybė*) was elaborated in more detail, not to mention the interrelation between these two concepts. The decisions of Ombudsperson usually focus on the investigation of particular facts and rarely extend to a conceptual level.

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

##### **a) Benefits for married employees**

In Lithuania, it would not constitute unlawful discrimination in national law if an employer were only to provide benefits to those employees who are married.

The question of family-related benefits provided by an employer 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, either to married employees or to those with opposite-sex partners, are not directly prohibited 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 such benefits (e.g. extra paid holidays for workers when they get married).

However, this issue becomes more relevant each year since some service providers tend to offer certain discounts or services for married customers or families. Therefore, the Equal Opportunities Ombudsperson recommended that the Parliament amend the Law on Equal Treatment by including explicit prohibition of discrimination on the grounds of family and marital status.<sup>162</sup>

##### **b) Benefits for employees with opposite-sex partners**

Under national legislation it is not possible to register a partnership (opposite-sex or same-sex). Although the Civil Code, adopted in 2003, does have a chapter on opposite-sex partnerships, these are not effective in practice due to the fact that the Law on Partnership, which has been stuck in the Parliament for more than a decade, is not in force. Neither the Law on Equal Treatment, nor the Labour Code explicitly forbids employers to provide benefits limited to employees with opposite-sex partners only. However, the question is theoretical (since partnerships are not legally recognised) and the author of this report is not aware of any cases on the matter. Of course, if the

<sup>161</sup> Lithuanian Equal Opportunities Ombudsperson (2015), *Annual Report for 2015*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>162</sup> Equal Opportunities Ombudsperson (2014), *Annual Report for 2014*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

situation of difference of treatment of cohabiting partners of same and opposite sex partners did arise, it should be interpreted in the light of the Law on Equal Treatment, which bans unequal treatment of employees with regards to their sexual orientation. Unfortunately, there has not yet been any case law in this respect.

#### **4.6 Health and safety (Article 7(2) Directive 2000/78)**

##### **a) Exceptions in relation to disability and health/safety**

In Lithuania, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78).

The Law on Equal Treatment does not elaborate on this. Article 2(7) of the Law on Equal Treatment provides exceptions to direct discrimination in the context of

‘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’.

However, this is more related to promoting positive action in employment.

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. The Disability and Working Capacity Assessment Office under the Ministry of Social Security and Labour (*Neįgalumo ir darbingumo nustatymo tarnyba (NDNT)*) assesses whether the employment of a disabled person in a particular position will result in a risk to the health and safety of that person. If it is not possible to adapt the working environment or the assessment prohibits certain forms of work entirely for the particular person, an employer is obliged to dismiss a disabled person from that position, following the assessment of the institution.

#### **4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.7.1 Direct discrimination**

Article 2(7) on the Law on Equal Treatment provides an exception for direct discrimination on age.

##### **a) Justification of direct discrimination on the ground of age**

In Lithuania, it is possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age.

Article 2(7) of the Law on Equal Treatment repeats the wording of the directive regarding the exception of age and states that restrictions on the grounds of age as established by law, where it is justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary, are not considered to constitute direct discrimination.

##### **b) Permitted differences of treatment based on age**

In Lithuania, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78, provided that restrictions on the grounds of age are established by law, are justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary (Article 2(7) of the Law on Equal Treatment).

Most of the age-based exceptions concerning minimum and maximum age requirements for entry to certain professions are set by other laws (discussed below under section 4.7.3 of this report). There are also prohibitions on access to some goods and services to protect minors.

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Lithuania, national law allows occupational pension schemes to fix the ages for admission to the scheme or entitlement to benefits, taking up the option provided for by article 6(2).

Generally the question of occupational pensions is not of great relevance in a national context, since such pensions are not popular and there are no occupational pension funds currently operating. However, according to the Law on Accumulation of Occupational Pensions,<sup>163</sup> fixing a particular age for admission to an occupational pension scheme is allowed, although 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**

In Lithuania, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

There are quite a few special provisions for young people, older people and persons with caring responsibilities embodied in the Labour Code. Article 129 of the Labour Code states that employment contracts with employees who will be entitled to the full old-age pension in not more than five years, persons under 18 years of age, disabled persons and employees raising children under 14 years of age may be terminated on the initiative of an employer without any fault on the part of the employee, but only in those cases where the retention of the employee would substantially violate the interests of the employer. 'Younger employees' are defined as those under the age of 18. Examples of the special provisions for these workers are: they are prevented from working overtime or at night; they have a right to choose their holiday dates; they are entitled to 35 days holiday (the normal entitlement is 28 days); they have a right to additional breaks if working time exceeds four hours (Article 159); and they must have two days off work during a week.

There are also additional guarantees for older workers. For instance, workers who have three years or less of working until they reach retirement age have a priority protection from being dismissed in case of restructuring (Article 135). These workers must be notified four months in advance of any organisational restructuring, for example, the merging of departments (other employees are notified two months in advance) (Article 130). According to the Labour Code, people with family care responsibilities are ensured certain protection if the child is under seven years old or, in the case of a disabled child,

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<sup>163</sup> Lithuania, Law on Accumulation of Occupational Pensions (*Lietuvos Respublikos profesinių pensijų kaupimo įstatymo pakeitimo įstatymas*, 2011, No. 146-6824). Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.103565D95E60/BwYiAogwWj>.

under 16 years old. Pregnant women, as well as employees caring for child under three years old, single parents caring for a child under 14 years old or a disabled child under 18 cannot be allocated to work overtime without their consent (Article 150).

The Labour Code provides additional guarantees for older people and persons with caring responsibilities. In the event of a reduction in the number of employees for economic or technological reasons or due to structural reorganisations at the workplace, the following employees have a right of priority in retaining their job: those who sustained an injury or contracted an occupational disease at that workplace; those who are, alone, raising children (or adopted children) under 16 years of age, or care for other family members who have a disability level that has been assessed as severe or moderate or whose capacity for work has been rated below 55 %, or family members who have reached retirement age, who have been assessed in accordance with the procedure established by legal acts as having high or moderate special needs; those whose continuous length of service at that workplace is at least 10 years, with the exception of employees who have become entitled to the full old-age pension or are in receipt thereof; and those 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 circumstances, as 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**

In Lithuania, there are exceptions permitting minimum and 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 (Article 13). 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 and the Law on Safety and Health of Workers.<sup>164</sup> Such activity must be proportionate to the child's age, not dangerous, must not jeopardise the child's education, school attendance or attendance of educational programmes and must not be harmful to his or her health, psychological or moral development (Article 277 of the Labour Code, Article 36 Law on Safety and Health of Workers).

For specific professions, the age of competency differs, with the minimum age often set at 18; it is 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 the current, specific, age-based exceptions concerning the minimum and maximum age requirements to access employment are set for certain statutory bodies (customs, the state security department, etc.), specific professions (ship captains, pilots, armed forces, etc.) or state services (judges, bailiffs, notaries, Members of Parliament, members of municipal council, etc.).

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<sup>164</sup> Lithuania, Law on Safety and Health of Workers (*Lietuvos Respublikos darbuotojų saugos ir sveikatos įstatymas*), *Valstybės žinios*, 2003-07-16, Nr. 70-3170). Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.95C79D036AA4/OKZufvKBCv>.

#### 4.7.4 Retirement

##### a) State pension age

In Lithuania, there is state pension age at which individuals must begin to collect their state pensions. If an individual wishes to work longer, the pension cannot be deferred. An individual can collect a pension and still work.

In 2016, the pension age in Lithuania was 61 years and 8 months for women and 63 years and 4 months for men.<sup>165</sup> Reaching the pension age does not preclude a person from continuing working. According to the jurisprudence of the Constitutional Court on the matter, gaining one constitutional right (to a pension) cannot deprive a person from exercising another constitutional right (the right to work, the right to own property).<sup>166</sup>

During the period of economic crisis in Lithuania (2009-2011 in particular), state pensions were reduced for most pensioners. However, the reduction for pensioners who were still working was more substantial than for others. Such regulation was subsequently declared as unconstitutional by the Constitutional Court, which stated that when there is an especially grave economic and financial situation in the state and when, due to this, there is a necessity temporarily to reduce the awarded and paid pensions in order to secure vitally important interests of society and the state and to protect other constitutional values, it is not permitted to establish any such legal regulation whereby the old-age pension or disability pension awarded and paid to the persons who have a certain job or conduct a certain business would be reduced, due to this, to a greater extent if compared with those people who do not have any job and do not conduct any business.<sup>167</sup> According to the Constitutional Court, having created (by means of the disputed legal regulation) the preconditions to reduce the state pensions of the receivers of state pension who have a certain job or conduct a certain business to a greater extent than for those receivers of the state pension who do not have any job or do not conduct any business, namely due to the fact that the former group have a certain job or conduct a certain business, the legislator restricted their right to freely choose a job or business, which is enshrined in Article 48(1) of the Constitution.<sup>168</sup>

Thus when a person reaches the age when they are entitled to a state pension, it cannot be considered as a legitimate reason to terminate employment. Moreover, Article 129 of the Labour Codes states that age cannot be a legitimate reason to terminate an employment contract. An employment contract with an employee 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 the employee would substantially violate the interests of the employer.

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<sup>165</sup> Since 2012 a new system has been established, which will gradually extend the pension age and by 2026 the pension age for women and men will be equated to 65 years old.

<sup>166</sup> Lithuania, Ruling of the Constitutional Court of the Republic of Lithuania, 25 November 2002, No. 113-5057, 2002 (*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.

<sup>167</sup> Constitutional Court of the Republic of Lithuania, ruling of 20 April 2010 (*LR Konstitucinio Teismo 2010 m. balandžio 20 d. sprendimas Dėl Konstitucinio Teismo 2002 m. lapkričio 25 d., 2003 m. gruodžio 3 d., 2006 m. sausio 16 d., 2007 m. rugsėjo 26 d., 2007 m. spalio 22 d., 2007 m. lapkričio 22 d., 2008 m. gruodžio 24 d. nutarimų ir 2009 m. sausio 15 d. sprendimo nuostatų, susijusių su pensijų ir atlyginimų mažinimu per ekonomikos krizę, išaiškinimo*), available at: <http://lrkt.lt/lt/teismo-aktai/paieska/135/ta172/content>.

<sup>168</sup> Constitutional Court of the Republic of Lithuania, Ruling on the recalculation and payment of pensions upon occurrence of an especially difficult economic and financial situation in the state, 6 February 2012. Available at: <http://lrkt.lt/en/court-acts/search/170/ta1073/content>.

b) Occupational pension schemes

In Lithuania, there is no normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wishes to work longer, payments from such occupational pension schemes cannot be deferred. An individual can collect a pension and still work.

Occupational pensions are a new phenomenon - the Law on the Accumulation of Occupational Pensions was introduced into the country fairly recently and the occupational pension system has not been established in practice. The law allows occupational pension funds to set their own rules and procedures regulating collection and distribution of pensions and does not impose any age limits. It must be said that given that occupational pensions are a rather new phenomenon in Lithuania, issues concerning the practical application of the law will emerge in the future.

c) State imposed mandatory retirement ages

In Lithuania, a state-imposed mandatory retirement age is only applied to particular professions and public service.

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. For instance, in general, the maximum retirement age for civil servants is 65 years, although it can be extended for a period of up to five years.<sup>169</sup>

There is a compulsory maximum age limit for particular professions. For example, according to the Law on Diplomacy, the maximum age of a diplomat is 65 years and this can only be extended by a year, and not more than five times. According to the Law on Courts, if a judge reaches the age of 65 during the hearing of a case, he or she may continue in office to complete the hearing of the case or until the hearing is postponed. In such circumstances, the President of the Republic is required 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,<sup>170</sup> and the same applies to bailiffs, however, the Minister of Justice may extend the term of office for a particular bailiff, but no longer than until the age of 70.<sup>171</sup>

Similar rules apply to other state officials, particular professions (pilots, ship captains, etc.) as well as to the head of administrations of universities and other educational or scientific institutions. Whether all these requirements are necessary, proportionate and seek a legitimate aim is questionable. However, there is no public discussion about the issue.

d) Retirement ages imposed by employers

In Lithuania, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

e) Employment rights applicable to all workers irrespective of age

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

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<sup>169</sup> Lithuania, Law on Public Service, 1999. (Official Gazette, 1999, No. 66-2130, *Mutatis mutandis*).

