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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Lithuania

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* The author has gratefully built on the reports written until 2018 by the previous expert Gediminas Andriukaitis.

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EXECUTIVE SUMMARY

1. Introduction

Lithuania regained its independence from the Soviet Union in 1990. The current Constitution¹ was approved by referendum in 1992. On 1 May 2004 Lithuania joined the European Union, requiring significant changes to be made to the legal system in little over a decade to meet EU and international standards without broader discussion.

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 may 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 that are currently available mostly derive from various studies, public opinion surveys and data collection 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, and the Ombudsperson's visibility has very much increased in recent years. The level of awareness of the institutions working in the field of human rights protection and the level of public trust in the existing mechanisms remain unsatisfactory.

Stereotypes and prejudice are persistent, particularly as regards certain groups. The potential vulnerability of particular communities can be assessed by analysing the data from annual surveys on public attitudes towards various minority groups, which reveal that the 'hierarchy of intolerance' remains the same – Roma persons, ex-convicts, 'mentally disabled people', refugees, migrants and the LGBT community are the least tolerated groups in Lithuania, and thus the most vulnerable to discrimination.

The initiatives taken by the Parliament to protect so-called 'traditional values' do not improve the situation. Prejudice against gay people is deeply rooted in society. The issue of sexual orientation is addressed by the Law on Equal Treatment (LET), which is designed to transpose EU anti-discrimination legislation. Unfortunately, the education system is only just beginning to partly address the issue. However, there has been significant progress in recent years, with more and more people openly supporting the rights of LGBT people. In 2010, the first Pride event raised opposition, but subsequent events in 2013 and 2016 took place in the main avenue of the capital, successfully and without any major incidents.

The small population of Lithuanian Roma (just over 2 000 persons) live in poverty and exclusion, despite 96 % of them being Lithuanian citizens.² In contrast to the general population, most Lithuanian Roma live in premises that they do not own (69 %, in

¹ 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>.

² 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>.

comparison with the national average of only 9 %), and 38 % live in social housing (the national average is 1 %). About a fifth of Lithuanian Roma do not pay rent (in illegal housing, staying at relatives, etc.), in contrast to the national average of 4 %. Hence, not surprisingly, living standards are much lower than the national 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 accommodation is not equipped with a bath or shower. The Roma community living in Kirtimai (a district of the Vilnius City Municipality), is the most obvious example of segregation. According to recent estimates, 155 persons now reside in the Kirtimai settlement (as compared with 100 houses with approximately 500 residents in 2001).³ Nevertheless, Roma persons still face housing problems. Their educational levels are also very low – only 2 % of the Roma population have a college or university degree, while 44 % have completed only basic education. In 2016, Vilnius City Municipality adopted the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019. The programme sets out a number of measures aimed at providing social housing options to members of the Kirtimai Roma community. According to the representatives of the municipality, the aim of the housing programme was to adopt a new approach, avoiding the enforcement of evictions (most buildings having been built illegally), and instead offering incentives (financial support for rent or social housing options) to those who voluntarily agreed to leave the settlement. The implementation of the programme seems to have had positive results, and more than 50 families left the settlement in 2017 to 2018, although their situation remains vulnerable.

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 number of grounds is non-exclusive according to the Constitutional Court.

The Republic of Lithuania has signed, or signed and ratified, a number of international human rights treaties, including 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 (ECHR), the Council of Europe Framework Convention for the Protection of National Minorities, the European Social Charter, the UN Convention on the Rights of Persons with Disabilities and others. According to the Constitution, international agreements that have been ratified by Parliament form a constituent part of the legal system. The 12th protocol of ECHR has not been ratified. The Law on International Agreements⁴ 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, 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 Men⁵ was passed. The law not only established the concept of discrimination on the ground of sex (gender),⁶ it also created a quasi-judicial

³ Committee on the Elimination of Racial Discrimination, combined ninth and tenth periodic reports submitted by Lithuania under article 9 of the Convention, due in 2018, 8 Feb 2018, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMcqfI%2fjd5knkSMb52z2%2fJJfiiU0kH%2bpSZJLncqAEiS8%2blykhrjNK0u76VpGle0uthCw0JLIQtVtMd6lx3BpW%2fb0tyDjTLN71>.

⁴ Lithuania, Law on International Agreements (*Tarptautinių sutarčių įstatymas*), 1999, No. 60-1948, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.5BCEC9B41811/asr>.

⁵ Lithuania, Law on Equal Opportunities for Women and Men (*Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas*), 1998, No. 112-3100, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/asr>.

⁶ 'Sex' and 'gender' can both be translated as *lytis* in Lithuanian. Therefore, in all the legal acts, the term *lytis* is used to refer to both sex and gender. In the official English translation of the Law on Equal Treatment of Women and Men, the term 'sex' is used, whereas in the translation of the Law on Equal Treatment, 'gender' is used, as well as in the translation of the Constitution of the Republic of Lithuania. So far, this has not had any consequences for the application of the laws.

institution to investigate complaints – the Office of the Equal Opportunities Ombudsperson.⁷ 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 gradually been added to the competence of the Ombudsperson (age, sexual orientation, disability, race, ethnicity and religion and beliefs) since the Law on Equal Treatment⁸ came into force in 2005. Since then, national anti-discrimination law has consisted of two major laws: the Law on Equal Opportunities for Women and Men, which prohibited discrimination on the grounds of gender and established 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 and religion and beliefs to the list of non-discrimination grounds, provided additional concepts and further expanded the competence of the Ombudsperson. In 2016, both laws were amended (the amendments entering into force on 1 January 2017), and all procedural aspects (appointment criteria, procedure, competence and provisions on the investigation of complaints) were moved from the Law on Equal Opportunities of Women and Men to the Law on Equal Treatment. In addition, in 2018 the Ombudsperson was granted an additional function: monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities.

The Law on Equal Treatment was designed to ensure the implementation of the EU anti-discrimination directives in national legislation, and was passed on 18 November 2003. Initially, it covered age, sexual orientation, disability, race, ethnicity and religion and beliefs. Later amendments in 2017 eliminated major weaknesses in implementation and expanded the list of protected grounds by adding social status, language, convictions and citizenship. The scope of the Law on Equal Treatment encompasses employment, education and the provision of goods and services, but does not explicitly state that it also applies in the sphere of social security (including housing, social advantages and healthcare).

The new Labour Code entered into force on 1 July 2017. Most of the provisions on employment that were previously outlined in the Law on Equal Treatment were copied into the new Labour Code. However, the code also introduced an obligation on public and private entities that employ more than 50 employees to adopt measures aimed at promoting and executing equality policies in the workplace, and it set out a broader list of non-discrimination grounds.

3. Main principles and definitions

Currently, the Law on Equal Treatment repeats the wording of the directives in most instances, without going into the 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, harassment is not prohibited in access to or the provision of goods and services.

Some definitions still lack clarity. For example, the phrasing of the duty to provide reasonable accommodation (initially embodied in the Law on Equal Treatment, but repeated in the Labour Code) is imprecise and somewhat 'softer' than that of the relevant directive. The Ombudsperson, in a decision made in 2018, stressed that the 'international and national legal framework imposes an obligation on the employer to ensure that persons with disabilities would not be discriminated against when applying for a job, by ensuring that their workplace and conditions are adapted. Failure to comply with this

⁷ See the website of the Equal Opportunities Ombudsperson: <http://www.lygybe.lt>.

⁸ 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/asr>.

obligation constitutes discrimination in the field of employment against persons with disabilities'. Despite that, the definition of 'reasonable accommodation' should use explicit wording, such that failure to provide it constitutes discrimination against persons with disabilities.

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 and has only been addressed by the Equal Opportunities Ombudsperson, not by the courts. Assumed discrimination is not explicitly prohibited by law, but it can be considered as being included in the definition of direct discrimination, although the issue has not been addressed either by the Ombudsperson or by the courts.

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 provides protection against discrimination on the grounds of social status, language, convictions and citizenship – although this applies only to EU and EEA citizens and their family members; the law does not explicitly mention partnerships (as opposed to marriage), and judicial interpretation is required in relation to same-sex families. The law applies to both the private and public sectors.

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 the prohibition of discrimination in access to and the provision of goods and services should apply to 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.

5. Enforcing the law

It should be emphasised that the only way for a victim of discrimination to get compensation for the harm suffered is to pursue the case in court or before a labour dispute commission in cases of unfair dismissal. 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, the legal aid mechanism needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights in court. Besides, assistance to victims is not fully ensured. 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 it is therefore necessary to use the services of a qualified and experienced legal consultant.

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.⁹ According to the normal practice, when a complaint is received from an NGO and the rights of the organisation have not been directly infringed, the Ombudsperson may start an investigation 'on its own initiative'. In addition, the most commonly used procedure at the Equal Opportunities Ombudsperson involves 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 proceedings in criminal, administrative or civil courts 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 ground of gender 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 3 000.

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. This was highlighted by a recent in-depth civil society report on the status of the national equality body. As many as 23 respondents out of 30 pointed out that the sanctions set out in the current legislation were not sufficiently effective, proportionate and dissuasive, and half of the respondents believed that the Equal Opportunities Ombudsperson lacked the powers to ensure the enforcement of his/her decisions.¹⁰

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, so they can be challenged in court. In the absolute majority of cases, the Ombudsperson chooses to issue 'recommendations' to stop discriminatory actions, although these are not essentially binding. 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, including the creation of an administrative follow-up system. Since May 2017, a table of recommendations and the status of their implementation (a monitoring report) has been available on the website of the Ombudsperson.¹¹ Of the 25 recommendations that were issued to various institutions in 2018, 15 were implemented, 9 were in the process of implementation and one had not begun to be implemented, as the case was pending in court. Although the table does not provide information about what has actually been done to implement the recommendations, the creation of a monitoring mechanism is still a significant step forward and an important achievement for the newly appointed Ombudsperson, strengthening the efficiency of the institution.

⁹ Supreme Administrative Court of Lithuania, No. A662-665/2010, decision of 19 April 2010 (*Vyriausiojo administracinio teismo sprendimas byloje Nr. A662-66/2010*); Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A492-2078/2013, decision of 7 November 2013.

¹⁰ Andriukaitis, G., Sabatauskaite, B. (2017), 'Lietuvos žmogaus teisių centras', *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kkontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

¹¹ See the website of the Equal Opportunities Ombudsperson: <http://www.lygybe.lt/lt>.

A few decisions of the Ombudsperson were challenged in court in 2018, but in the majority of cases the courts respected the decisions of the Equal Opportunities Ombudsperson. In one case, discrimination against a person on the ground of disability in the provision of services was recognised; in another, harassment on the ground of disability in employment.

According to the annual reports of the institution, during its last 10 years of operation, the Ombudsperson issued a fine on only one occasion.¹² However, even were the Ombudsperson to issue fines, such administrative sanctions could not be considered effective, proportionate and dissuasive, as was stressed by the Ombudsperson herself in her annual report. Fines – the only administrative sanction available – are provided for in the Administrative Violations Code, and can range from EUR 40 to 560 (or from EUR 560 to 1 200 for repeat offences).¹³

Support from various associations is crucial in discrimination cases, but the right of associations to engage in legal proceedings is limited in practice. 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 proceedings. In theory, associations can act in defence of the public interest, even when applying to the Equal Opportunities Ombudsperson, but not in practice. 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. 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, established 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. 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 plus the ground of gender.

Although awareness raising was formally added to the competence of the Ombudsperson on 1 January 2017, in practice the Ombudsperson had been involved in such activities since the 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, recent years have marked an important turning point in moving towards increased efficiency and strengthening the institutional structure. The institution was re-structured with four internal divisions (the legal division, equal opportunities mainstreaming division, communication division and operational management division) in addition to a financial adviser and the Ombudsperson herself. Furthermore, the institution has adopted its strategic plan for 2016-2018, which is renewed every year.

¹² The staff of the institution claim that fines have in fact been issued at least a few times.

¹³ Lithuania, Administrative Violations Code (*Lietuvos Respublikos Administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas*), 25 June 2015, No. XII-1869, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b/asr>.

The Ombudsperson considers itself as a mixed mandate (promotional and tribunal) body, and it carries out different functions that may be attributed to a quasi-judicial body, but it also carries out education, campaigning and research activities. The Ombudsperson exercises its functions with respect to gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion. Decisions of the Equal Opportunities Ombudsperson 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 of the Ombudsperson, peaceful resolution of discrimination is one of its main objectives.

According to the law, the Ombudsperson 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, however the Ombudsperson does offer people consultations. 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, and has a right to offer recommendations.

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. Hence, the work of the institution and its political independence completely depend 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, the transposition into national law is still insufficient with regard to the following aspects:

- The existing Law on Equal Treatment does not explicitly prohibit harassment in access to and the provision of goods and services.
- 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.
- The duty to provide reasonable accommodation, as it is phrased in the Law on Equal Treatment and the Labour Code, lacks precision and is somewhat more 'narrow' than that of the directive, and is therefore more difficult to enforce in practice, even though the Equal Opportunities Ombudsperson and the courts often refer to the UN Convention on the Rights of Persons with Disabilities.
- Neither the Law on Equal Treatment nor the Labour Code provisions explicitly state that failure to provide reasonable accommodation would constitute discrimination.
- In relation to laws on self-employment, it is not precisely clear from the Law on Equal Treatment whether the directives have been adequately transposed. Self-employment is not explicitly mentioned in the Law on Equal Treatment but, on the other hand, the Labour Code is a *lex generalis* in the occupational sphere, and therefore its principles would apply in the absence of specific rules.
- The existing Law on Equal Treatment does not explicitly state that social protection, social security and healthcare fall under its scope.
- 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. However, it is applied not only to recruitment but to education materials and other matters. The first version of 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. Besides, the exception in the Law is much broader than that of the directive, where a 'person's religion or belief constitute a genuine, legitimate and justified occupational requirement'. It remains unclear which organisations can take advantage of this exception. There is no mention of the provision that 'difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.' Therefore, the exception can be applied in cases of discrimination on the ground of sexual orientation, as was discussed during consideration of the draft Law in Parliament.

- 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.
- National legislation provides protection from victimisation in the field of employment only; it does not provide protection from victimisation in other fields (education and the provision of goods and services).
- The system of sanctions must be significantly strengthened to make them effective, proportionate and dissuasive. 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.

Some positive examples in 2018 can be highlighted. The Ombudsperson launched a website on equality plans for employers (<http://www.lygybesplanai.lt/>), and carried out a number of activities to promote equal opportunities in the labour market. In the autumn, the country's businesses signed a 'Diversity Charter', with a public commitment to a culture of equality. Thus, Lithuania became the 22nd member of the EU Platform of Diversity Charters.

The National Equality and Diversity Awards, an awareness-raising initiative implemented jointly by the Equal Opportunities Ombudsperson and a group of NGOs working with vulnerable groups, was continued, having been taking place since 2014. In March 2018, winners from various nominations were given awards for their achievements in the field of promoting equality or protecting people from discrimination. The awards were broadcasted live on national television and received substantial media attention and social media coverage. A number of organisations, companies and institutions participated in the selection of nominees, in voting and in organising and presenting the awards. Organisers are planning to continue the initiative in future years, as the awards function as a tool to raise awareness and carry out promotional activities. The awards were mainly financed by the Office of the Equal Opportunities Ombudsperson.

INTRODUCTION

The national legal system

The Republic of Lithuania is a unitary state. The Constitution of the Republic of Lithuania¹⁴ 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. According to the Law on International Agreements, 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 the law.

The right to file a petition with the Constitutional Court concerning the constitutionality of a legal act is vested in the Government, groups consisting of at least one fifth of all members of the Seimas (Parliament), the courts and the President of Lithuania. Neither individuals nor the Ombudsperson institutions enjoyed the right to lodge petitions with the Constitutional Court until the end of 2018.¹⁵

List of main legislation transposing and implementing the directives

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

- The Law on Equal Treatment (LET).¹⁶ Date of adoption: 18.11.2003. Grounds covered: gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion. The material scope of the law covers employment, access to goods or services and education.
- The Law on Equal Opportunities for Women and Men.¹⁷ Date of adoption: 01.12.1998. 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, in accordance with the Law on Equal Treatment, supervises the implementation of equal opportunities on all grounds covered by the directives in Lithuania.

¹⁴ 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>.

¹⁵ After the cut-off date for this report, constitutional amendments were adopted granting the right to individuals in 2019.

Lithuania, Law amending Articles 106 and 107 of the Constitution of the Republic of Lithuania, 21 March 2019, No. XIII-2004, due to come into force on 1 September 1 2019, available in English at:

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/786eb162508a11e98bc2ba0c0453c004?ifwid=pffih3y6p>.

¹⁶ Lithuania, Law on Equal Treatment (*Lietuvos Respublikos Lygių galimybių įstatymas*), 2003, No. 114-5115, entry into force 01.01.2005; latest amendments: 11.12.2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr>.

¹⁷ Lithuania, Law on Equal Opportunities for Women and Men (*Moterų ir vyrų lygių galimybių įstatymas*), 1998, No. 112-3100, entry into force: 01.03.1999; latest amendments: 01.07.2017, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/asr>.

In addition, a number of employment provisions from the Law on Equal Treatment were copied into the Labour Code. Date of adoption: 14.06.2016.¹⁸

¹⁸ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, entry into force: 01.07.2017; latest amendments: 20.12.2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

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.'

A general equality clause is embodied in Chapter 2 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.'¹⁹

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 before the end of 2018 in which the Constitutional Court elaborated on those equality grounds,²⁰ 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,²¹ is binding on all governmental institutions, companies and organisations, as well as on officials and citizens.

In its ruling of 11 November 1998, the Constitutional Court, commenting on Article 29 of the Constitution, stated:

¹⁹ Ruling of the Constitutional Court of the Republic of Lithuania of 13 June 2000, available in English at: <http://www.lrkt.lt/en/court-acts/search/170/ta1161/content>.

²⁰ Conclusion of the Constitutional Court of the Republic of Lithuania elaborating on the grounds of sexual orientation and gender identity, 11.01.2019, No. KT3-N1/2019. In general, the Court Conclusion concerned the issuing of a temporary residence permit to a foreign national in the context of family reunification. The Court held that: 'a temporary residence permit may be issued to a foreign national who is not a citizen of a Member State of the European Union or the European Free Trade Association not exclusively in cases where an opposite-sex family member of such a foreign national resides in the Republic of Lithuania, ... but also in cases where a same-sex family member of such a foreign national resides in the Republic of Lithuania, i.e. a person with whom a marriage or registered partnership has lawfully been concluded in another state and who is a citizen of the Republic of Lithuania or a foreign national (not a citizen of a Member State of the European Union or the European Free Trade Association) holding a residence permit.' The Court also elaborated on sexual orientation and gender identity as the grounds that may not be explicitly mentioned in the text of the Constitution, but based on which discrimination is prohibited by the equality principle. The Court held that: 'Article 29 of the Constitution, under which, as mentioned before, one of the forms of prohibited discrimination is the restriction of the rights of a person on the grounds of his/her gender identity and/or sexual orientation, or with Paragraphs 2 and 3 of Article 21 of the Constitution, which protect human dignity and prohibit its degrading.' Available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1915/content>.

²¹ Lithuania, Law on the Constitutional Court (*Lietuvos Respublikos Konstitucinio Teismo įstatymas*), 1993, No. 6-120, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.DEFB2C5600E3/asr>.