<sup>170</sup> Lithuania, Law on Public Prosecutor's Office, 1994 (Official gazette, 1994, No.81-1514, *Mutatis mutandis*).

<sup>171</sup> Lithuania, Law on Bailiffs, 2002 (Official gazette, 2002, No.53-2042, *Mutatis mutandis*).



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 receive the old age pension in no more than three years will enjoy a priority right to job retention.

However, as was mentioned before, there is a compulsory maximum age limit for particular professions in the public sector, which matches the general retirement age of men. It can be extended only by a limited time. These rules mostly apply to state officials, pilots (and other military or statutory institutions) as well as to the head of administrations of universities and other educational or scientific institutions.

f) Compliance of national law with CJEU case law

In Lithuania, national legislation is in line with the CJEU case law on age regarding compulsory retirement.

As was mentioned above, the general rule of the Labour Code is that compulsory retirement when reaching pension age is not allowed, given that age alone cannot be considered as a legitimate reason to terminate the employment contract. Some laws fix certain age limits for particular professions (judges, prosecutors, etc.), but it remains for the national courts to decide whether such provisions are justified.

#### **4.7.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

The general rule of the Labour Code is that age alone cannot be considered as a legitimate reason to terminate a labour contract (Article 129(3)(5)). In Lithuania, national law does not permit age or seniority to be taken into account in selecting workers for redundancy. However, the Labour Code provides additional guarantees that are related to a person's acquisition of the right to a pension. 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. In this sense, employers are obliged to take into account rights to old-age pensions, but not age as such. In addition, the Labour Code also 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 is enjoyed by those employees whose continuous length of service at that workplace is at least 10 years (with the exception of employees who have become entitled to the full old age pension or are in receipt thereof) (Article 135 of the Labour Code).

b) Age taken into account for redundancy compensation

In Lithuania, national law provides compensation for redundancy. The age of the worker as such does not affect the amount of compensation, although age is taken into account to the extent that the amount of compensation depends on the length of time that the worker has been employed in that particular company or institution (Article 140 of the Labour Code).

#### **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)**

In Lithuania, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. The author of this report is not aware of such national provisions.

#### **4.9 Any other exceptions**

In Lithuania, other exceptions to the prohibition of discrimination (on any ground) provided in national law are the following:

The requirement to know the state language as well as a prohibition on participation in political activities are listed as exceptions (see, for instance, Article 9 of the Law on Public Service).<sup>172</sup> Such exceptions are elaborated in other laws. For example, those serving in the armed forces or police cannot be members of a political party (Article 36 of the Law on Organisation of the National Defence System and Military Service).<sup>173</sup> However, there are no specific exceptions in the field of private employment.

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<sup>172</sup> Lithuania, Law on Public Service (*Valstybės tarnybos įstatymas*), Valstybės žinios, 1999-07-30, Nr. 66-2130, Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/NNPgMEsNHj>.

<sup>173</sup> Lithuania, Law on Organisation of the National Defence System and Military Service (*Krašto sistemos organizavimo ir karo tarnybos įstatymas*), 1998, No. 49-1325, Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=449333](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=449333).. <https://www.e-tar.lt/portal/lt/legalAct/TAR.15C705E93776/UvKTZGiBug>.

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

### **a) Scope for positive action measures**

In Lithuania, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law.

Article 2(7) of 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 gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

The concept of positive action is not widely discussed at national level. Although different measures, which vary in scope and form, exist in practice, a consistent legal/political approach is lacking. This issue was highlighted by the Equal Opportunities Ombudsperson.<sup>174</sup> The Ombudsperson identified the need for a comprehensive approach to positive action measures as well as the fact that the country lacks a clear mechanism for their implementation. The Ombudsperson recommended that a law on positive action should be passed.

There is no single piece of legislation that deals with positive action measures and the definition of such measures is not provided in national law. A ruling of the Constitutional Court,<sup>175</sup> passed much earlier than the Law on Equal Treatment, gives some idea on how positive action measures 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 that 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.

On 1 October 2014 Article 5(2) of the Law on Equal Treatment came into effect.<sup>176</sup> The provision obliges state and municipal institutions to draft measures ensuring equal opportunities in their strategic planning documents. The full wording of the provision reads as follows:

'public authorities are obliged to draft measures to ensure equal opportunities in their strategic planning documents. The municipal authorities are obliged to draft measures to ensure equal opportunities in their strategic municipal development and (or) strategic action plans.'

<sup>174</sup> Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>175</sup> Ruling of the Constitutional Court, No. 100-2791, 1998. *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*.

<sup>176</sup> Lithuania, Law amending Article 5 of the Law on Equal Treatment (*Lygių galimybių įstatymo 5 straipsnio pakeitimo ir papildymo įstatymas*), adopted 2 July 2013, however the date of effect was postponed to 1 October 2014. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=453405&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453405&p_tr2=2).

This might be considered as some sort of equality mainstreaming obligation, however, it is brief and not elaborated and no control mechanism has been put in place. Therefore it is not surprising that when in 2015 the Ombudsperson made an independent survey of 13 ministries and 60 municipalities, the results were rather disappointing.<sup>177</sup> According to the results of the research, very few institutions have any understanding of equality mainstreaming in general, or see ensuring equal opportunities as their obligation (or function) at all. In many instances, municipalities declared completely irrelevant activities (supporting sport, promotion of healthy lifestyle activities, local community projects, or reconstruction of cemeteries – instalment of columbarium – etc.) as something pertinent to the promotion of equal opportunities. The situation is slightly more positive in respect of the ministries and in relation to the promotion of gender equality. However, the measures that were declared were in many ways not relevant. In most cases this duty to promote equal opportunities is understood as an obligation to refrain from discrimination. Therefore, it can be concluded that, in practice, Article 5(2) of the Law on Equal Treatment is nothing more than a declaration.

#### b) Main positive action measures in place on national level

Although not named as such, in practice, there are quite a few measures that could be characterised as positive action measures (both in laws and Government programmes for social integration).

The action plan for the implementation of the integration of foreigners programme for 2015–2017<sup>178</sup> sets out a number of measures for the integration of foreigners (in particular those who have been granted subsidiary protection or granted asylum and financed through EU funds: financial assistance, language courses, counselling, professional orientation training). However, recent studies by the International Organisation for Migration<sup>179</sup> identify systematic flaws: the vast majority of resettled and relocated persons do not see any prospect of staying in the country and do not link their future with Lithuania; the local language training is insufficient; there is a lack of interpreters; the EUR 2 that is allocated per person per day does not ensure even the most modest standard of living; and employment access facilitation is insufficient.<sup>180</sup>

In the field of employment, the Law on Support for Employment creates a system of additional support for employers employing disabled people, as well as setting out various measures of support for certain categories of persons, who are considered eligible for additional support:<sup>181</sup> people with disabilities as well as persons over the age

<sup>177</sup> Lithuania, Notice of Equal Opportunities Ombudsperson of 22 June 2015, No. (15)SN-98 (*Lygių galimybių kontrolieriaus 2015-06-22 d. pažyma Nr. (15)SN-98*)SP Dėl nepriklausomos apžvalgos atlikimo apie priemones lygioms galimybės užtikrinti valstybės ir savivaldos institucijų strateginiuose planuose ) (SP concerning the initiation of independent review of the governmental and municipal institutions' efforts to ensure equal opportunities in their strategic plans).

<sup>178</sup> Lithuania, Action plan for the implementation of the integration of foreigners programme 2015–2017, approved by the Ministry of Social Security and Labour (*Socialinės apsaugos ir darbo ministro įsakymas Dėl Užsieniečių integracijos politikos įgyvendinimo 2015–2017 metų veiksmų plano patvirtinimo*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/ee908ca090d211e4bb408baba2bddd3>.

<sup>179</sup> International Organisation for Migration/European Migration Network (2015), 'A study on the Lithuanian system of refugee integration' (*Prieglobstį Lietuvoje gavusių užsieniečių integracija: teisinis reguliavimas ir situacija*) available at: [http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BESienie%C4%8Di%C5%B3-integracija\\_National-Report.pdf](http://emn.lt/wp-content/uploads/2016/01/Prieglobst%C4%AF-Lietuvoje-gavusi%C5%B3-u%C5%BESienie%C4%8Di%C5%B3-integracija_National-Report.pdf)  
International Organisation for Migration (2016), 'A study on the refugee re-location programme in Lithuania: the experience of asylum seekers, expert views and attitude of general population' (*Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos*), available at: [http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf)

<sup>180</sup> International Organisation for Migration (2016), 'A study on the refugee re-location programme in Lithuania: the experience of asylum seekers, expert views and attitude of general population' (*Prieglobsčio prašančių asmenų perkėlimas į Lietuvą: migrantų patirtys, ekspertų vertinimai, Lietuvos gyventojų nuostatos*), available at: [http://www.iom.lt/images/publikacijos/failai/1480415327\\_IOM\\_leidinys\\_2016\\_2\\_web.pdf](http://www.iom.lt/images/publikacijos/failai/1480415327_IOM_leidinys_2016_2_web.pdf)

<sup>181</sup> Lithuania, Law on Support for Employment (*Užimtumo rėmimo įstatymas*), 2006, No. 73-2762 Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.4C18D17F9BA5/wQxsWeftDY>.

of 50 years, persons with caring responsibilities (those who have a child under eight years old or a child with disability under the age of 18) are identified as those who are additionally supported in the labour market groups (there are other groups, such as ex-convicts). There are various measures that are set out in the law in order to facilitate the access to employment of those groups, ranging from consulting and counselling to subsidies for employers or public work.

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 mentioned earlier, people with disabilities are entitled to additional support and guarantees in the employment market under the Labour Code.

A specific system of additional support has been established in the field of education. The Law on Education makes provision for students with special needs (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. A broad range of measures is set out in the National Programme for Integration of Persons with Disabilities 2013 – 2019, which is implemented by Ministry of Social Security and Labour. The programme is based on national laws that deal with the social integration of people with disabilities as well as the UN Convention on the Rights of Persons with Disabilities. The programme provides statistical information on the situation of people with disabilities and lists the main areas of concern, which, later in the text, are addressed by concrete measures for increased social integration as well as finalised with a specific plan of action.

With regards to the social inclusion of Roma, quite a few measures were applied in the past, but their efficiency is questionable, since no substantial evaluation was produced. In 2012, the Roma Integration into Lithuanian Society Action Plan for 2012 – 2014<sup>182</sup> was adopted by the Ministry of Culture and submitted to the European Commission in accordance with the provisions of the European Commission communication, 'The EU Framework for National Roma Integration Strategies up to 2020.'<sup>183</sup> The long-awaited action plan filled the vacuum in the national Roma integration policy, however, NGOs criticised its adoption as not being inclusive, given that the suggestions of NGOs working in the field of Roma integration and non-discrimination were not taken into account.<sup>184</sup>

In 2015 the Ministry of Culture approved a new Roma Integration into Lithuanian Society Action Plan for 2015–2020.<sup>185</sup> The action plan sets out various measures including educational assistance (covering school pupils as well as adult education), vocational training, additional state language training, basic employment skills training, healthcare assistance measures, etc. It must be added that a significant part of the intended

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<sup>182</sup> Lithuanian Ministry of Culture (2012), 'LR Kultūros ministro įsakymas Dėl Romų integracijos į Lietuvos visuomenę 2012-2014 metų veiklos plano patvirtinimo', (Roma Integration to Lithuanian Society Action Plan for 2012 – 2014), 20 March 2012. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=420934&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=420934&p_query=&p_tr2=2).