'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.'²²

Besides the ruling mentioned, the Constitutional Court elaborated on the non-discrimination principle in its conclusion of 24 January 1995:

'The Constitutional Court argues that the word-for-word comparison of the texts of the second paragraph of Article 29 of the Constitution and Article 14 of the Convention allows the assertion that the Convention provides for more extensive non-discrimination guarantees, because it prohibits discrimination also on the basis of colour, association with a national minority, property, birth or other status. However, it is necessary to take into consideration the essential identity of the constitutional norms and the norms of the Convention concerning non-discrimination of people on any ground, and not the differences in verbal expression of separate non-discrimination indications.

... Consequently, a complex and not formalistic word-for-word comparison of the provisions of the Constitution and the Convention allows one to make the conclusion that Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not contradict the Constitution of the Republic of Lithuania.'²³

Other constitutional clauses relating to equality and non-discrimination are as follows:

- 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 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 clauses outline rights that are enjoyed solely by 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 the State service of the Republic of Lithuania.'

- 4) According to Article 37,

²² Ruling of the Constitutional Court of the Republic 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>.

²³ Conclusion of the Constitutional Court of Lithuania, No. 22/94, 1995 (*Dėl Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 4, 5, 9, 14 straipsnių ir jos Ketvirtąjo protokolo 2 straipsnio atitikimo Lietuvos Respublikos Konstitucijai*), available in English at: <http://www.lrkt.lt/en/court-acts/search/170/ta990/content>.

'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 that of the directives.

The Constitution is directly applicable. 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.' 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.

Regarding the enforcement of provisions of the Constitution against private individuals, 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 individuals.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives:

The Law on Equal Treatment covers gender, race, 'nationality',²⁴ citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion.²⁵

However, some laws only state the principle of equality as such, for example the Law on Education, while others provide a wide-ranging list of non-discrimination grounds. Article 2 of the Labour Code²⁶ lists the following grounds of equality of persons involved in employment relationships: gender, sexual orientation, race, ethnicity (or, as translated in LET, 'nationality'), language, origin, social status, belief,²⁷ marital and family status, intention to have a child or 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. This Article does not include citizenship as a ground, however it is included in other articles of the Labour Code, such as Article 59 (termination of employment contract by employer) and Article 75 (application of non-discrimination principle).

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.'²⁸

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

²⁴ The term used in LET is *tautybė*, which refers to belonging to a national minority and is not used with the meaning of 'citizenship'.

²⁵ 'Citizenship' was added to the list in 2017 as a result of the transposition of Directive 2014/54/EU and only applies to citizens of the EU and EEA countries and their family members (partners, however, are not explicitly included).

²⁶ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

²⁷ The term 'belief' should be understood as covering religion.

²⁸ Lithuania, Criminal Code (*Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas*), 2000, No. 89-2741, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/ZpNMZQSaRN>.

'Instigates war propaganda, war or hatred, ridicule, or scorn, or instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, sexual orientation, ethnic origin, race, "nationality", citizenship, language, origin, social status, belief, convictions, views or religion' (Article 19).²⁹

2.1.1 Definition of the grounds of unlawful discrimination within the directives

The general rule is that national legislation does not provide definitions of equality grounds, with the exception of 'social status', 'disability' and 'citizenship', which are defined in different laws.

According to Article 2(8) of the Law on Equal Treatment, 'social status' is defined as the level of education attained by a natural person, his or her qualifications and characteristics related to that person's financial or economic situation (such as income or property ownership).

Citizenship was added to the list of protected grounds in the Law on Equal Treatment in 2017 as a result of the transposition of Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. In the context of the Law on Equal Treatment, it is explicitly defined that the ground of citizenship only applies to citizens of EU and EEA countries and their family members. However, the wording does not mention unmarried partners (neither opposite-sex nor same-sex partners).

a) Racial or ethnic origin

Neither the Law on Equal Treatment nor any other law provides definitions of race or ethnic origin. In the reports of the Equal Opportunities Ombudsperson, race, 'nationality', citizenship, language, origin and ethnic origin are always reported under the same headline and are dealt with as interrelated concepts. The Ombudsperson refers to the definition of racial discrimination provided in the UN Convention on the Elimination of All Forms of Racial Discrimination:

'As defined by the Convention, "racial discrimination" means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Therefore, such definition implies a possibility to claim that the characteristics of race, "nationality", origin, ethnic origin and language are highly related.'³⁰

As the report of the Equal Opportunities Ombudspersons states:

'Legal acts of the Republic of Lithuania do not provide any definition of the above-mentioned grounds, nevertheless, persons approaching the Office based on alleged discrimination on the ground of "nationality" very often indicate the grounds of origin and ethnic origin together. When applicants file complaints regarding alleged

²⁹ Lithuania, Law on the Provision of Information to the Public (*Lietuvos Respublikos Visuomenės informavimo įstatymas*), No. I-1418, 1996, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.222522/asr>.

³⁰ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.
Lithuanian Equal Opportunities Ombudsperson (2015), *Annual Report for 2015*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

discrimination based on the ground of language, they indicate the ground of "nationality". Therefore, the factual circumstances provided in the complaint help to identify the ground(s) based on which the investigations are started.³¹

In 2018, the Equal Opportunities Ombudsperson received 20 complaints regarding discrimination on the grounds of race, 'nationality', citizenship, language, origin and ethnic origin. Most complaints concerned alleged discrimination based on 'nationality' (ethnicity) (12), citizenship (4) and language (6). One investigation was started regarding racial discrimination, and investigations were started based on origin or ethnic origin in 2018.³²

Continuous discussions have been taking place regarding a possible definition of national/ethnic minority in the Law on National/Ethnic Minorities, but the Law has not been adopted since its cancellation in 2010. The previous Law on National Minorities, which was in force until 2010, did not provide any definitions.

There has not been any case law regarding discrimination on the ground of race, while the majority of cases before the Equal Opportunities Ombudsperson have concerned 'nationality' (ethnicity), language or ethnic origin. Due to the lack of jurisprudence, it is not possible to identify patterns in the interpretation of the grounds of race or ethnic origin by the courts in practice.

b) Religion and belief

The Law on Equal Treatment states that belief, convictions or views and religion are among the protected grounds, but it does not provide their definitions. There is no state religion in Lithuania. Article 26, parts 1 and 2, of the Constitution provides:

'Freedom of thought, conscience, and religion shall not be restricted.
Every person shall have the right to freely choose any religion or faith and, either individually or with others, in public or in private, to manifest his or her religion or faith in worship, observance, practice or teaching.'

The right to freely choose religion or belief is also described in the Law on Religious Communities and Associations, however it does not provide any definitions of belief, convictions or views and religion.³³ This leaves room for interpretation, because in the Lithuanian language these concepts are often treated as synonymous. The Constitutional Court has provided the following interpretation of convictions:

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

The freedom to have convictions means that an individual is free to form his own convictions, to choose world-view values, he is protected from any coercion, it is not permitted to exert control over his convictions. The duty of state institutions is to ensure and protect this freedom of individuals. The content of convictions is a private matter of the individual.³⁴

³¹ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

³² Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*.

³³ 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/asr>.

³⁴ 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>.

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

c) Disability

There is no legal definition of disability provided in the Law on Equal Treatment. Even though the Equal Opportunities Ombudsperson often refers to the text of the UN Convention on the Rights of Persons with Disabilities (UN CRPD), the only available legal definition of disability, which is provided in the Law on the Social Integration of Persons with Disabilities, is incompatible with the text of the Convention:³⁵

'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 the person's bodily functions and detrimental environmental factors.'³⁶

The definition does not necessarily affect the decisions of the Ombudsperson, but it is meaningful in relation to the application of reasonable accommodation measures and the recognition of who is eligible for state-supported measures, as the Law on the Social Integration of Persons with Disabilities and the Law on Equal Treatment are part of the legal system and do not function separately within it. The legal definition in the national law does not explicitly make reference to physical, mental or psychological impairments and their interaction with outside barriers. Although mentioning environmental factors partly adds an element of a social model of disability, it focuses very much on the impairments of an individual 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 person's state of health must be 'long term'. Such a definition goes beyond the definition given by the Court of Justice of the European Union and is in line with the reasoning of the CJEU in the joined cases C-335/11 and C-337/11, *Skouboe Werge and Ring*:

'a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.'³⁷

The United Nations Committee on the Rights of Persons with Disabilities expressed its concern 'that the definition and understanding of disability in State party laws and regulations focuses on the individual impairment, thereby neglecting the social and relational dimension of disability, including, in particular, the barriers faced by persons with disabilities', and urged Lithuania to change that.³⁸

Lithuania is a party to the UN CRPD and, according to the Article 138 of the Constitution, ratified international treaties are an integral part of the national system. Theoretically, the concept of disability provided for in the UN Convention on the Rights of Persons with

³⁵ The Law on the Social Integration of Persons with Disabilities has not been designed to transpose the EU non-discrimination directives into national legislation.

³⁶ 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>.

³⁷ Judgment of 11 April 2013, *Skouboe Werge and Ring*, joined cases C-335/11 and C-337/11, EU:C:2013:222, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-335/11>.

³⁸ UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssZC9ptKX1BBEFvI4q2fNHbisIoJQJExObNo%2b164VPCFXqGIA71mMejw37A6SN9XPufu0q0d%2bKAUo0n7OoJHqx8CIPsL3E3GfZp%2bYbsWbcFo>.

Disabilities should be applicable, as, in the case of any clash, the provisions of the international treaties should be applied.³⁹ Article 1 of the Convention states:

‘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 the UN Convention on the Rights of Persons with Disabilities in the Republic of Lithuania*.⁴⁰ According to this report, since medical definitions and a negative understanding of disability are 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.⁴¹

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’. Therefore, 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.

d) Age

National law does not provide definitions of ‘age’ and, to the knowledge of the author, these concepts have not been elaborated upon in the courts either. The Ombudsperson’s report states that:

‘Discrimination on the ground of age is often associated only with discrimination against older people. The age at which a person is considered to be of ‘older age’ depends on many aspects, but the set of circumstances outlined in the complaints suggests that younger and older people may suffer less favourable treatment.’

e) Sexual orientation

National law does not provide definitions of ‘sexual orientation’ and, to the knowledge of the author, such concepts have not been elaborated upon in the courts either.

The Supreme Court has referred to discrimination on the ground of sexual orientation in 2016 mostly in quoting decisions of the European Court of Human Rights. It emphasised that the ECtHR has repeatedly held that discrimination based on sexual orientation is as serious as racial or ethnic discrimination. The Supreme Court also held that:

³⁹ 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.

⁴⁰ Lietuvos Neįgaliečių 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_tesiu_konvencijos_Alternatyvioji_ataskaita.pdf.

⁴¹ Lietuvos Neįgaliečių 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.

'The ECHR has repeatedly held that, just like differences based on sex, differences based on sexual orientation require "particularly convincing and weighty reasons" by way of justification (see *Smith and Grady v. United Kingdom*, appl. No. 33985/96, 33986/96, ECHR-1999, § 90; *L. and V. v. Austria*, appl. No. 39392/98, 39829/98, § 45 ECHR 2003-1, cited in *Valliantos and others v. Greece*, § 77). Where a difference in treatment is based on sex or sexual orientation the State's margin of appreciation is narrow. Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *E.B. v. France*, Appl. No. 43546/02, § 93, 96; cited in *Valliantos and others v. Greece*, § 77).'⁴²

2.1.2 Multiple discrimination

In Lithuania, multiple discrimination is not prohibited in the law.

In Lithuania, there is no case law dealing with multiple discrimination. However, the Ombudsperson mentions the examination of multiple discrimination cases in its annual reports.

In its annual report in 2018 as well as in previous years, the Ombudsperson mentions a few examples of multiple discrimination. The 2018 report indicates that 'almost 30% of all investigations regarding age discrimination were related also to discrimination based on other grounds – social status, gender, disability, "nationality" and language. Discrimination based on gender often appears in job vacancy announcements, where among requirements for age, a requirement for candidates to be of a certain gender appear (usually looking for women).'⁴³ 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.⁴⁴

However, there are no special rules or procedures regarding the investigation of multiple discrimination cases by the Ombudsperson, nor there are instructions for the application of more severe sanctions or information on more severe sanctions in cases of multiple discrimination.

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.'⁴⁵

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

⁴² Supreme Court of Lithuania, *N.M. v. Lietuvos edukologijos universitetas*, civil case No. e3K-3-497-611/2016, 6 December 2016.

⁴³ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

⁴⁴ Available in Lithuanian at: <http://www.lygybe.lt/lt/atmintinedarbdaviams>.

⁴⁵ 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.

regard and, in the view of the author of this report, there are no plans in Lithuania for the adoption of rules in the field of anti-discrimination that deal with cases of multiple discrimination.

There are plans to prohibit multiple discrimination under the Law on Equal Treatment. The Ombudsperson suggested certain amendments to the Law on Equal Treatment in its 2018 annual report. However, no legal amendments were registered in 2018.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Lithuania, discrimination based on a perception or assumption of a person's characteristics is not explicitly prohibited in national law. However, Article 2(9) of the Law on Equal Treatment could be interpreted as prohibiting discrimination based on perception or assumption of what a person is.

Article 2(9) of the Law 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", citizenship, 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 in the Equal Opportunities Ombudsperson's decisions, according to the current information available to the author.

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

b) Discrimination by association

In Lithuania, discrimination based on association with persons with particular characteristics is not explicitly prohibited in national law, therefore judicial interpretation is required on the Law on Equal Treatment, Article 2(9). 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*.⁴⁶ Therefore, the wording should also be interpreted as has been established by Case C 83/14, *CHEZ Razpredelenie Bulgaria AD v. Komisija za zashtita ot diskriminatsia*, such that a person can suffer discrimination together with a certain group without belonging to it.

However, in the past, the Equal Opportunities Ombudsperson did not consider this wording to be sufficient. 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.⁴⁷ The Ombudsperson did not elaborate on any proposed wording. This proposal has not been registered as a draft law in the Parliament, however, and therefore it is uncertain whether it will be adopted in the near future.

⁴⁶ Judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, case C-303/06, EU:C:2008:415, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

⁴⁷ Lithuanian Equal Opportunities Ombudsperson (2012), *Annual Report of the Equal Opportunities Ombudsperson for 2012*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

The author 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.

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

a) Prohibition and definition of direct discrimination

In Lithuania, direct discrimination is prohibited in national law. It is defined. Article 2(9) 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”, citizenship, 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. It is important to note that, in interpreting the Law on Equal Treatment, disability is a symmetrical ground, which means that persons without disability could be considered as being discriminated against in cases when jobs are reserved for persons with disabilities. However, no such discrimination cases are known to the author.

Under the heading ‘Discriminatory Advertisements’, Article 11 of the Law on Equal Treatment explicitly states that announcements that advertise job vacancies or civil service or education opportunities that give preference to candidates of a particular gender, race, “nationality”, citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion are prohibited, 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 a regular basis. Most of the investigations conducted in the sphere of employment have concerned discriminatory job vacancy announcements. In most of the 140 cases in 2018 when the Ombudsperson contacted employers after receiving information about discriminatory job vacancy announcements, it did not begin any investigation. However, investigations were commenced in three cases, as the employers refused to amend their job announcements.⁴⁸ The Ombudsperson noted that the number of such announcements in 2018 was lower than it had been before and that, ‘after contacting the employers in most cases employers changed the announcements or deleted them’. Usually these advertisements are placed on online jobseekers’ platforms, and the administrators of such platforms claim they have no control over the content of individual advertisements. The Ombudsperson suggested that national legislation should be amended to specify their liability for the discriminatory content.⁴⁹

⁴⁸ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

⁴⁹ Equal Opportunities Ombudsperson (2016), *Annual Report for 2016*, available at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

When it comes to defending rights in court, the situation is different. In 2013, the Supreme Administrative Court of Lithuania upheld its reasoning in previous cases, that only those persons whose rights are or have been directly affected have a right to initiate proceedings in the court.⁵⁰ 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 the public interest. However, the Ombudsperson usually responds regarding any job announcement notified to them by NGOs without having an individual person or persons claiming that their rights have been violated. If there has been a refusal to change the wording of the announcement or to remove it, the Ombudsperson may start an investigation on their own initiative.

Apparently, not all discriminatory public announcements or statements can be considered illegal. According to case law, general discriminatory oral statements would not fall under the scope of the Law on Equal Treatment. In 2008, during the EU-wide campaign 'For Diversity. Against Discrimination', an event focusing on different grounds of discrimination, among them discrimination against LGBT persons,⁵¹ was refused permission by the then mayor of Vilnius, who publicly stated that, while he remained in office, 'there will be no advertisements for sexual minorities'. A month previously, 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 the decision at the administrative court. The court approved the reasoning of the Ombudsperson, that the 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 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.⁵² No further action has been taken regarding the case.

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 CJEU were made, and the courts mainly focused on the issue of whether a mayor could be considered 'a municipal agency or institution' within the meaning of the Law on Equal Treatment and under administrative law. However, in previous years, the Ombudsperson had investigated oral statements by civil servants (particularly on the ground of gender) and found them to be discriminatory.⁵³ 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 the more recent case law of the CJEU.⁵⁴

b) Justification for direct discrimination

The Law on Equal Treatment does not generally permit the justification of direct discrimination, but it provides an exhaustive list of exceptions, specifically adjusted to

⁵⁰ Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, 7 November 2013.

⁵¹ For further information, see https://europa.eu/rapid/press-release_IP-08-976_en.htm.

⁵² Supreme Administrative Court of Lithuania, case No. A⁶⁶²-665/2010, 19 April 2010.

⁵³ Lithuanian Equal Opportunities Ombudsperson (2008), *Annual Report of the Equal Opportunities Ombudsperson 2008*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁵⁴ Judgment of 25 April, *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, case C-81/12, EU:C:2013:275, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-81/12>.

particular grounds. Specific exceptions to direct discrimination as established by the Law on Equal Treatment are set out in Chapter 4.

However, the Ombudsperson recommends establishing certain exceptional justifications in the provision of goods and services for persons of certain ages, with a disability or of a certain social status:

'In certain cases, based on the assessment of a person's age or disability or the material conditions of people belonging to a particular social group, limited legal capacity, need for financial support, the granting of preferences for the acquisition of goods and services could be justified, although the Law on Equal Treatment does not justify the provision of such benefits. Therefore it is suggested that the Law on Equal Treatment be supplemented with provisions establishing exceptional situations in which the provision of goods and services exclusively (or primarily) to persons of certain characteristics can be justified by a legitimate aim, and the means to achieve that aim are appropriate and necessary, and such situations would not be considered a more favourable treatment.'⁵⁵

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 under 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.⁵⁶ The same concept is applied in administrative procedures. As was proven by case law,⁵⁷ a court would accept evidence based on the use of situation testing, but it would not be treated as evidence of high probative value.

It is also important to note that the Code of Civil Procedure, at Article 177 p. 3, establishes that pictures, audio and video recordings can serve as means of evidence if they are obtained without violating the law. The Supreme Court of Lithuania elaborated on this provision: 'when establishing a violation of privacy of a person, it is important to establish whether a person who invokes a violation of their right to privacy does not abuse this right or does not act unfairly. If it is established that a person is acting unfairly and aims to hide such behaviour, the Court can refuse to protect their right to privacy'.⁵⁸

b) Practice

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 author is not aware of recent cases where situation testing would have been applied.