<sup>183</sup> European Commission (2011), *An EU Framework for National Roma Integration Strategies up to 2020*, COM (2011) 173, Brussels, 5 April 2011. [http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf).

<sup>184</sup> European Network against Racism (2012), *ENAR Shadow Report on Racism and Related Discriminatory Practices in Lithuania 2011-2012*, available in English at: <http://cms.horus.be/files/99935/MediaArchive/publications/shadow%20report%202011-12/Lithuania.pdf>.

<sup>185</sup> Lithuanian Ministry of Culture, Roma Integration to Lithuanian Society Action Plan for 2012– 014 (LR Kultūros ministro įsakymas Dėl romų integracijos į Lietuvos visuomenę 2015–2020 metų veiksmų plano patvirtinim), 29 January 2015, No. IV-48. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682>.

measures must be implemented without allocated funding, but as a part of regular functions of particular institutions (employment exchange, municipalities, etc.). According to the plan, EUR 129 000 had to be allocated for the measures in 2015. However, given that some of the measures were supposed to be funded on a project basis and that the implementation report is not available to the public, it is hard to estimate the scale of measures that have actually been implemented or their efficiency.

As mentioned above, in 2016 Vilnius city municipality adopted the Vilnius Kirtimai Roma Community Integration to the Society Programme 2016–2019.<sup>186</sup>

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<sup>186</sup> For more information please see section 3.2.10.1 above on trends and patterns regarding housing segregation for Roma.

## 6 REMEDIES AND ENFORCEMENT

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

#### a) Available procedures for enforcing the principle of equal treatment

In Lithuania, there are two main procedures for enforcing the principle of equal treatment: judicial procedure (in civil and administrative courts) and quasi-judicial procedure (filing a complaint with the Equal Opportunities Ombudsperson - this is considered to be an administrative procedure).<sup>187</sup>

The constitution guarantees the right of every person to appeal to 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). According to Article 12(1) of the Law on Equal Treatment, each person whose equal opportunities have been violated has a right to file a complaint to the Ombudsperson, however, this does not preclude the person having the right to defend his or her rights in court. Therefore, in cases of violation of the principle of equal treatment, each person can address the court (administrative or civil jurisdiction, depending on a matter). The court offers the only option for a person to receive some sort of compensation for discriminatory actions and suffered harm, because all other available procedures do not provide compensation to the victim.

In the case of a labour dispute, a person could take advantage of certain pre-trial procedures established by the Labour Code. The Labour Code does not directly provide any sanctions for discrimination in the workplace; these sanctions are provided for in the Administrative Violations Code.<sup>188</sup> A person can apply to the Employment Disputes Commission or courts directly. According to the Labour Code, the responsibility for establishing an 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 that 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, the claimant is not able to continue working in the same position).

An additional option in the field of employment, although theoretical, is to apply to the 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 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

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<sup>187</sup> In addition to this, there are further theoretical options, which are not used in practice, such as filing a complaint to the Parliamentary Ombudsman, when human rights violations are committed by state officials or institutions, or to the State Labour Inspectorate (in case of labour law violations), as well as seeking criminal prosecution of discrimination (Article 169 of the Criminal Code prohibits discrimination). However, the Parliamentary Ombudsman would not duplicate the function of the Equal Opportunities Ombudsperson, there have not been any cases where a person was convicted on the basis of Article 169 of the Criminal Code and State Labour Inspectorates do not deal with discrimination in the workplace.

<sup>188</sup> Lithuania, Administrative Violations Code (Lietuvos Respublikos administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas), 2015-06-25, No. XII-1869. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b/rGRpUcICUx>.



Violations Code. In practice, however, State Labour Inspectorate officials do not address issues of discrimination in the workplace.

People who believe that their rights have been infringed by individual administrative actions or by the 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 Administrative Disputes Commission under the Law on Administrative Disputes Commissions or with the administrative courts under the Law on Administrative Procedure. Actions (or omissions) by civil servants or municipality employees in the sphere of public administration can also be challenged at the *Seimas* (Parliamentary) Ombudsmen's Office. According to the Constitution:

'the *Seimas* Ombudsmen shall examine complaints of citizens concerning the abuse of powers by, and bureaucracy of, State and local government officers. The Ombudsmen shall have the right to submit proposals to the court to dismiss guilty officers from their posts.'

According to the Law on *Seimas* Ombudsmen, the purpose of activities of the *Seimas* Ombudsmen is to protect a person's right to good public administration securing human rights and freedoms and to supervise the fulfilment by state authorities of their duty to properly serve the people. Therefore, in reality most cases investigated by the *Seimas* Ombudsperson relate to bureaucracy and maladministration.

However, the most widely used option in practice is to file a complaint to the Equal Opportunities Ombudsperson. The Equal Opportunities Ombudsperson was established by the Law on Equal Treatment, which expanded the mandate of the previously existing institution (the Office of Equal Opportunities for Men and Women) by including additional grounds of discrimination and expanding the competence of the Ombudsperson. Since 2005 it is considered to be the national equality body in terms of Article 13 of the Race Equality Directive 2000/43/EC. 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, email 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. The general rule is that complaints must be investigated within three months after being received, however, an extra month can be added if the case is complicated and the Ombudsperson decides that it is necessary.

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, although 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 office, peaceful resolution of discrimination is one of its main objectives.<sup>189</sup> On the other hand, such activities by the Ombudsperson have never provided compensation to the victim. In the absolute majority of cases, the Ombudsperson chooses to issue 'recommendations', which are not binding. In practice, according to the Ombudsperson, most of the recommendations are followed. However, until 2016 it was difficult to estimate whether this was actually the case in practice, since neither legislation nor the Ombudsperson's internal rules of procedure provided for any follow-up action and no system for administrative follow-up was in place before 2016. However, a number of measures to ensure the efficiency of the institution were established in 2016 and the

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<sup>189</sup> See the annual reports of the Equal Opportunities Ombudsperson from 2005 - 2012. Available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

creation of an administrative follow-up system was one of them. A table of recommendations and the status of their implementation (a monitoring report) was annexed to the annual report of the Ombudsperson in 2016.<sup>190</sup> According to the table, 26 recommendations to various institutions were issued between February and December 2016. Of the 26 recommendations, 16 were implemented and 10 were in the process of implementation. The creation of a monitoring mechanism is a significant step forward and an important achievement for the newly appointed Ombudsperson, strengthening the efficiency of the institution.

Although the Ombudsperson has a right to impose administrative sanctions (fines), according to the annual reports of the institution, during the last 10 years of operation the Ombudsperson has issued a fine on only one occasion.<sup>191</sup>

#### b) Barriers and other deterrents faced by litigants seeking redress

First of all it must be emphasised that the only way for a victim of discrimination to get some sort of compensation for the harm suffered is to pursue the case in 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 there is a system of state supported legal aid and a few legal aid clinics (mostly staffed by law students), the legal aid mechanism needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights in court.

In addition to this, the Code of Civil Procedure and other procedural laws do not include special judicial, administrative or conciliation procedures specifically for cases of discrimination. Thus, in civil or administrative cases victims of discrimination must rely on general procedures of civil procedure, and therefore a qualified and experienced legal consultant is necessary. As yet, only a couple of cases concerning some form of discrimination are brought to court each year and national jurisprudence in this respect is rather limited.

No special conciliation procedures for cases of discrimination exist at national level. Mediation in discrimination disputes is not covered in national law either (in practice, however, the Equal Opportunities Ombudsperson sometimes acts as a mediator, but this procedure is not formalised and therefore the outcome of the mediation is neither binding, nor compensatory).

In practice, associations initiate administrative proceedings with the Ombudsperson, although case law on the issue confirmed that only persons whose rights have been directly infringed by particular decisions have the right to appeal to the Ombudsperson.<sup>192</sup> It must be admitted that the Office of the Ombudsperson has not been consistent in this approach in the past. However, recent practice is that when the complaint is received from an NGO and the rights of the organisation have not been directly infringed, the Ombudsperson would start an investigation 'on its own initiative'.

In addition, the procedure at the Equal Opportunities Ombudsperson, which is the one 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.

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<sup>190</sup> Equal Opportunities Ombudsperson (2017), 'Annex 1 of the Equal Opportunities Ombudsperson annual report 2016', available at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

<sup>191</sup> Although the staff of the institution claim that fines have been in fact issued at least a few times.

<sup>192</sup> The Supreme Administrative Court of Lithuania, case No. A<sup>662</sup>-665/2010, decision of 19 April 2010; Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*. Administrative case No. A<sup>492</sup>-2078/2013, decision of 7 November 2013.

c) Number of discrimination cases brought to justice

In Lithuania, there are no available statistics on the number of cases related to discrimination brought to justice.

The exact statistics on the number of cases related to discrimination are not available. The author of this report is aware of no more than 15-20 relevant<sup>193</sup> cases that were brought to courts, concerning various grounds (other than of sex), and only on a few occasions was discrimination actually established by the courts and the perpetrators sanctioned.

d) Registration of discrimination cases by national courts

In Lithuania, discrimination cases are not registered as such by national courts.

There is no separate registry for discrimination cases; cases are not categorised as such by national courts, therefore one has to search for them in the databases of all available case law.

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

a) Engaging on behalf of victims of discrimination (representing them)

In Lithuania, associations/organisations/trade unions are in principle entitled to act on behalf of victims of discrimination. However, legal provisions on the matter need judicial interpretation.

Article 12(2) of the Law on Equal Treatment states that associations whose field of activity, as stated in their founding documents, encompasses the 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. However, procedural legislation is not consistent with this wording.

When it comes to civil proceedings, a similar provision in the Code of Civil Procedure provides a narrower wording. Article 56(1)(6) states that such associations may engage in judicial proceedings on behalf of their members only. Although this particular provision has not been tested in courts in civil cases yet, unofficial interpretation provided by the Ministry of Justice<sup>194</sup> suggested a narrow interpretation of this provision as well – a victim can be represented by an association only if he or she is formally a member of that organisation. Hence it seems that there is an inconsistency between the wording of the Law on Equal Treatment and of the Code of Civil Procedure.

In the past it was fairly common for associations to initiate administrative proceedings with the Office of the Equal Opportunities Ombudsperson in cases where their rights were not directly affected by particular actions or omissions, and the Ombudsperson would start an investigation of their complaint. However, in 2010 the court ruled that only persons whose rights were directly affected by particular decisions have the right to appeal to the Ombudsperson.<sup>195</sup> According to the court's interpretation, associations can thus lodge a complaint with the Ombudsperson only when their rights have been directly

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<sup>193</sup> Meaning those cases that deal with the scope of the EU anti-discrimination law and are not necessarily based on provisions of the Law on Equal Treatment (in most cases they would be based on violations of the Labour Code, without reference to Law on Equal Treatment).

<sup>194</sup> Official Letter from the Ministry of Justice 10 November 2011, No. (1.11) 7R-9117, replying to inquiry of 18 October 2011.

<sup>195</sup> Supreme Administrative Court of Lithuania, decision in case No. A<sup>662</sup>-665/2010, 19 April 2010.

violated. This was reaffirmed in 2013, when the Supreme Administrative Court ruled that although an association can initiate an investigation (by informing the Ombudsperson), they do not have a right to complain, unless the rights of the association have been directly affected.<sup>196</sup> However, in practice the situation is handled in a less formal way – in 2016 (as in 2015) 19 % of the complaints received by the Ombudsperson came from various associations, mostly with regards to discriminatory advertisements and in most cases the rights of these associations were not directly infringed. Usually, in such cases, the Ombudsperson would 'start an investigation on its own initiative' after 'receiving information'.

b) Engaging in support of victims of discrimination

In Lithuania, associations/organisations/trade unions are entitled to act in support of victims of discrimination.