⁵⁵ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

⁵⁶ Lithuania, Code of Civil Procedure (*Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas*), 2002, No. 36-13640, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454/LdHBgHfrhz>.

⁵⁷ Vilnius Regional Court Lithuania, *S. Marcinkevici v. UAB Disona*, case No. 2-1189-545/2008, 30 June 2008.

⁵⁸ Supreme Court of the Republic of Lithuania, *R.T. v. I. Martikonienės II*, case No. 3K-271/2006, 19 April 2006, <https://eteismai.lt/byla/127397584883189/3K-3-271/2006>.

The latest example comes from 2015, when an LGBT organisation was attempting to hire a bus for a Pride event.⁵⁹ A private company refused to rent out a bus to the LGBT organisation, claiming that all buses were rented out for the upcoming months. A representative of the organisation called 10 days later, pretending to call as a private person, inquiring about the possibility of renting the same bus for the same full day as the LGBT organisation 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 was not brought before the court by either side of the dispute.

So far, only one case of discrimination has been brought to court following the use of situation testing.⁶⁰ 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 had occurred in the recruitment of women by a café. A Lithuanian woman of a similar age as the complainant was sent to the café a few hours after the Roma woman was told that the position was no longer vacant. The Lithuanian woman was immediately accepted. The results of the situation testing were approved by a bailiff and later used in court to successfully challenge discriminatory behaviour.

This was a pilot case for the situation testing method, although no later cases of situation testing have been brought to the court, as far as is known to the author. National human rights NGOs lack the 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 be hindering 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(5) 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”, citizenship, language, origin, social status, belief, 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

⁵⁹ 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-deli-galimos-diskriminacijos-lytines-orientacijos-pagrindu-teikiant-autobuso-nuomos-paslaugas.pdf>.

⁶⁰ Vilnius Regional Court, *S. Marcinkevici v. UAB Disona*, case No. 2-1189-545/2008, 30 June 2008.

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). Furthermore, it is not clear how the provisions in the Law on Equal Treatment will be interpreted in the 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 indirect discrimination case law is scarce.

The existing jurisprudence of the Constitutional Court suggests that a 'legitimate aim' must be 'constitutionally justified'.⁶¹ 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 the courts. However, the Equal Opportunities Ombudsperson clearly states the link between requirements to know a particular language and indirect discrimination based on ethnic origin.⁶² The Ombudsperson recently explained that the requirement adopted by the Minister of Education and Science to increase the number of teaching staff with less than 20 years of experience constitutes indirect discrimination based on age. One of the reasons was that this requirement was not established by law and was neither justified nor necessary.⁶³

2.3.1 Statistical evidence

a) Legal framework

In Lithuania, there is legislation regulating the collection of personal data.

Statistical evidence in order to establish indirect discrimination is not explicitly permitted or prohibited by national law.

In general, personal data collection must proceed under the requirements of the Law on the Legal Protection of Personal Data and, since the entry into force of the new version of the Law in 16 July 2018, it must also adhere to the requirements of the General Data

⁶¹ Ruling of the Constitutional Court of the Republic of Lithuania of 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“*).

⁶² Lithuanian Equal Opportunities Ombudsperson (2016), *Annual Report of the Equal Opportunities Ombudsperson of 2016*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁶³ Decision of the Equal Opportunities Ombudsperson No. (18)SI-7)SP-86, 4 September 2018 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos amžiaus pagrindu Lietuvos Respublikos švietimo ir mokslo ministro 2018 m. kovo 26 d. įsakymo Nr. V-267 "Dėl Lietuvos Respublikos 2018 metų valstybės biudžeto lėšų, skirtų išlaidoms, susijusioms su pedagoginių darbuotojų skaičiaus optimizavimu, apmokėti, paskirstymo tvarkos aprašo patvirtinimo" nuostatų tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/09/sprendimas-86.pdf>.

Protection Regulation (GDPR).⁶⁴ As GDPR is directly applicable in Lithuania, the collection of personal data must be carried out in conformity with its requirements.

The general rule according to the GDPR is that the processing of data is lawful if a 'the data subject has given consent' (Article 6(1a)). The Regulation also specifies conditions for consent. All 'factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity' of a person are considered to be personal data (Article 4(1)). GDPR generally prohibits the processing of special categories data, which is 'personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, ... data concerning health or data concerning a natural person's sex life or sexual orientation' (Article 9(1)). This general rule prohibits the collection of such data, with exceptions provided by the GDPR. Among these are when the person 'has given explicit consent to the processing of those personal data' or 'processing is necessary for the establishment, exercise or defence of legal claim' (Article 9(2(f,a))).

Special categories data can also be collected for statistical purposes (Article 9(2f)), but with safeguards established by the Article 89(1), for example by pseudonymisation of the person, ensuring that the data subject will not be identified further.

Therefore, in the opinion of the author, the collection of certain data for the purpose of proving indirect discrimination is restricted in practice.

Although there are no special restrictions on the use of data on gender, the use of data on racial or ethnic origin, data concerning health or sexual orientation seems to be allowed only under certain exceptions established by the GDPR.

In Lithuania, statistical evidence is permitted by national law in order to establish indirect discrimination. No requirements for the usage of statistical evidence to establish indirect discrimination are established by law. However, due to a lack of case law in the field of discrimination, it is hard to state how the use of such evidence would be valued in court.

b) Practice

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

The lack of proper statistical data is one of the obstacles to assessing discrimination at national level. The state institutions use statistical data to draw up strategic documents, such as the action plans for the promotion of non-discrimination, the integration of Roma persons and equal opportunities for women and men. The data are mostly based on surveys, and research and surveys are usually performed by private companies, on the basis of service contracts. The 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-

⁶⁴ 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>.

2014.⁶⁵ However, since the plan was not finally approved, no funding was allocated to implement it.

In 2011, the Ombudsperson managed to take a small step forward, with the support of EU PROGRESS funding. It implemented a project, one outcome of which was an analysis of statistical indicators in Lithuania, and the Ombudsperson also made some recommendations.⁶⁶ The research once again highlighted the fact that an equality data collection system in Lithuania is not yet established, and the data sets 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, involving both NGOs and scientists.

In June 2018 a new Action Plan for 2018-2021 on the Implementation of the State Programme on Equal Opportunities for Women and Men 2015-2021 was adopted. It provides for the collection of data on the situation of disabled women for the purpose of monitoring the implementation of the Convention on the Rights of Persons with Disabilities.⁶⁷

The Action Plan for the Promotion of Non-discrimination 2017-2019 based the planning of the strategic document on statistical data, and it also contained a few measures for collecting data to evaluate the situation of vulnerable groups, including the carrying out of research on the situation of persons belonging to the LGBT community in society at large and on the protection of their private life.⁶⁸ There is no overview of the results of the Action Plan's implementation, and the author could not find any research evaluating the situation of persons belonging to the LGBT community on the website of the Office of the Equal Opportunities Ombudsperson – it having been mentioned in the Action Plan that the Ombudsperson was responsible for its implementation.

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 (Article 2(1)) provides a general definition of discrimination which, among other things, specifies that harassment is a form of discrimination. In addition, Article 2(7) of LET provides a definition of harassment in compliance with the definition outlined in the directives. Article 2(7) reads as follows:

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

⁶⁵ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁶⁶ 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.

⁶⁷ Lithuania, Order of the Minister of Social Security and Labour on the adoption of the Action Plan for 2018-2021 on the Implementation of the State Programme on Equal Opportunities for Women and Men 2015-2021, 27 June 2018, available at: <https://www.e-tar.lt/portal/lt/legalAct/571f9fe079d711e8ae2bfd1913d66d57>.

⁶⁸ Lithuania, Order of the Minister of Social Security and Labour on the adoption of the Action Plan for the Promotion of Non-discrimination 2017-2019, 15 May 2017, available at: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363>.

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

A definition of sexual harassment is provided in the Law on Equal Opportunities of Women and Men, Article 2(6): it 'means any form of unwanted and insulting verbal, written or physical conduct of a sexual nature with a person, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, humiliating or offensive environment.' The Law also defines sexual harassment as a form of discrimination. The law does not mention explicitly whether the sexual harassment of a person in a same-sex context would constitute sexual harassment, but as the provision is sex-neutral, it should be considered as prohibited by the Law.

However, the prohibition of harassment does not fully comply with the EU directives, and gaps exist in the material scope: harassment is not explicitly prohibited in relation to the supply of goods and services. The Ombudsperson provided recommendations to amend the Law on Equal Treatment prohibiting harassment in the provision of goods and services.⁶⁹

Codes of conduct are not widespread in Lithuania; however, diversity charters were launched in around 30 companies and organisations in 2018. 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. Very often, non-discrimination is addressed only by the general provisions on equality and impartiality that are embodied in the codes. In some instances, harassment and sexual harassment are mentioned but not defined.

A court found in 2018 that the decision of the Equal Opportunities Ombudsperson to recognise harassment on the ground of disability in employment was justified. The court explained that 'In order to be able to establish the facts of harassment of a person on ground of disability in a particular situation, it is necessary to establish that the applicant's inappropriate behaviour towards the employee was due to the latter's disability' (decision of the Supreme Administrative Court of 2015.10.27 in administrative case No. A-1543-143 / 2015). In examining the validity of part of a contested decision in the light of the Law on Equal Treatments (Article 7(6)), it must be established that the proposal to terminate the contract of employment by agreement between the parties was made precisely because of the applicant's disability.⁷⁰

The practice of the Equal Opportunities Ombudsperson is also limited in this respect, but it is worth mentioning a decision of the Ombudsperson taken in 2018. An actor from the National Kaunas Drama Theatre filed a complaint regarding the actions of an employer after he presented the findings of the Disability and Working Capacity Assessment Office (NDNT) on his disability. 'Upon receipt of this information, the employer has submitted the employee a proposal to change the employment contract, setting a working time of 20 hours per week (instead of 40 hours), and informed him that, according to the Labour Code, the employee's refusal to work under the changed working conditions may be considered a cause to terminate the employment contract. ... The decision of the Ombudsperson noted that the legal framework regulating labour relations and occupational safety and health requirements do not establish a direct link between the level of capacity and workload and / or nature of the work, and therefore the ability of a person with a disability to work in a specific workplace can be determined by the family doctor or a doctor of occupational medicine.' Therefore, the Ombudsperson found that

⁶⁹ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁷⁰ Vilnius Regional Administrative Court, decision in administrative case No. EI-1014-535/2018, 07.03.2018, available in Lithuanian at: <https://eteismai.lt/byla/160970553233117/eI-1014-535/2018>.