The wording of Article 12(2) of the Law on Equal Treatment states that associations whose field of activity, as stated in their founding documents, encompasses the 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.

However, how this right might be implemented in practice is far from clear. The Code of Civil Procedure allows an association, as a third party, to get involved in both civil and administrative procedure in support of a victim (Article 47 of the Code of Civil Procedure), and to provide certain evidence and expert opinion (Article 61 of the Code of Civil Procedure). Under the Code of Civil Procedure (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 the organisation has a legitimate interest in participating as a third person in support of the complainant.

The latest amendments to the Law on the Proceedings of Administrative Cases, which entered into force on 1 January 2017, do not mention associations among the list of possible representatives of persons in an administrative procedure.<sup>197</sup> However, the Law on Equal Treatment gives associations, whose field of activity as stated in their founding documents encompasses the representation of victims of discrimination on a particular ground of discrimination in court, the right to engage on behalf or in support of the complainant in judicial and administrative procedures. Therefore there is an inconsistency in respect of administrative proceedings. However, according to the interpretation by the Supreme Administrative Court, associations can take part in administrative procedure only when their rights have been directly violated.<sup>198</sup> There have been very few cases when equality and non-discrimination NGOs started judicial proceedings on behalf of a particular victim and in general national equality organisations lack sufficient resources and legal skills. If the rights of a particular person were violated, NGOs would usually provide assistance, help to find a lawyer and participate in support of the victim (applicant).

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<sup>196</sup> Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba* Administrative case No. A<sup>492</sup>-2078/2013, decision of 7 November 2013.

<sup>197</sup> Lithuania, Law on the Proceedings of Administrative Cases (*Lietuvos Respublikos Administracinių bylų teisenos įstatymas*), 1999, No. 13-308. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.67B5099C5848/aFzuriomwl>.

<sup>198</sup> Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, Administrative case No. A<sup>492</sup>-2078/2013, decision of 7 November 2013.

Only established trade unions may represent their members in labour disputes. According to the Law on Trade Unions,<sup>199</sup> a trade union is established if it has no less than 20 founders, or the founders in the enterprise, establishment or organisation would comprise not less than one-tenth of all the employees (and one-tenth of all the employees would account for not less than three employees), and the articles of association are approved and the governing bodies are elected at the meeting of the trade union. In addition to this, it must have elected governing bodies and have adopted a decision on the registered office.

c) *Actio popularis*

In Lithuania, national procedural legislation in principle allows associations / organisations / trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (***actio popularis***), however, further judicial interpretation is required.

Article 49(2) of the Code of Civil Procedure mentions that in cases prescribed by law, a 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 courts in defence of the public interest, exists at national level. Therefore, currently, due to lack of additional legislation, practical action in the public interest in case of discrimination is not possible. The same can be said of the administrative procedure. Article 55(1) of the Law on the Proceedings of Administrative Cases mentions that in cases prescribed by law, a prosecutor, state institution or natural person has a right to pursue *actio popularis*. However, no additional law that would allow associations to act in the public interest, exists at national level, therefore these provisions remain theoretical and need judicial clarification.

A case from 2013 gives a fairly good example of possible challenges. In 2013, the Supreme Administrative Court of Lithuania ruled<sup>200</sup> that according to the Law on the Proceedings of Administrative Cases, only those persons whose rights were directly affected have a right to file a complaint to the Ombudsperson. The European Foundation of Human Rights (EFHR), a Vilnius-based association, filed a complaint to the Equal Opportunities Ombudsperson in September 2012. It complained about a discriminatory job advertisement in an online job search portal, where a private company placed an advertisement looking for a female sales person to work at a women's clothes shop. The EFHR claimed that the job advertisement is discriminatory, because no objective criteria were provided explaining why such a position could not be offered to men. The Equal Opportunities Ombudsperson started an investigation, however, in the course of two months it was unable to reach the company (the company failed to respond to any queries). The Ombudsperson discontinued the investigation due to the 'lack of objective data about a violation of anti-discrimination legislation'.

The EFHR filed a complaint to Vilnius regional administrative court, claiming, that the Ombudsperson had failed to properly implement its duties according to the Law on Equal Opportunities for Women and Men and had avoided issuing administrative sanctions. In response, the Ombudsperson claimed that it had started the investigation on its own initiative upon receiving the complaint from the EFHR. Since the rights of the association, (the EFHR) were not in any way affected by the allegedly discriminatory advertisement, the association had no legal standing in the case.

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<sup>199</sup> Lithuania, Law on Trade Unions (*Lietuvos Respublikos Profesinių sąjungų įstatymas*) No. 34-933, 21 November 1991. Available in Lithuanian at: [https://www.e-tar.lt/portal/lt/legalAct/TAR.ABF3AEE57087/TAIS\\_452476](https://www.e-tar.lt/portal/lt/legalAct/TAR.ABF3AEE57087/TAIS_452476).

<sup>200</sup> Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, Administrative case No. A<sup>492</sup>-2078/2013, 7 November 2013.

The court of first instance supported the complainant and ruled that the decision of the Ombudsperson was not objectively justified, that there was no evidence that the Ombudsperson did everything it was obliged to do according to the Law on Equal Opportunities for Women and Men and that such an unjustified decision contradicts the goals of the Ombudsperson and the mission for which the office was established. The Ombudsperson appealed and the Supreme Administrative Court of Lithuania overruled the decision of the court of first instance. The Supreme Administrative Court took a very formal approach and did not look into the material substance of the case entirely. It stated that an administrative act, which does not affect the rights of any person may not be the subject of administrative procedure. Since the rights of the European Foundation of Human Rights were not been in any way affected by the decision of the Ombudsperson, it had no right to file a complaint in the first place. The court emphasised, that the Law on the Proceedings of Administrative Cases does allow specific subjects to act in the public interest, however this right may only be exercised by specific subjects, as defined by law, and only in cases outlined in specific legislation. Neither the Law on the Proceedings of Administrative Cases, nor anti-discrimination legislation explicitly allows associations to act in defence of the public interest, therefore the complainant did not have legal standing in the case. Since the court established that the association did not have legal standing in the case, it did not go further into the details of the case. The decisions of the 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.

d) Class action

According to amendments to the Code of Civil Procedure, which entered into force on 1 January 2015,<sup>201</sup> the law does not allow associations/organisations/trade unions to act directly in the interest of more than one individual victim (class action) for claims arising from the same event, but it does allow class action through the representation of a lawyer.<sup>202</sup> A group of claimants must consist of no less than 20 natural or legal persons and they must be represented in court by a lawyer. An organisation (association or a trade union) may act on behalf of a group of claimants if (1) the matter of the class action is consistent with the goals and interest of the organisation, (2) no less than 10 members of the group that is pursuing the class action are members of the organisation (3) it hires a lawyer who will represent the group in court. However, as the provisions on class action came into force only recently, there have been only a few cases (in the protection of consumer rights) and none concerning discrimination.

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

In Lithuania, national law requires or permits a shift of the burden of proof from the complainant to the respondent.

The current wording of the Law on Equal Treatment repeats the provision of the directives, and does not go into details. There are no other legal acts that explain the procedure in anti-discrimination cases in detail; the interpretation of the law would largely depend on the judge in a particular case. For the sake of legal certainty, the Government initiated an amendment to the Code of Civil Procedure to include a provision

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<sup>201</sup> Lithuania, Code of Civil Procedure, 2002, as amended. *Lietuvos Respublikos civilinio proceso kodekso 49, 80, 182 straipsnių pakeitimo ir Kodekso papildymo 261-1 straipsniu bei XXIV-1 skyriumi, 2014 m. kovo 13 d. Nr. XII-771*, available in Lithuanian at: <http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=467585&b=>.

<sup>202</sup> The amendments came into effect on 1 January 2015.



for the shift of the burden of proof in discrimination cases.<sup>203</sup> However it did not convince members of Parliament to approve it,<sup>204</sup> and the draft amendment was dismissed.

Nevertheless, a few cases in recent years reaffirmed, that courts generally do accept the shift of the burden of proof in discrimination cases.<sup>205</sup> The Code of Civil Procedure provides the general rule that the burden of proof falls upon the applicant. However, Article 182(4) of the Code also contains a provision that 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 provisions are used together to convince the court to shift the burden of proof.

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

In Lithuania, there are legal measures of protection against victimisation.

Article 7(8) of the Law on Equal Treatment repeats the wording of the directives, saying that an employer is obliged to take necessary measures to ensure that 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. However, this wording excludes protection from victimisation in other fields (education, provision of goods and services).

The shift of the burden of proof would also apply in cases of victimisation, since national provision of the shift of the burden of proof is broad enough to interpret it in a way that can be applied in all disputes with regards to the breach of equal opportunities, as outlined in the Law on Equal Treatment.

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

##### **a) Applicable sanctions in cases of discrimination – in law and in practice**

In Lithuania, there are two procedures for imposing sanctions for discriminatory behaviour: judicial procedure in administrative or civil courts (mostly for claiming compensation as the national law does not accept the concept of punitive damages) as well as in criminal courts, or through administrative procedure at the Equal Opportunities Ombudsperson, who can issue warnings (admonish the perpetrator) as well as impose a fine according to the Administrative Violations Code, but cannot in any way compensate the victim.

Under paragraph 2 of Article 6.250 of the Civil Code, non-pecuniary damages in a civil case can be claimed only in cases prescribed by law. In addition to this, the equality of persons is one of the principles of law embodied in the Labour Code. A person has the right to bring a civil action against an employer and claim compensation in the case of discrimination in a workplace. Therefore, the claimant is able to seek compensation either way – by claiming violation of the Labour Code (in the field of employment) or by claiming violation of the Law on Equal Treatment (employment and other fields). Article 13 of the Law on Equal Treatment explicitly states that persons have the right to claim pecuniary and non-pecuniary damages if they have suffered from discrimination.

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<sup>203</sup> Lithuania, Amendment to Code of Civil Procedure (*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=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299949&p_query=&p_tr2=).

<sup>204</sup> Stenograph of the Parliament sitting of 27 June 2007. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=300811](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=300811).

<sup>205</sup> Vilnius County Court (Vilniaus apygardos teismas), *Koncertinė įstaiga valstybinis dainų ir šokių ansamblis Lietuva v. V. J.*, Case No.2A-557-640/2014, 27 February 2014.



Although only the courts can compensate for damages, the procedure at the Equal Opportunities Ombudsperson remains much more widely used in practice. According to Article 29 of the Law on Equal Treatment, having completed an investigation, 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 a fine for violations of the Law on Equal Treatment and the Law on Equal Opportunities for Women and Men in accordance with Article 81 of the Administrative Violations Code.
- To admonish those who have committed a violation. In such cases the Ombudsperson issues a warning or recommendation to halt the discriminatory practices (these are not binding in essence).
- 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.
- To address an inquiry to the administrative court whether an administrative enactment of a public institution or administrative act of a political party, organisation, association or religious community is in conformity with the provisions of the Law on Equal Treatment or the Law on Equal Opportunities.<sup>206</sup>

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 any way (neither compensation, nor re-instatement, etc.). 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. According to the annual reports of the institution, during the last 10 years of operation the Ombudsperson issued a fine on only one occasion (in 2014).<sup>207</sup> Fines might range from EUR 40 to 500 (or EUR 500 to 1 000 for repeat offences) and are provided for in the Administrative Violations Code (Article 81).

In the past, the former Ombudsperson stated numerous times in the office's annual reports that it does not consider a fine to be an effective solution to discriminatory situations. On the other hand, in the opinion of the author of this report, if the Ombudsperson issued fines, those could be challenged in court, which would result in litigation, thus placing an extra burden on the Ombudsperson's staff.