'the actions of the employer created an intimidating and humiliating environment for the applicant, uncertainty regarding his work and working conditions, restricted his ability to feel safe and dignified in the workplace and therefore constituted harassment of the applicant based on his disability.'⁷¹

b) Scope of liability for harassment

In Lithuania, where harassment is perpetrated by an employee, 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 under which it is addressed. If discrimination is addressed via provisions of criminal law, the liability is personal – only a direct perpetrator (whether a natural or legal person) could be liable. In contrast, the 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. Tenants, customers and employees cannot be held liable. In its annual reports, the Ombudsperson has recommended amending the Law on Equal Treatment with provisions explicitly extending the scope of liability of persons.⁷² The same would apply for the 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.⁷³

The employee can be held liable only by an employer applying the Labour Code, as harassment based on gender or sexual harassment, discriminative actions or violations of the honour and dignity of other employees or third parties during work or at the workplace would be considered a grave violation of working duties and a reason to terminate the employment contract.⁷⁴

Harassment in the sphere of access to or the supply of goods and services should be explicitly prohibited under the Law on Equal Treatment. A similar recommendation was made by the Equal Opportunities Ombudsperson in their *Annual Report for 2018*.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

LET (Article 2(1)) defines discrimination as follows:

⁷¹ Decision of the Equal Opportunities Ombudsperson No. (18)SN-110)SP-60, 14 July 2018 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos negalios pagrindu darbo santykių srityje BĮ Nacionaliniame Kauno dramos teatre tyrimo*), available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2018/08/sprendimas-18sn-110sp-60.pdf>.

⁷² Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁷³ Lithuanian Equal Opportunities Ombudsperson (2010), *Annual Report for 2010*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁷⁴ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

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

In addition, Article 2(10) of LET explicitly states that instructions to discriminate are considered to be discrimination, as defined in Article 2(5) on indirect discrimination and Article 2(9) on direct discrimination. Therefore, instructions to discriminate directly or indirectly are considered to be discrimination, although LET does not elaborate on or provide an explanation of what particular actions could be considered as instructions.

b) Scope of liability for instructions to discriminate

In Lithuania, the instructor and/or discriminator is liable, i.e. the executive body of a legal person, but not the employee who instructs another employee.

As mentioned in Section 2.4 above, there is both a lack of clarity and inconsistency in the case law. When applying administrative sanctions, the Equal Opportunities Ombudsperson issues them to the executive body of the relevant 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. Tenants, customers and employees cannot be held liable. In its annual reports for 2009 to 2011, the Ombudsperson recommended amending the Law on Equal Treatment to introduce provisions explicitly extending the scope of liability of persons.⁷⁵ Therefore, it appears that an individual employee or representative of an education institution could not be held liable under the application of the Law on Equal Treatment.

It is not clear whether a service provider would be held liable for an instruction to discriminate, as this is not explicitly stated under the article regulating the duties of service providers in the Law on Equal Treatment.

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 and is not defined.

The duty to provide reasonable accommodation was initially contained in the Law on Equal Treatment, and the same wording was repeated in the Labour Code in Article 26(2).⁷⁶ However, this wording lacks precision and is somewhat 'narrower' than that of the directive. Article 7(9) of 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.'

⁷⁵ Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

⁷⁶ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

The legal framework does not provide any criteria for assessing the extent of the duty of the employer, nor does it give any explanation what 'disproportionate burden' for an employer means. Financial assistance from the state in this regard is not taken into account in the legislation.

In addition, the Law on Equal Treatment and the Labour Code neither define disability nor do they provide explanations about '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 LET). The term 'reasonable accommodation' is not explicitly defined in the Law on Equal Treatment.

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.

However, since there is neither a definition of 'disability' nor one of 'reasonable accommodation' in the Law on Equal Treatment, there is a risk that too narrow an interpretation of the duty could mean that a person may only benefit from an employer making 'reasonable accommodation' in cases where the definition of 'disability' provided in the Law on the Social Integration of Persons with Disabilities applies. Nevertheless, as mentioned before, the definition of 'disability' within the Law on the Social Integration of Persons with Disabilities has been criticised by the UN Committee on the Rights of Persons with Disabilities and has not been amended, even though it was initially planned to be amended by 2017, as indicated in the national plan for the implementation of the CRPD's recommendation.⁷⁷

There is no clear mechanism provided in national law for the enforcement of the duty to provide 'reasonable accommodation' in court practice. The law does not provide criteria for assessing an employer's duty or evaluating what can be considered as a proportionate burden – or when it can be considered disproportionate.

However, the Ombudsperson applies the concept of 'individualised assessment' instead of a general rule when examining complaints, and an example from the *Annual Report for 2018* will be analysed in part (b) below.

The UN Convention on the Rights of Persons with Disabilities 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, this provision, as such, lacks precision for its practical application in courts in particular cases. In this respect, it is very similar to the national provision of the Law on Equal Treatment. However, it does provide definitions of 'reasonable accommodation' and 'universal design'.

In conclusion, as there is no definition of 'reasonable accommodation' and the transposition of the directive might be too narrow, there is a risk that employers might have no duty to take individualised measures to accommodate the needs of a specific person with a disability in a specific situation or context, especially if the person has a minor disability that would not fall under the regulation of another law, as there are only general duties to provide accessible workplaces under the legislation.

⁷⁷ Lithuania, Order of the Minister of Social Security and Labour on the adoption of the Action Plan for Implementation of the Recommendations of the UN Committee on the Rights of Persons with Disabilities 2016-2020, 9 November 2016, available at: https://socmin.lrv.lt/uploads/socmin/documents/files/veiklos-sritys/socialine-integracija/neigalieji/12068_jt-rekomendaciju-igyvendinimo-planas-po-suinteresuotu-galutinis.pdf.

However, as yet, there is not much case law from the courts clarifying the application of the principle of 'reasonable accommodation' within employment, and most of the cases discussed in this report were examined by the Equal Opportunities Ombudsperson.

b) Practice and case law

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 Ombudsperson has analysed two complaints in 2018 that could contribute to the interpretation of the principle of 'reasonable accommodation'. Complaints were submitted by a person who had partial work ability, as established by a competent institution, and was applying for a position of a cashier/salesperson in two shops. In both cases, the Ombudsperson found that there had been discrimination in the field of employment based on the person's disability. The Ombudsperson noted that:

'The essential criteria in decision making by an employer should be an individualised assessment of a person's ability to perform a particular job, when evaluating whether a person would be able to perform the functions assigned to him/her.'

The Ombudsperson stressed that the 'international and national legal framework imposes an obligation on the employer to ensure that persons with disabilities would not be discriminated against when applying for a job, by ensuring that their workplace and conditions are adapted. Failure to comply with this obligation constitutes discrimination in the field of employment against persons with disabilities.'⁷⁸

However, the author is not aware of recent case law that would interpret 'reasonable accommodation' in employment. The lack of case law still contributes to legal uncertainty over how the definition should be interpreted and what would be considered a 'disproportionate burden' for an employer.

c) Definition of disability and non-discrimination protection

There is no separate definition of disability, either for claiming protection from discrimination or for the purpose of claiming a reasonable accommodation. The general definition of 'disability' is provided in the Law on the Social Integration of Persons with Disabilities.

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

In Lithuania, a failure to meet the duty of reasonable accommodation does count as discrimination, although this is not explicitly stated in the Law on Equal Treatment. Case law allows this conclusion.

However, the CRPD provided a recommendation for Lithuania to 'Recognize the denial of reasonable accommodation as a form of discrimination on the basis of disability'.⁷⁹

⁷⁸ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

⁷⁹ UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssZC9ptKX1BBEFvI4q2fNHbisIoJQJExObNo%2b164VPCFXqGIA71mMejw37A6SN9XPufu0q0d%2bKAUo0n7OoJHqx8CIPsL3E3GfZp%2bYbsWbcFo>.

As analysed in Section 2.6(b), the Equal Opportunities Ombudsperson considers that failure to ensure that the workplace and conditions are adapted/accommodated to ensure a person's access to that workplace constitutes discrimination in the field of employment against persons with disabilities.⁸⁰ Besides this, the author is not aware of cases in which the courts have elaborated on the concept of what is 'reasonable' or have given any reasoning regarding the failure to meet the duty of reasonable accommodation as direct discrimination, or where they have elaborated on the proportionality of the burden for employers.

In 2014 the first case explicitly concerning a failure to provide reasonable accommodation was adjudicated in court.⁸¹ 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 performer in a choir by the administration of the ensemble in 2013, due to his state of health. 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 his state of health and stated the potential risk factors that might have an effect on his state of health. According to the assessment, the person was not allowed to work at a job in a position where permanent standing or walking was required or if leaning or lifting weights of more than 15 kg (among certain other motions) were necessary.

Given that, according to the Labour Code as well as the Law on the Health and Safety of Workers, the decisions of the Disability and Working Capacity Assessment Office were binding on 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 the choir performer filed a complaint with the Equal Opportunities Ombudsperson, it appeared that the position of the choir performer did not require constant standing, and that the employer had not even considered any possible adjustments of working conditions for the complainant. The Ombudsperson stated that the employer had failed in its duty to provide reasonable accommodation, and therefore found a breach of the Law on Equal Treatment, as well as violation of 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.

The choir performer, V.J., applied to the county court, which found the dismissal to be direct discrimination. The case was then brought to Vilnius Regional Court.⁸² The court of appeal upheld the decision of the first instance court and ruled that V.J. had been discriminated against on the basis of disability.⁸³ The court upheld the reasoning of the court of first instance, stating that 'although the decisions of the Disability and Working Capacity Assessment Office ... 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 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 V.J.'s ability to work or that it had considered adjusting V.J.'s working conditions in order for him to continue his work as a choir performer.

⁸⁰ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

⁸¹ Vilnius Regional 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: <https://eteismai.lt/byla/276850064617444/2A-557-640/2014>.

⁸² Vilnius Regional 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: <https://eteismai.lt/byla/276850064617444/2A-557-640/2014>.

⁸³ The author was not able to access the first instance decision in the public court case law search database; the decision is not publicly available.

Therefore, the dismissal breached the requirements of the Law on Equal Treatment and of the Law on the Social Integration of People with Disabilities, and had discriminated against V.J. on the basis of disability.

As noted in Section 2.4(a), the Equal Opportunities Ombudsperson examined a similar complaint in 2018 against the National Kaunas Drama Theatre, which wanted to reduce the working hours of a person following a decision of the Disability and Working Capacity Assessment Office. Here, the Ombudsperson found that such behaviour constituted harassment based on the person's disability.

In another court case considered in 2018, even though the court did not analyse the failure to provide reasonable accommodation but ruled that there had been harassment based on the person's disability, it quoted the CRPD provisions on discrimination on the basis of disability, which 'includes all forms of discrimination, including denial of reasonable accommodation'. The court went further and provided examples of denial of reasonable accommodations, such as 'reasonable accommodation of the working place, setting certain working time models, allocating tasks or providing training or integration resources.'⁸⁴

Despite the court cases mentioned, it is difficult to draw a conclusion on whether the same would be applied in other cases. Therefore, since neither the Law on Equal Treatment nor the provisions of the Labour Code explicitly state that failure to provide reasonable accommodation would constitute discrimination, it would be useful to regulate this clearly in the Law on Equal Treatment and/or the Labour Code.

e) 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. However, such discrimination might be recognised in compliance with provisions of CRPD. The concept of 'disproportionate burden' with regard to providing reasonable accommodation is not known outside the field of employment.

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 Article 34(3), the Law on Education provides that 'Accessibility of education is ensured by adapting the school environment, providing psychological, special pedagogical, special and social pedagogical support, supplying with technical aid measures at school and special educational measures in other ways established by law.'⁸⁵ In addition, disabled students have the right to financial support granted by the state during their studies in further education establishments and universities. The concept of 'disproportionate burden' is not regulated in the field of education.

Even if the concept of 'reasonable accommodation' is not explicitly established in education and in the provision of goods and services by the Law on Equal Treatment, the duty to ensure access to education and goods and services can in some situations be interpreted as encompassing the concept. However, there is insufficient case law to draw any conclusion as to whether this duty is applied in the same manner as 'reasonable accommodation' in the field of employment.

⁸⁴ Vilnius Regional Court decision, case No. 2A-557-640/2014, 7 March 2018, (*Vilniaus apygardos teismo 2018 m. kovo 7 d. sprendimas byloje Nr. eI-1014-535/2018*), available in Lithuanian at: <https://eteismai.lt/byla/160970553233117/eI-1014-535/2018>.

⁸⁵ Lithuania, Law on Education (*Lietuvos Respublikos švietimo įstatymas*), 1991, No. I-1489, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

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

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

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 residency or citizenship/nationality requirements for protection under the relevant national laws transposing the directives.

The protection from discrimination should be valid for irregular or undocumented migrants and for persons under 18 years old in all spheres. The protection from discrimination in employment or social benefits, however, might not be covered for adult irregular migrants, even if they are asylum seekers, because they do not have a right to work in Lithuania. There has been no case law to provide a more thorough interpretation.

The protection from discrimination on the ground of citizenship applies to EU and EEA citizens and their family members.

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 persons. This is supported by the findings of the Equal Opportunities Ombudsperson as well as by other provisions under LET and by case law. For instance, on the provision on the shift of the burden of proof, Article 4 of the Law on Equal Treatment states that it should be applied while investigating complaints of discrimination submitted 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 according to the law. 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 based on Article 170 of the Criminal Code (incitement of hatred or hatred). Criminal liability for natural persons is covered in Article 169 of the Criminal Code (in the article on 'Discrimination on Grounds of "Nationality", Race, Sex, Descent, Religion or Belonging to Other Groups', where other grounds are also included).

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 the outcomes may also be applied to other grounds of discrimination). Two previous decisions contradicted each other: in one case, Vilnius Regional Administrative Court stated that only employers, not their representatives, could be held liable;⁸⁶ a month later, the Supreme Administrative Court of Lithuania ruled that, although the Law on Equal Opportunities did not *expressis verbis* provide a list of subjects who could be admonished, a systematic analysis of the Law on Equal Opportunities for Women and

⁸⁶ Vilnius Regional Administrative Court, case No. I-1278-624/2012, decision of 1 March 2012.

Men and of the 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.⁸⁷ This means that managers or heads of administration and other personnel with 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.

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

a) Protection against discrimination

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

b) Liability for discrimination

In Lithuania, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination.

The Law on Equal Treatment was designed with the particular purpose of transposing the requirements of the EU anti-discrimination directives into national legislation. The law does not make a distinction between the public and private sectors in the fields of employment, education and the provision of goods and services. In addition, it has a separate provision on public entities, Article 5, 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", citizenship, 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 or social protection, it does not exclude these fields either. It can be interpreted as encompassing these fields but, as described below, court interpretation might be needed for clarification.

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 and statutory office, for the five grounds. Judicial interpretation is required if self-employment is covered by the Law on Equal Treatment.

In relation to employment, the same requirements apply to the public sector as to 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.

According to the Law on the Legal Status of Foreigners,⁸⁸ foreigners granted refugee status and foreigners granted subsidiary protection are exempt from the obligation to

⁸⁷ Supreme Administrative Court of Lithuania, administrative case No. A⁸⁵⁸-403/2012, decision of 2 April 2012.

⁸⁸ Lithuania, Law on the Legal Status of Foreigners (*Įstatymas dėl užsieniečių teisinės padėties*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD>.

obtain a work permit, and thus can start to work under an employment contract as soon as they receive a residence permit in Lithuania. However, before asylum status and a Lithuanian residence permit are granted, they are not allowed to work in Lithuania. Since the asylum procedure takes months, in practice most of the people concerned are not allowed to work for a year or more after arrival. This inability to work during the asylum application procedure cuts down the opportunities for integration solutions for asylum seekers from the moment of their arrival in Lithuania and, when they are granted asylum in Lithuania, it makes it more difficult for them to access the labour market.⁸⁹

It is not fully clear whether discrimination is forbidden in self-employment, given that it is not explicitly mentioned in the Law on Equal Treatment and that legislation on particular professions (attorneys, notaries, etc.) lacks non-discrimination provisions. Thus, it depends on how the Law on Equal Treatment is interpreted.

In 2018 the Ombudsperson analysed a person's complaint regarding discrimination in employment based on the grounds of origin, citizenship and language. The applicant was seeking employment as a taxi driver, and had a certificate to carry out individual activities (considered as self-employment). The investigation of the complaint was terminated, because the Ombudsperson recognised that the contractual relation in question was not within the scope of the Law:

'The applicant's complaint indicated that there was supposed to be an employment relationship between him and the Company, whereas the head of the Company indicated taxi drivers are contracted by signing the joint activity (partnership) contracts.

Joint activity (partnership) contracts are not equated with a service or employment contract and therefore are not regulated by the Law on Equal Treatment.'⁹⁰

It is not clear if the example given might be interpreted otherwise by the courts. Usually in cases of self-employment, service provision contracts are signed. Nevertheless, the nature of the relationships should be also taken into consideration.

So far, however, there have been no rulings on self-employment by the courts, and it has not been explicitly mentioned 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 as regards 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. Judicial interpretation is required regarding 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. The same

⁸⁹ Lietuvos socialinių tyrimų centras (Lithuanian Social Research Centre) and Diversity Development Group (2016), *A Study of integration policy of foreigners, granted asylum in Lithuania*, available at: <http://www.diversitygroup.lt/wp-content/uploads/2017/03/Refugee-Integration-EN.pdf>.

⁹⁰ Decision of the Equal Opportunities Ombudsperson No. (18)SN-129)SP-77, 10 August 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos kilmės, kalbos ir pilietybės pagrindais UAB "Dallis" vykdant priėmimą į darbą tyrimo*), available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2018/08/sprendimas-nr.-77.pdf>.

wording was repeated in the Labour Code, Articles 2 and 26.⁹¹ Both laws do not explicitly include self-employment. However, the Law on Equal Treatment could be interpreted to cover it. The Law on Income Tax,⁹² which provides a list of activities related to self-employment or occupation (artists, performers, designers, etc.), does not have any references to anti-discrimination. On the other hand, the Labour Code is a *lex generalis* in the occupational sphere, and therefore its principles would apply in the absence of specific rules in other legislation.

The laws relating to specific professions, such as the Attorney Law,⁹³ the Law on the Healthcare System,⁹⁴ the Accountancy Law,⁹⁵ the Audit Law⁹⁶ and the Dentistry Law,⁹⁷ do not contain non-discrimination clauses, definitions of discrimination or any regulations on protection against discrimination, nor do they include a direct prohibition of discrimination on the grounds covered by the directives. However, the general principles of non-discrimination established in the Constitution and in the Law on Equal Treatment should apply.