Finally, criminal law in Lithuania provides protection from severe discriminatory acts, which could amount to crimes, and also provides sanctions. Article 169 of 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. However, it is not clear from the vague wording of the Criminal Code exactly which discriminatory actions amount to crimes and to the knowledge of the author of this report, since 2003, only one investigation on the basis of this article has been started and no sanctions have been brought. Therefore, the criminal provisions are not used in practice to sanction perpetrators; they lack clarity and need judicial interpretation.

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<sup>206</sup> This particular provision entered into force on 1 January, 2017.

<sup>207</sup> Although the staff of the institution claim that fines have been in fact issued at least a few times.

b) Ceiling and amount of compensation

Since there have been only a handful of successful discrimination cases (most of them on the basis of gender discrimination and only a few on other grounds) it is still too early to provide a comprehensive overview of general trends. According to the law, there is no limit on compensation for non-pecuniary harm suffered because of discriminatory behaviour, and therefore decisions depend on individual cases. During the first case of discrimination that was brought to the court, the court awarded a Roma woman EUR 830 in compensation for not being hired.<sup>208</sup> In 2011, the court of first instance awarded EUR 7 802 to a man who was allegedly discriminated against on the basis of sexual orientation,<sup>209</sup> however the court of appeal overruled the decision entirely and concluded that there was no discrimination at all.<sup>210</sup> In 2014, a man was awarded EUR 579 for discriminatory dismissal on the basis of disability (overruling the decision of the court of first instance to award EUR 2 027).<sup>211</sup> Therefore currently judicial compensations for victims of discrimination range from EUR 579 to 830.

The decisions of the Equal Opportunities Ombudsperson do not provide any type of compensation to the victim of discrimination.

c) Assessment of the sanctions

In the opinion of the author of this report, the system of sanctions for discriminatory acts in Lithuania cannot be considered effective, proportionate or dissuasive. Neither can it be said that the practice of the Equal Opportunities Ombudsperson is effective, proportionate or dissuasive. However, even if the Ombudsperson 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.

In 2014, this issue was raised by the UN Committee on the Elimination of Discrimination against Women, which stated that

'limited application of administrative sanctions by the Ombudsman in cases of sex- and gender-based discrimination' causes great concern.<sup>212</sup>

In 2014, the new Ombudsperson (a temporary substitute, because the post of the Ombudsperson was vacant throughout 2014) identified the issue of sanctions in its annual report. According to the Ombudsperson, the current situation and sanctions, defined by the Administrative Violations Code do not constitute effective, proportionate or dissuasive sanctions, as required by the directives. The Ombudsperson also recommended that the Parliament should expand the current list of sanctions and allow multiple sanctions, to ensure the discontinuation of discriminatory acts and also to serve as dissuasive sanctions.<sup>213</sup>

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<sup>208</sup> Lithuania, 2nd District Court of Vilnius, *S. Marcinkevič v. UAB Disona*, Reference number: 2-1189-545/2008, 30 June 2008.

<sup>209</sup> Lithuania, 2nd District court of Vilnius, *Vilnius College v. A.Z.*, Reference number: Civil case No.2-101-294/2011, 31 March 2011.

<sup>210</sup> Lithuania, Vilnius county court, *Vilnius College v. A.Z.*, Reference number: Civil case No. 2A-2140-464/2011, 11 November 2011.

<sup>211</sup> For more information about the case please see the section on case law at 12.2 of this report.

<sup>212</sup> UN Committee on the Elimination of Discrimination against Women (2014), 'Concluding observations on the fifth periodic report of Lithuania' (CEDAW/C/LTU/5), adopted by the Committee at its fifty-eighth session, 30 June-18 July 2014. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLTU%2fCO%2f5&Lang=en).

<sup>213</sup> Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

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 into force in 2005 it expanded the mandate of the previous Ombudsperson for Equal Opportunities for Men and Women, which was functioning on the basis of the Law on Equal Opportunities of Women and Men. 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 operating on 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.

In November 2016, both laws were amended (the amendments entered into force on 1 January 2017) and all procedural aspects (appointment criteria and procedure as well as competence and provisions on investigations of complaints) were moved from the Law on Equal Opportunities of Women and Men to the Law on Equal Treatment. Therefore, the Law on Equal Opportunities of Women and Men lost its relevance with regards to all other grounds of discrimination.

- b) Status of the designated body/bodies – general independence

The Ombudsperson is appointed by Parliament for a term of five years. The newly appointed head of the institution advocated placing a limit of two consecutive terms and the latest amendments introduced the provision that the same person cannot be appointed for more than two terms in a row. 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. According to the jurisprudence, the Parliament is entirely autonomous when deciding upon the candidate and the decision of the Parliament cannot be overruled by a court.<sup>214</sup>

The requirements for the candidate are set out in the Law on Equal Treatment and they are: an impeccable reputation; a university degree in law; and a minimum of 10 years' experience in law. The requirement of 'impeccable reputation' is not detailed in the Law on Equal Treatment. However, it is elaborated upon in detail in Article 3<sup>1</sup> of the Law on Public Service,<sup>215</sup> which states that a person would not be considered as having an 'impeccable reputation' if he or she: has a current conviction record for a serious crime, crime of corruption, crimes against state service, has been dismissed from a previous state office due to particular violations and the term of three years from that dismissal has not passed, is a member of a organisation that is forbidden by law etc. Therefore the requirement is not entirely subjective.

Before the Ombudsperson takes up office, she or he is obliged to take an oath to honour the Lithuanian state, impartiality and the rule of law. In addition, the candidate must end his or her membership of any political party before taking the oath. The independence of the Ombudsperson is also ensured by the provision that prohibits the Ombudsperson from any other job or involvement in any profit-making activities with the exception of creative or educational work. The term of the Ombudsperson can be terminated by

<sup>214</sup> Vilnius County Administrative Court (*Vilniaus apygardos administracinis teismas*), Case No. eI-9300-811/2015, D.G.-K. v. Lithuanian Parliament, Lithuanian State..

<sup>215</sup> Lithuania, Law on Public Service (*Valstybės tarnybos įstatymas*), Valstybės žinios, 1999-07-30, Nr. 66-2130, Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/NNPgMEsNHj>

Parliament only if the Ombudsperson is ill for a certain period of time as specified by law, the Ombudsperson breaches the Constitution or if the Ombudsperson is convicted of a criminal offence. Previously the Parliament could dismiss the Ombudsperson if he or she failed to pass a confidence vote,<sup>216</sup> but this provision was removed from 1 January 2017, thus strengthening the independence of the Ombudsperson. 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 well as its political independence largely depends on the position of the head of the institution – the Ombudsperson themselves.

The current Ombudsperson was appointed in June 2015, more than two years after the mandate of their predecessor expired in April 2013. Between April and November 2013 the former Ombudsperson continued working as interim head of the institution, appointed by the Board of the *Seimas*. In November 2013, the former head of the institution died and the Board of the *Seimas* appointed the Ombudsman of the Rights of the Child as a temporary substitute. After that, there were two failed attempts to appoint a new Ombudsperson. On 20 November 2014, the Speaker of the Parliament proposed an experienced lawyer with an academic background in the field of non-discrimination (PhD) and 10 years of legal practice as an attorney, as the new candidate for the position of the Equal Opportunities Ombudsperson. During the plenary sitting of 25 November 2014, the members of the Parliament voted on the appointment of the new candidate, she was asked a few questions regarding her connection to an LGBT organisation, as well as asked to comment on 'genderism ideology', her stance on abortions, etc. Although there were no doubts regarding her professional qualifications and no questions with regards to 'impeccable reputation' were raised at the sitting, her candidacy was not approved.

The second failed attempt to appoint a new head of the Office of the Equal Opportunities Ombudsperson has affected the status of the equality body. The Speaker of the Parliament, who is responsible for proposing the candidates to the Parliament, said publicly that the attitude of the Parliament made the search for new candidates to the post more difficult. However, finally a new candidate, moving from the post of vice-minister for Culture, was appointed due to a political agreement among the parties of the governing coalition, solving the ongoing institutional crisis.

The Office of the Equal Opportunities Ombudsperson is financed from the pre-approved budget; thus its financial independence is also ensured by law. The Ombudsperson has a right to use its general financing according to its needs and priorities (neither the Government, nor the Parliament has any control over this). The Ombudsperson is fully in charge of the institution and has a right to use allocated funding according to the needs of the institution as well as to manage staff, hire or fire personnel, etc.<sup>217</sup>

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), and thus the Parliament may cut the budget of the office. The total budget of the office in 2016 was EUR 453 000 (50 000 more than for the previous year); out of this sum, the staff budget was 49 %, which was similar to the previous year.<sup>218</sup> In addition, the Ombudsperson Office was involved in projects and various programmes (for instance, PROGRESS), thus it received an additional EUR 67 400 in funding from the European Commission. The institution employed 14 people (a reduction of 2 employees since 2015).

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<sup>216</sup> Please see section 12.2 on case law for more on the previous confidence requirement.

<sup>217</sup> Lithuania, Decision of the Seimas (Parliament) of the Republic of Lithuania on the approval of the Equal Opportunities Ombudsperson's internal procedure act (*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.

<sup>218</sup> Lithuanian Equal Opportunities Ombudsperson, *Annual Report for 2015, 2016* available in Lithuanian at <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

The year 2016 was an important turning point towards increased efficiency and strengthening of the institutional structure. The institution was re-structured with three internal divisions: legal division (four employees), equal opportunities mainstreaming division (four employees), operational management division (three employees), in addition to a chief specialist for public relations, a financial adviser and the Ombudsperson herself.

Furthermore, the institution has adopted its strategic plan for 2016–2018, which is the first detailed effort to implement a strategic approach for the institution, with certain priorities and assessment criteria.<sup>219</sup> According to the knowledge of the author of this report, all previous strategic planning documents were more a formality, mostly concerning financial resource management and were not taken into account when deciding on action priorities. Therefore the new strategic plan can definitely be considered a step forward. Increasing the efficiency of the institution was the top priority of the strategic plan for the period of 2016.

In 2016, the Ombudsperson received 260 complaints, 185 email inquiries, 94 inquiries via social media (Facebook) and started 68 investigations on its own initiative.<sup>220</sup> However, it is common practice for the Ombudsperson to start an investigation 'on its own initiative' after receiving a particular complaint either from an NGO or an individual and the absolute majority of those cases in 2016 concerned discriminatory job vacancy announcements.

c) Grounds covered by the designated body/bodies

The Ombudsperson exercises its functions with respect to all grounds covered by the directives as well as gender, language, convictions and social status. Concerning nationality, the term nationality may have two meanings in Lithuanian. One meaning (*pilietybė*) refers to citizenship in the strictly legal sense of the word. Article 2(7) of the Law on Equal Treatment provides an exception to direct discrimination with regard to nationality (citizenship, *pilietybė*). The other term (*tautybė*) refers to ethnicity and is listed among protected grounds, in addition to origin (*kilmė*).

In 2016 the situation of migrants was not a priority issue for the Ombudsperson. It should be noted that the number of migrants and asylum seekers in Lithuania remains low in comparison to other EU countries.

d) Competences of the designated body/bodies – and their independent exercise

In accordance with Article 17 of the Law on Equal Treatment, 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;

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<sup>219</sup> Equal Opportunities Ombudsperson Strategic action plan 2016 – 2018, available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2015/12/strateginis-planas-2016-2018-patvirtintas-2015-12-18.pdf>.

<sup>220</sup> Lithuanian Equal Opportunities Ombudsperson (2017), *Annual Report for 2016*, p.8, available in Lithuanian at <http://www.lygybe.lt/lt/metines-ataskaitos/405>

- 4) Conducting awareness raising, educational and preventive work.
- 5) Exchanging information with analogous institutions in other Member States.

Although awareness raising was formally added to the competence of the Ombudsperson only on 1 January 2017, in practice the Ombudsperson had been involved in such activities since the very beginning. The Ombudsperson was appointed by the Government to be the main national body implementing the European Year of Equal Opportunities for All 2007 and a number of educational, awareness raising and research functions have been allocated to the Ombudsperson by the Government since the Ombudsperson was involved in the National Anti-discrimination Programme for 2006-2008<sup>221</sup> (later extended to 2009-2011),<sup>222</sup> including the Government Programme for the Integration of the Roma 2008-2010,<sup>223</sup> the Strategy for the Development of a National Minority Policy by 2015;<sup>224</sup> and more recently, the Roma Integration into Lithuanian Society Action Plan for 2012 – 2014.<sup>225</sup>

The Government also appointed the Ombudsperson to be one of the main institutions implementing most of the activities of the Inter-institutional Action Plan for the Promotion of Non-discrimination 2012-2014,<sup>226</sup> which was extended in 2015<sup>227</sup> to cover 2015-2020. Therefore, the Government considers the Ombudsperson as the key institution for awareness raising and promoting equal opportunities, despite the fact, that the law provides for a much narrower, mainly quasi-judicial mandate.

According to the Law on Equal Treatment, the Equal Opportunities Ombudsperson 'provides independent consultations' with regards to various inquiries. This is the only provision that could be interpreted as 'independent assistance' to victims of discrimination. Since most discrimination complaints reach the Ombudsperson first, in practice, the Ombudsperson is doing consultancy work, and, possibly advising the applicants with regard to which procedural ways to pursue justice. On a few occasions the Ombudsperson Office has been involved in the judicial proceedings as an expert witness on the side of the complainant, providing its expertise on the matter.

<sup>221</sup> Lithuania, The Decision of the Government of the Republic of Lithuania of 19 September 2006, on the adoption of the National Anti-discrimination Programme for 2006-2008 (*Lietuvos Respublikos Vyriausybės nutarimas 'Dėl Nacionalinės antidiskriminacinės 2006-2008 metų programos patvirtinimo'*, 2006 m. rugsėjo 19 d. No. 907), available in Lithuanian at:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=282802&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=282802&p_query=&p_tr2=).

<sup>222</sup> Lithuania, The Decision of the Government of the Republic of Lithuania of 15 April 2009, on the adoption of the National Anti-discrimination Programme for 2009-2011 (*Lietuvos Respublikos Vyriausybės nutarimas 'Dėl Nacionalinės antidiskriminacinės 2009-2011 metų programos patvirtinimo'*), 2009 m. balandžio 15 d., No. 317. Available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3D2948EFC5E>.

<sup>223</sup> Lithuania, Decision of the Government of the Republic of Lithuania of 26 March 2008, on the adoption of the Government Programme for the Integration of the Roma 2008-2010 (*Lietuvos Respublikos Vyriausybės nutarimas 'Dėl romų integracijos į Lietuvos visuomenę 2008-2010 metų programos patvirtinimo'*), 2008 m. kovo 26 d. No. 309, Available in Lithuanian at:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=317530&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=317530&p_query=&p_tr2=).

<sup>224</sup> Lithuania, Decision of the Government of the Republic of Lithuania of 17 October 2007 on the adoption of the Strategy for the Development of a National Minority Policy by 2015 (*Lietuvos Respublikos Vyriausybės nutarimas 'Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo'*), 2007 m. spalio 17 d. No. 1132. Available in Lithuanian at:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=307551&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=).

<sup>225</sup> Lithuania, Order of the Minister of Culture of 20 March 2012 on the approval of Roma Integration into Lithuanian Society Action Plan for 2012 – 2014 (*LR Kultūros ministro įsakymas Dėl Romų integracijos į Lietuvos visuomenę 2012-2014 metų veiklos plano patvirtinimo*), 2012 m. kovo 20 d., available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=420934&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=420934&p_query=&p_tr2=).

<sup>226</sup> Lithuania, Decision of the Government of Lithuania (*Lietuvos Respublikos Vyriausybės nutarimas 'Nediskriminavimo skatinimo 2012-2014 metų tarpinstitucinio veiklos plano patvirtinimo'*), 2 November 2011, Valstybės žinios, 2011-11-10, No. 134-6362, Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_p?p\\_id=410523](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_p?p_id=410523).

<sup>227</sup> Lithuania, Decision of the Government of the Republic of Lithuania No. 46 of 28 January 2015 on the approval of the Inter-Institutional Action Plan for the Promotion of Non-discrimination (*Lietuvos Respublikos 2015 m. sausio 28 d. nutarimas Nr. 46 Dėl Nediskriminavimo skatinimo tarpinstitucinio veiklos plano patvirtinimo*), available in Lithuanian at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=1006990&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1006990&p_tr2=2).



The Ombudsperson may also conduct independent research related to complaints of discrimination and draft independent reports and overviews of the situation regarding discrimination. This particular field of competence remained relatively unexplored until 2014. However, in the past couple of years, the Ombudsperson has initiated yearly research in particular fields, mainly (co)financing this activity from projects supported by external EU funding (through PROGRESS project financing and others). No thematic research was implemented during 2016. National law only obliges the Ombudsperson to present an annual report to Parliament (usually before 15 March of the following year); the Ombudsperson exercises its annual reporting role fairly well and all of its annual reports are available on its website.

In 2014, the performance of the Ombudsperson in recent years was criticised by the UN Committee on the Elimination of Discrimination against Women for the lack of visibility of the office.<sup>228</sup> Apparently the Ombudsperson Office took the critique into account and since the beginning of 2015 there has been some progress in the way in which the institution provides information to the public. The situation was further improved in 2016: the website of the Ombudsperson has been updated on a regular basis; all of the decisions of the Ombudsperson are being uploaded and can be publicly accessed; and the Ombudsperson has been posting news and information on a regular basis. Although statistical information (which is rather scarce at national level) has neither been processed nor collected by the Ombudsperson, 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.

Finally, according to the law, the Ombudsperson is obliged to provide advice to state or municipal institutions and organisations. 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) Legal standing of the designated body/bodies

In Lithuania, the designated body does not have legal standing to bring discrimination complaints (on behalf or not of identified victim(s)) 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.

f) Quasi-judicial competences

In Lithuania, the body is primarily a quasi-judicial institution.

Despite the fact that the Ombudsperson had been involved in many promotional-type activities, from a legal point of view, the main function of the Ombudsperson's office was quasi-judicial. However, on 1 January 2017, awareness raising, educational and preventive work was also added to the competence of the Ombudsperson. However, these new functions are not elaborated upon in more detail and the Law on Equal Treatment places most emphasis on the quasi-judicial function of the body and provides procedural requirements as well as a list of possible investigation outcomes. Not only can the Ombudsperson investigate complaints but it can also issue administrative sanctions in accordance with the Administrative Violations Code.

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<sup>228</sup> For more information please see section 2.1.2. on multiple discrimination of this report.



According to the law, 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 a fine for violations of the Law on Equal Treatment and the Law on Equal Opportunities for Women and Men in accordance with 81 of the Administrative Violations Code.
- To admonish those who have committed a violation. In such cases the Ombudsperson issues a warning or recommendation to halt the discriminatory practices (these are not binding in essence).
- 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.
- To address an inquiry to an administrative court, whether in respect of an administrative enactment of a public institution or an administrative act of a political party, organisation, association or religious community, is in conformity with the provisions of the Law on Equal Treatment or the Law on Equal Opportunities.<sup>229</sup>

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 and occasionally admonishes those who commit violations.

Although according to the Ombudsperson, its recommendations to stop discriminatory behaviour or change certain practices are usually followed without a dispute, until 2016 it was difficult to estimate whether this was actually the case in practice, since neither legislation nor the Ombudsperson's internal rules of procedure provided for any follow-up action and no system for administrative follow-up was in place. However, a number of measures to ensure the efficiency of the institution were established in 2016 and the creation of an administrative follow-up system was one of them. A table of recommendations and the status of their implementation (a monitoring report) was annexed to the annual report of the Ombudsperson in 2016.<sup>230</sup> According to the table, 26 recommendations to various institutions were issued between February and December 2016. Of those recommendations, 16 were implemented and 10 were in the process of implementation.

#### g) Registration by the body/bodies of complaints and decisions

In Lithuania, the equality body registers the number of complaints and decisions (by ground, field, type of discrimination, etc.). In the past this data was not systematically provided to the public (the Ombudsperson would, however, include excerpts from its decisions in its annual reports). However, from the beginning of 2015 the situation started to improve and the Ombudsperson began publishing its decisions online,

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<sup>229</sup> This particular provision entered into force on 1 January 2017.

<sup>230</sup> For more about the follow-up procedure at the Ombudsperson institution please see section 6.1 of this report on judicial and/or administrative procedures.

therefore most of the newest decisions are available to the public. The trend continued in 2016 and now all decisions are being regularly uploaded to the official website of the institution.

#### h) Roma and Travellers

Roma problems used to be a visible issue on the agenda of the Ombudsperson a few years ago. However, due to the lack of complaints from Roma in recent years (no complaints were made by Roma during the period 2012 – 2014, and only a few complaints were made in 2015 and 2016), there has been no special emphasis on addressing Roma problems by the Ombudsperson. Since the Ombudsperson mainly works as a quasi-judicial institution in a reactive manner, traditionally, it does not set an agenda for priorities and it has not done so in practice.

## 8 IMPLEMENTATION ISSUES

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

On January 28, 2015 the Government of the Republic of Lithuania approved a new edition of the Inter-institutional Action Plan for the Promotion of Non-discrimination, from 2015-2020.<sup>231</sup> In January 2016 the measures as well as the budget for 2016-2018 were adopted.<sup>232</sup> The dissemination of information, dialogue with NGOs and measures to promote dialogue among social partners are set out in the Inter-institutional Action Plan for Promotion of Non-discrimination. The Ombudsperson was appointed as one of the main institutions responsible for implementation of the plan in both instances, with the participation of the Ministry of Social Security and Labour, the Ministry of Culture, the Ministry of Education and Science and the youth department under the Ministry of Social Security and Labour.

Under the action plan, dissemination of information and awareness raising, together with educational activities, are the main roles of the Ombudsperson for 2015-2016. From the information provided by the Ministry of Social Security and Labour, the following measures were implemented in 2016:

- (1) National Diversity and Equality Award initiative – a high-profile non-discrimination promoting public event, which attracted 420 participants and media coverage;
- (2) Education of ethnic minority pupils and pupils/families of migrants – an educational youth project from ethnic minority schools was supported, which mostly focused on the historical perspective on international relationships between Lithuania and Poland and implemented training for Lithuanian language teachers who work in multilingual schools and multi-cultural environments (596 participants);
- (3) Social campaign on non-discrimination was implemented in public transport (tender won by advertisement agency);
- (4) A seminar on the rights of persons with mental disabilities from the perspective of the UN Convention on the Rights of Persons with Disabilities was organised by the Ministry of Justice (124 participants);
- (5) Non-discrimination promotion seminars for youth were organised by the youth department under the Ministry of Social Security and Labour (two seminars with 25 participants each);
- (6) 15 seminars for employers were organised by the labour exchange on the principle of equality of persons in employment (266 participants);
- (7) A set of seminars were organised and a methodological tool kit on the integration of migrants was produced by the department of social services under the Ministry of Social Security and Labour.

The total budget of all measures set in 2016, was EUR 719 400. However, it appears that measures that required the biggest financial contribution were not implemented either due to some bureaucratic failures or simply to a lack of allocated finance:<sup>233</sup> activities with regards to the prevention of discrimination in general and in the field of employment to be implemented by the Equal Opportunities Ombudsperson and Ministry of Social Security and Labour were not implemented (none of the planned EUR 241 000 was

<sup>231</sup> Lithuania, Decision of the Government of the Republic of Lithuania (*Lietuvos Respublikos 2015 m. sausio 28 d. nutarimas Nr. 46 Dėl Nediskriminavimo skatinimo tarpinstitucinio veiklos plano patvirtinimo*), available in Lithuanian at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=1006990&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1006990&p_tr2=2).

<sup>232</sup> Lithuania, Decision of the Government of the Republic of Lithuania (*LR Vyriausybės nutarimas dėl Nutarimo nr. 46 "Dėl Nediskriminavimo skatinimo tarpinstitucinio veiklos plano patvirtinimo pakeitimo"*), 2016 m. sausio 6 d. Nr.3, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/e82e6eb0b91f11e5be9bf78e07ed6470?jfwid=-wd7z6un1d>.

<sup>233</sup> The implementation report was sent to the author of this report by the representative of Ministry of Social Security and Labour.

allocated), measures supporting better integration of ethnic minorities into the labour market were not implemented either (none of the planned EUR 121 000 was allocated). In addition, an information campaign on strengthening multi-cultural dialogue and the integration of foreigners was not implemented by the Ministry of Social Security and Labour (though EUR 100 000 was initially planned), both a research study on the situation of transsexual persons and the protection of private life and a study on public attitudes towards married/unmarried couples were not implemented (valued at EUR 18 000). All in all, it could be roughly estimated that anti-discrimination measures planned for 2016 were given only 35 % of the initial budget.

On the other hand, underfinancing of anti-discrimination programmes is a regular practice. The previous edition of the Inter-institutional Action Plan for the Promotion of Non-discrimination 2012-2014<sup>234</sup> was not implemented in full – in 2014 it received EUR 51 627 (or 44.3 % of the initially planned funding), in 2013 it received 59 % of its initial budget, which was, however, an improvement on the position in 2012, when the figure was only 35 %. 2015 was an exception in this respect (97 % of the funding was actually allocated), however, the total budget of anti-discrimination measures that year was only EU 192 000.

There have not been many initiatives by the Government or the ministries directly to encourage dialogue with NGOs. Most of the initiatives aimed at fostering dialogue with NGOs in the past 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. One must take into account that the national NGO scene is rather fragmented and the Government does not take NGOs seriously as partners. NGOs operate on very limited human and financial resources. There is no government policy on the development of this sector. There are no NGOs that specialise only in anti-discrimination work. There are only a few NGOs that deal with human rights (and non-discrimination is only one field of their activities), there are organisations that work on particular grounds (women's rights, rights of people with disabilities, LGBT rights, etc.), and there are almost no ethnic minority NGOs working on lobbying or policymaking. One could say that the pressure for government action is weak, and so the Government makes limited efforts.

Since 2012, the Ministry of Social Security and Labour has announced calls for proposals for NGOs working in the field of human rights and non-discrimination. Each year the Ministry of Social Security and Labour allocated a sum worth approximately EUR 20 000 – 40 000 in total, which was shared by six to 10 grant-winning organisations, covering all grounds for anti-discrimination.<sup>235</sup> Although this can be considered as positive practice in general, in the opinion of the author of this report, dialogue with civil society is occasional and takes place on an *ad hoc* basis.

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.

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<sup>234</sup> Lithuania, Decision of the Government of the Republic of 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](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_p?p_id=410523).

<sup>235</sup> The list of grant winners is available at the ministry's website: <http://www.socmin.lt/lt/konkursai/konkursu-rezultatai/archive/nevalstybiniu-organizaciju-ginanciu-hdgif.html>.

There is no single body or entity appointed on the national level to address Roma issues. These issues are addressed by many institutions from different angles – the municipalities (mainly social, housing, employment issues), the Ministry of Culture (as the main institution working on the integration of ethnic minorities), the Equal Opportunities Ombudsperson and others.

In 2012, the Roma integration to the Lithuanian Society Action Plan for 2012 – 2014 was adopted by the Ministry of Culture and submitted to the European Commission in accordance with the provisions of the European Commission communication, 'The EU Framework for National Roma Integration Strategies up to 2020.'<sup>236</sup> The long awaited action plan filled the vacuum in the national Roma integration policy, however, NGOs criticised its adoption as not being inclusive, given that suggestions of NGOs working in the field of Roma integration and non-discrimination were not taken into account.<sup>237</sup> However, the author of this report was not able to locate the evaluation report of the activities in 2012 - 2014, and therefore it was not possible to assess the progress made in this field.

In 2015 the Ministry of Culture approved a new Roma Integration into Lithuanian Society Action Plan for 2015–2020.<sup>238</sup> The action plan sets out various measures including educational assistance (for school pupils as well as adult education), vocational training, additional state language training, basic employment skills training, healthcare assistance measures etc. It must be added that a significant part of the planned measures must be implemented without allocated funding, but as a part of regular functions of particular institutions (employment exchange, municipalities, etc.). The implementation report is not available to the public and it is hard to estimate the scale of measures actually implemented or their efficiency.

Finally, Vilnius City Council adopted the Vilnius Kirtimai Roma Community Integration to Society Programme 2016–2019.<sup>239</sup> The programme sets out a number of measures aimed at providing social housing options to Kirtimai Roma community members who agree to leave the settlement, providing educational assistance to pupils of Kirtimai and employment access assistance, etc. However, a large proportion of the measures are targeting drug prevention and policing, which, on the one hand is an attempt to solve the problem of drug-production and drug-sales activity at the settlement, but on the other hand further criminalises the whole community. A total of EUR 927 948 is planned for the implementation of the programme during a three-year period.

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

### **a) Mechanisms**

There is no special mechanism ensuring that legislation (current or future), contracts, collective agreements, internal rules or undertakings are in line with anti-discrimination law. Every such provision can eventually be challenged in court. 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

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<sup>236</sup> European Commission (2011), *An EU Framework for National Roma Integration Strategies up to 2020*, COM (2011) 173, Brussels, 5 April 2011.

[http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf).

<sup>237</sup> European Network against Racism (2012), *ENAR Shadow Report on Racism and Related Discriminatory Practices in Lithuania 2011-2012*, available in English at:

<http://cms.horus.be/files/99935/MediaArchive/publications/shadow%20report%202011-12/Lithuania.pdf>.

<sup>238</sup> Lithuania, Order of the Minister of Culture of 29 January 2015 No. IV-48 on approval of Roma Integration into Lithuanian Society Action Plan for 2015 – 2020 (*LR Kultūros ministro įsakymas Dėl romų integracijos į Lietuvos visuomenę 2015–2020 metų veiksmų plano patvirtinimo*, 2015 m. sausio 29 d. Nr. IV-48), available in Lithuanian at <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682>.

<sup>239</sup> Vilnius Kirtimai Roma Community Integration to the Society Programme 2016–2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>

laws and other legal acts adopted by the Parliament are in compliance with the constitution and whether the acts adopted by the President or the Government correspond to the constitution and laws.

b) Rules contrary to the principle of equality

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 that are still in force, which are contrary to the principle of equality. For example, religious communities that 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 religious communities, which then have access to certain benefits – including the right to religious education at public schools and certain tax benefits for people employed at state-recognised religious communities – which are not accessible to religious communities that are not recognised by the state.<sup>240</sup>

In addition to this, there are a number of laws (particularly those regulating statutory office), which have various provisions on age (see the sections on age above), which may not be in line with directives. However, since no legal audit was exercised and there is no mechanism of review of all this legislation, these inconsistencies appear on a case-by-case basis.

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<sup>240</sup> Lithuania, Law on Religious Communities and Associations, 1995. According to Article 5, the recognised religious communities are the following: Roman Catholic, Greek Catholic, Lutheran, Reform, Orthodox, Old-believers, Jewish, Muslim (Sunni), Karaite.

## 9 COORDINATION AT NATIONAL LEVEL

On 28 January 2015 the Government of the Republic of Lithuania approved a new edition of the Inter-institutional Action Plan for the Promotion of Non-discrimination.<sup>241</sup> The plan covers the period 2015–2020. The coordinating institution responsible for the implementation of the plan is the Ministry of Social Security and Labour, however the plan sets out quite a few activities for other institutions (particularly the 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 (the Ombudsperson for Equal Opportunities, the Ministry of Culture, the Ministry of Education and Science and the youth department under the Ministry of Social Security and Labour).

However, underfinancing of anti-discrimination programmes is a regular practice. It could be roughly estimated that anti-discrimination measures planned for 2016 were given only 35 % of the initial budget.<sup>242</sup>

It is hard to estimate the impact that the activities of the action plan have had on particular target groups, since the evaluation of the plan is done on a quantitative basis. In the opinion of the author of this report, it would be extremely useful if an independent institution could carry out an external evaluation of the plan and provide its findings to the Ministry of Social Security and Labour.

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<sup>241</sup> Lithuania, Decision of the Government of the Republic of Lithuania No. 46 of 28 January 2015 on the approval of the Inter-Institutional Action Plan for the Promotion of Non-discrimination, available in Lithuanian at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=1006990&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1006990&p_tr2=2).

<sup>242</sup> For more information please see section 8.1. of this report.



## 10 CURRENT BEST PRACTICES

These measures could be identified as good practices in 2016:

- The continuation of an awareness-raising initiative, implemented jointly by the Equal Opportunities Ombudsperson and a group of NGOs working with vulnerable groups, called 'The National Equality and Diversity Awards'. This initiative has been taking place since 2014. In April 2016, winners from various nominations (Journalist of the Year, Civic Activist of the Year, Ethno-Dialogue promoter, Golden Age award, etc.) were given awards for their achievements in the field of promoting equality or protecting people from discrimination.<sup>243</sup> The awards received quite substantial media attention and a number of organisations participated by selecting nominees, voting, organising and implementing awards. The awards ceremony could serve as a tool to raise awareness, spread good practice and encourage those who work in the field in the future as well. Organisers are planning to continue its implementation next year.
- The introduction of a follow-up procedure at the Equal Opportunities Ombudsperson. The institution introduced an administrative management system, which allows it to monitor the implementation of its decisions and recommendations more efficiently. The implementation report is annexed to the annual report of the institution.
- Increased visibility of the Equal Opportunities Ombudsperson, with improved communication (constantly updated webpage, rather active social media account) and timely publication of decisions and recommendations on its webpage.

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<sup>243</sup> More information about the awards can be found at: <http://manoteises.lt/naujiena/iteikti-nacionaliniai-lygybes-ir-ivairoves-apdovanojimai/>.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives (if any)**

National anti-discrimination legislation in most cases repeats the wording of the directives, without going into details of particular provisions. In the opinion of the author of this report, the transposition is still insufficient with regards to the following aspects:

- The existing Law on Equal Treatment does not explicitly state that social protection, social security and healthcare fall under its scope. For more information please see sections 3.2.6-3.2.7 of this report.
- 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 and sanctions imposed by the Ombudsperson are not effective, proportionate and dissuasive. For more information please see sections 6.5 and 7 of this report.
- Providing independent assistance to victims of discrimination in pursuing their complaints of discrimination does not explicitly fall within the competence of the national equality body - the Equal Opportunities Ombudsperson - according to the law. The current wording speaks about "providing impartial and objective consultations with regards to investigation of complaints" only. For more information please see section 7 of this report.
- The right for associations to engage in legal proceedings was included in the Law on Equal Treatment, repeating the wording of the directives. However, exercising this right is limited in practice. The Code of Civil Procedure states that only actual members of a particular organisation can be represented in court by that association. In theory, associations can act on behalf of the victim in administrative procedure only, but not in civil cases. For more information please see section 6.2 of this report.
- 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, therefore it is more difficult to enforce it in practice. For more information please see section 2.6 of this report.
- 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. Self-employment is not explicitly mentioned in the Law on Equal Treatment, although in contrast, it is referred to in the Law on Equal Opportunities of Women and Men, which deals with the ground of sex. For more information please see sections 6.5 and 3.2.1 of this report.
- The Equal Opportunities Ombudsperson, when applying administrative sanctions, issues them to the executive body of a legal person (director, etc.) but not to 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. For more information please see sections 2.2 – 2.4 of this report.
- 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 LET did not contain this exception and there is still 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 LGBT persons (as was suggested in discussions in Parliament during the adoption of these provisions). Such vague provisions of national legislation are hardly compatible with the goals of the directive. For more information please see sections 4.2 of this report.

- The Law on Equal Treatment does not apply to 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 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 after its adoption. It is not clear which schools would be exempted from applying the law and in which cases as 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. For more information please see section 3.2.8 of this report.

## 11.2 Other issues of concern

The Law on the Protection of Minors against the Detrimental Effect of Public Information remains in force and continues to cause problems. In 2014, major local TV broadcasters refused to broadcast a social commercial, which showed same-sex couples talking about their relationship and explaining that same-sex couples can also be considered families. They refused to show the advert explaining that it might be considered as in breach of the Law on the Protection of Minors against the Detrimental Effect of Public Information. Another example is the censorship of a fairy tales book, which contained a story of same-sex love. The book was published by the Lithuanian University of Educational Sciences, which was later ordered to remove it from bookstores. On top of that, the Inspector of Journalist Ethics concluded that two fairy tales that promote tolerance for same-sex couples are harmful to minors and should be marked by the index 'N-14'. Article 4(2)(16) of the Law on the Protection of Minors against the Detrimental Effect of Public Information,<sup>244</sup> which states that any information that 'encourages a concept of marriage and family other than the one stipulated in the Constitution of the Republic of Lithuania or in the Civil Code of the Republic of Lithuania' is detrimental to minors and therefore should be restricted, has been subjected to constant criticism by major international human rights organisations and LGBT organisations. The provisions of the law are also currently the subject of a court case.<sup>245</sup>

<sup>244</sup> Lithuania, Law on the Protection of Minors against the Detrimental Effect of Public Information (*Lietuvos Respublikos nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas*), available in Lithuanian at: [https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS\\_410367](https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS_410367)

<sup>245</sup> Please see section 12.2 of this report on case law (case *Neringa Mikalauskienė v. Lietuvos Edukologijos Universitetas*).

## 12 LATEST DEVELOPMENTS IN 2016

### 12.1 Legislative amendments

In November 2016, the Law on Equal Treatment and the Law on Equal Opportunities of Women and Men were both amended (the amendments entered into force on 1 January 2017). All procedural aspects of the Equal Opportunities Ombudsperson, including appointment criteria and procedure as well as competence and provisions on investigations of complaints, were moved from the Law on Equal Opportunities of Women and Men to the Law on Equal Treatment. Additional provisions with regards to the independence of the body as well as competence were also added to the Law on Equal Treatment.

### 12.2 Case law

**Name of the court:** Supreme Administrative Court (*Vyriausiasis Administracinis Teismas*)

**Date of decision:** 11 August, 2016

**Name of the parties:** *D.G.-K. v. Lithuanian Parliament, Lithuanian State*

**Reference number:** Case No. eA-2107-502/2016

**Address of the webpage:**

**Brief summary:** On 20 November 2014 the Speaker of the *Seimas* (Lithuanian Parliament) proposed D.G.-K., an experienced lawyer with a scientific background in the field of non-discrimination (PhD) and 10 years of legal practice as an attorney, as a new candidate for the position of the Equal Opportunities Ombudsperson. During the plenary sitting of 25 November the members of the Parliament voted on the appointment of the new candidate and although no doubts regarding her professional qualifications were raised at the sitting, her candidacy was not approved. During the hearing the candidate was deliberately asked questions about her views on same sex marriage and partnerships, her relationship with LGBT organisations, her attitude towards 'genderism ideology', and views on 'homosexual propaganda' and abortion. The candidate demonstrated a firm commitment to the institution's mandate (including the protection against discrimination on the ground of sexual orientation) as well as expressing her understanding of Lithuania's international commitments with regards to fundamental rights. No comments or remarks regarding her professional qualities, knowledge or sufficiency of experience were raised.

D.G.-K. filed a lawsuit to the Vilnius County Administrative Court, claiming that her appointment procedure was contrary to the principles of the Law on Equal Treatment as well claiming pecuniary damages. The court of first instance refused to accept the claim, stating that the Parliament cannot be considered an administrative institution in the sense of the Law on the Proceedings of Administrative Cases. The complainant filed an appeal to Supreme Administrative Court, which ruled that despite the fact that Parliament cannot be considered an administrative institution in the sense of the Law on the Proceedings of Administrative Cases, the question of pecuniary damage caused by the state institution are eligible, however, the respondent in such case should be Lithuanian state, not the administration of the Parliament. The court sent the case back to Vilnius Administrative Court, ordering it to review the claim with respect to the issue of pecuniary damage. In October 2015 Vilnius County Administrative Court issued a ruling, stating that in order to award non-pecuniary damages, the court had to establish conditions under which the defendant may be subject the civil tort liability – damage, fault and causation. Since Parliament cannot be considered an administrative institution in the sense of the Law on the Proceedings of Administrative Cases, the actions of the Parliament were outside of the jurisdiction of the administrative courts, therefore it was not possible to establish fault. Hence the claim was dismissed. The applicant once again submitted an appeal to the Supreme Administrative Court and the judgment is pending.

The Supreme Administrative Court upheld the decision of the Vilnius County Administrative Court. An interesting element in the reasoning of the court was the argument that since according to the law, the Ombudsperson may be dismissed if he/she lost a confidence vote in the Parliament, the confidence of the Parliament is essential in appointing the Ombudsperson. Therefore professional qualities are not the only criteria for appointment, certain political circumstance can play a role in the process and these fall outside the scope for legal evaluation because the law does not elaborate upon the conditions of political confidence. Essentially the Parliament has a wide margin of discretion in this respect.

Interestingly, in November 2016 the law was amended and the provision on political confidence was removed. Therefore it would be interesting to see whether a similar case might appear in the future.

**Name of the court:** Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*)

**Date of decision:** 6 December 2016

**Name of the parties:** *Neringa Mikalauskienė v. Lietuvos Edukologijos universitetas*

**Reference number:** Case Nr. e3K-3-497-611/2016

**Address of the webpage:**

**Brief summary:** A writer of children's literature challenged the decision of a publisher to halt publication of her storybook, claiming that this decision was discriminatory on the ground of sexual orientation.

The claimant, Neringa Mikalauskienė, is an author of children's books. In 2013 she made an agreement with the Lithuanian University of Educational Science with regards to publishing and distributing her upcoming book of children's stories (initially titled 'Different Stories'). Using traditional storytelling patterns the author wrote a book about children from vulnerable groups (disability, different race, as well as a story about two same sex characters, who fell in love with each other). Publishing was co-financed by the Ministry of Culture and the book was released. However, in spring 2014, distribution of the book was stopped because the university received a letter from a group of members of Parliament opposing the book. In the meantime the Office of the Inspector of Journalist Ethics carried out a complaint investigation and concluded that the information, provided in the book falls under the Law on the Protection of Minors against the Detrimental Effect of Public Information.<sup>246</sup> The Inspector concluded that two fairy tales that promote tolerance for same-sex couples are harmful to minors since they 'promote family relations which are different from those that are outlined in the Constitution of the Republic of Lithuania', and therefore the book should be marked by the index 'N-14' (suitable for pupils older than 14 years old). The University re-distributed the book with stickers 'N-14'.

Both the court of first instance and the court of appeal took a very formal approach in the case. According to the Law on Copyright and Related Rights<sup>247</sup> the publishing agreements must be concluded in written form. In this case, there was no written contract between the complainant and the university, therefore both instances found that in fact the university was not obliged to publish the book. Since there was no obligation, there was no discrimination either.

The Supreme Court concluded that despite the fact that there was no written agreement, the courts failed to consider the factual circumstances given that the book was in fact published and that they had failed to investigate the reasoning behind the decision to

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<sup>246</sup> Lithuania, Law on the Protection of Minors Against the Detrimental Effect of Public Information (*Lietuvos Respublikos nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas*) Valstybės žinios, 2002-09-18, Nr. 91-3890, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54>

<sup>247</sup> Lithuania, Law on Copyright and Related Rights (*Lietuvos Respublikos autorių teisių ir gretutinių teisių įstatymas*), Valstybės žinios, 1999-06-09, Nr. 50-1598. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.551F0CDE5B64/xGlaHuKiND>

temporarily stop the distribution of the book. Finally, the Supreme Court said that the expert findings of the Inspector of Journalist Ethics are not binding on the court and should be considered equally among other evidence, such that the courts should evaluate the content of the book themselves.

The Supreme Court returned the case to the court of first instance for re-trial.

## **Roma**

To the knowledge of the author of this report, no cases of discrimination against Roma were brought to courts in 2015-2016. A couple of complaints regarding discrimination in providing access to services (a café) were registered at the Equal Opportunities Ombudsperson and the perpetrators were admonished.<sup>248</sup>

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<sup>248</sup> Decision of the Equal Opportunities Ombudsperson, available at: <http://www.lygybe.lt/data/public/uploads/2016/01/pazyma-del-galimos-romu-tautybes-asmenu-diskriminacijos-tautybes-pagrindu-paslaugu-srityje.pdf> .

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

**Country:** Lithuania  
**Date:** 1 January 2017

<b>Title of legislation (including amending legislation)</b>	Title of the law: Law on Equal Treatment Abbreviation: LET Date of adoption: 18.11.2003 Entry into force: 01.01.2005 Latest amendments: 08.11.2016 Web link: <a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179</a> Grounds covered: gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion
	Civil/administrative law
	Material scope: employment, access to goods or services, education.
	Principal content: The main national law, implementing Directives, provides concepts, definitions, prohibits discrimination, etc.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Law on Equal Opportunities for Women and Men Abbreviation: LEOWM Date of adoption: 01.12.1998 Entry into force: 01.03.1999 Latest amendments: 08.11.2016 Web link: <a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=478625</a> Grounds covered: gender Article: Article 12 (2)
	Civil/administrative law
	Material scope: employment, access to goods or services, education.
	Principal content: Prohibits discrimination on the basis of gender
<b>Title of legislation (including amending legislation)</b>	Title of the law: Law on Social Integration of People with Disabilities Abbreviation: LSIPD Date of adoption: 28.11.1991 Latest amendments: 02.07.2013 Entry into force: 31.12.1991 Web link: <a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454193">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454193</a> Grounds covered: Disability
	Civil/administrative law:
	Material scope: employment, access to goods or services, education.
	Principal content: Prohibition of discrimination on the ground of disability, various measures on social inclusion, etc.
	Principal content:
<b>Title of legislation (including amending legislation)</b>	Title of the law: Labour Code Abbreviation: LD Date of adoption: 06.06.2002 Latest amendments: Entry into force: 01.01.2003 Web link: <a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=494119">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=494119</a> Grounds covered: Gender, sexual orientation, race, nationality, language, ethnic origin, citizenship, social status, religion, marital



	status, age, convictions or opinions, membership of political parties or other organisations
	Civil law
	Material scope: Employment
	Principal content: General prohibition of discrimination in employment

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Lithuania  
**Date:** 1 January 2017

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Day.month. year</b>	<b>Date of ratification (if not ratified please indicate) Day. month. year</b>	<b>Derogation s/reservati ons relevant to equality and non- discriminati on</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
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 of National Minorities	17.02.2002	17.02.2002	No derogations / reservations	Yes	Yes
International Covenant 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

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Day.month.year</b>	<b>Date of ratification (if not ratified please indicate) Day.month.year</b>	<b>Derogations/reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Convention on the Rights of the Child	08.01.1992	03.07.1995	No derogations / reservations	Accepted	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	27.05.2010	No derogations / reservations	Accepted	Yes

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