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

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

According to Article 7 of the Law on Equal Treatment, the actions of an employer shall be deemed discriminatory if he or she applies less (or more) favourable terms of employment, payment for work or dismissal criteria to one employee or civil servant than to another. The same wording is repeated in the Labour Code under Article 26(2).⁹⁸

In the court case regarding the dismissal of a person in 2018, the court stated that:

'In the present case, the applicant relied the dismissal of the defendant on the ground that she did not provide information on her disability (the only and clear reason mentioned in the Act). Therefore, in the Court's view, such grounds for dismissal are directly related to discrimination against the employee and cannot be a reason for inappropriate results of the trial period and have an objective substantive effect on her dismissal.'⁹⁹

⁹¹ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

⁹² 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/wVGhEHdaRq>.

⁹³ 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/asr>.

⁹⁴ 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/ykTupWhxcs>.

⁹⁵ Lithuania, Accountancy Law (*Lietuvos Respublikos Būhalterinės apskaitos įstatymas*), 2001, No.99-3515, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.43178AA9832E/eGHQNZASDS>.

⁹⁶ Lithuania, Audit Law (*Lietuvos Respublikos Finansinių ataskaitų audito įstatymas*), 1999 m. No. VIII-1227, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9845F775C518/npJADmsHoX>.

⁹⁷ 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>.

⁹⁸ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

⁹⁹ Vilnius County Court (*Vilniaus apylinkės teismas*), *Viešojo įstaiga "Seimos medicinos ir paliatyvus gydymo centras" v. E.V.G.*, case No. e2-23430-727/2018, 6 November 2018, available in Lithuanian at: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=fb076a27-c3e1-4b09-988a-d28fef79d5b0>.

In the court's view, the employer had a duty to implement the principles of gender equality and non-discrimination on other grounds, in conformity with Article 26(1) of the Labour Code.

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 prohibits discrimination in vocational training outside the employment relationship, such as in adult lifelong learning courses or vocational training provided by technical schools or universities, based on the prohibition of non-discrimination in education.

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', although the law does not provide explanations as to what the concepts 'vocational training' or 'advanced vocational training' mean. The same wording is repeated in the Labour Code under Article 26(2)(2)).¹⁰⁰ Besides, according to Article 29 of the Labour Code, employers must respect the pursuit of a professional qualification by its employees and must take appropriate measures to facilitate training that is related to acquiring skills that are needed in ever-changing business, professional and working conditions.

The author is not aware of any case law on the matter. Therefore, judicial interpretation of the national legislation would clarify the application of the law.

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 regarding 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.

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

In Lithuania, national legislation does not explicitly prohibit discrimination in 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,¹⁰¹ does not explicitly state that social protection, including social security and healthcare, falls under the scope of the law. There are no particular provisions on this in LET, with the exception of a general duty to implement equal opportunities (Article 5), which reads as follows:

¹⁰⁰ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603. Article 26, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

¹⁰¹ Article 9 of the Law on Equal Opportunities for Women and Men explicitly states that discrimination on the ground of sex is prohibited in the field of social protection.

'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", citizenship, 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 was broad enough to include health services.¹⁰² Prior to 2014, the Ombudsperson had not investigated any social security cases with regard to grounds other than gender. However, in 2014 the Ombudsperson received 32 complaints from state pension recipients (former statutory officials and military personnel) with a general claim that they had been discriminated against because, from 2010 to 2013 (during the financial crisis), the Government reduced their state pension payments.¹⁰³ The group claimed that they had been 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 of 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 enact laws that would compensate state pension recipients for their loss of income because of reduced pensions.

In addition to this, social protection is mainly regulated by the Law on State Social Security Insurance.¹⁰⁴ 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 benefits,¹⁰⁵ health insurance and healthcare,¹⁰⁶ but these laws also lack non-discrimination provisions. The Law on the Healthcare System only provides a description of the principle of 'just healthcare' – as 'state-recognised healthcare conditions ensuring equal opportunities to seek health and as much as possible reducing the differences between those seeking it'.

However, based on the practice of the Ombudsperson, it can be held that healthcare is considered as a part of access to goods and services, with healthcare considered a public service. For example, in their annual report, the Ombudsperson states that:

'In 2018, in the area of consumer rights protection, no violations of accessibility took place, following investigation, regarding access to buildings where public and administrative, educational, healthcare or cultural services were provided, or goods were sold'.

¹⁰² Equal Opportunities Ombudsperson (2010), *Annual Report for 2010*, available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2016/02/lqkt-ataskaita-2010.pdf>.

¹⁰³ An overview of the case is provided in: Equal Opportunities Ombudsperson (2014), *Annual Report for 2014*, pp. 74-82), available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>. Decisions on the Ombudsperson's website are available only from 2015.

¹⁰⁴ 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>.

¹⁰⁵ Lithuania, Law on Social State Benefits (*Valstybinių šalpos išmokų įstatymas*), 1994, No. 96-1873, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f5ee93504a6e11e6b5d09300a16a686c/owltqajZOe>.

¹⁰⁶ Lithuania, Law on the Healthcare System, (*Lietuvos Respublikos sveikatos sistemos įstatymas*), 1994, No. I-552, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.E2B2957B9182/RNEbuYulPl>.

Therefore, this and other examples from the past complaints indicate that healthcare is considered to fall under the scope of the law according to the practice of the Ombudsperson. Nevertheless, it would be useful to have this explicitly regulated by the Law on Equal Treatment.

To conclude, there is a lack of clarity in the Law on Equal Treatment on the prohibition of discrimination in the field of social protection, including social security and healthcare. Lack of clarity causes inconsistencies and problems in the practical application of the law. There is no court case law that would help the interpretation of prohibition of discrimination on the grounds of race or ethnic origin. As mentioned above, the Law on Equal Opportunities for Women and Men explicitly prohibits discrimination based on sex within the social protection system. Therefore, uncertainty regarding race, ethnic origin and other equality grounds remains until the Law on Equal Treatment broadens its scope to the sphere of social protection.

a) 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 regarding social advantages as formulated in the Racial Equality Directive.

Nevertheless, complaints regarding social benefits are likely to be investigated by the Ombudsperson.

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 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.

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 the sale of reduced-rate tickets to pensioners by Vilnius City Municipality.¹⁰⁷ In 2015, the Equal Opportunities Ombudsperson investigated a few complaints regarding kindergarten benefit schemes.¹⁰⁸ The municipalities of three major cities decided to solve the problem of a lack of public kindergartens by financially compensating 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 were discriminatory 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 or indirect discrimination, issued a recommendation that municipalities should follow the general 'duty to implement equal opportunities' as formulated under Article 5 of the Law on Equal Treatment and amend the schemes.

¹⁰⁷ Equal Opportunities Ombudsperson (2011), *Annual Report for 2011*, available in Lithuanian at: <http://www.lygybe.lt/lt/metines-ataskaitos/405>.

¹⁰⁸ Decisions of the Equal Opportunities Ombudsperson with regard to social status, available in Lithuanian at: <http://www.lygybe.lt/lt/socialine-padetis-pazymos>.

A complaint regarding a decision of the Council of Klaipėda City Municipality was investigated in 2018. The decision granted free access to the services of the Klaipėda Fitness Centre for senior persons, persons with disabilities, athletes (up to the age of 28) and swimming veterans. The Ombudsperson noted:

'When assessing exceptional conditions for the use of services for senior persons (retired persons) ... free of charge, it was decided that, based on higher morbidity of senior persons and persons with disabilities, their limited financial capacity, these groups have objectively different conditions, are in a different social, economic, financial environment, therefore cannot be compared to other groups of persons without these characteristics (younger persons and persons without disabilities). Based on the above, it has been established that there is no legal basis to assess whether persons of retirement age or persons with disabilities are treated more favourably in the area of consumer protection. For this reason, this part of the complaint was considered to be unfounded as the infringements referred to in the part of the complaint were not confirmed.'¹⁰⁹

However, the Ombudsperson admitted the violation of equal treatment providing privileges for athletes younger than 28 and recommended that the decision be amended, which was done by the Council of Klaipėda City Municipality.

In their *Annual Report for 2018*, the Ombudsperson recommends amending the Law on Equal Treatment to establish exceptions within the Law to allow for certain benefits for persons with disabilities, persons of certain ages or those in certain financial situations. In the report, it indicated that 'justification of such advantages is not established by Law', therefore it could be concluded that it was not clear whether the Ombudsperson considered that the provision of social advantages would constitute a breach of non-discrimination.

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

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

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

In general, all educational institutions, schools and 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 regard to all the grounds listed in the Law on Equal Treatment. Furthermore, the Law sets out that 'Educational establishments, other education providers as well as research and education establishments must, within their competence, ensure that education programmes, textbooks and teaching aids do not contain or propagate discrimination' on all grounds.

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.

¹⁰⁹ Decision of the Equal Opportunities Ombudsperson No. (18)SN-138)SP-98, 4 October 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos amžiaus, negalios ir socialinės padėties pagrindu Klaipėdos miesto savivaldybės tarybos sprendime tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/10/18sn-138sp-98.pdf>.

There has not been any major case law with regard to education in 2018. A complaint was investigated regarding alleged discrimination based on the grounds of gender, sexual orientation and disability in the provision of education material in remote online course for teachers on sex education, but it was discontinued due to the lack of objective information – missing confirmation from the providers of the remote online courses on what constituted the training material. The director of the online courses and the lecturer who had prepared the content could not confirm whether the training course information provided to the Ombudsperson by the applicant was part of an online course they had organised. Moreover, the application was submitted by the Human Rights Organisation Coalition with the training course material received from an anonymous source, therefore the Ombudsperson declared they could not objectively investigate whether there had been a violation of the Law on Equal Treatment.¹¹⁰

One of the provisions of Article 3 of 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 regulated by the Law on the Social Integration of Persons with Disabilities (which establishes the general right to education of people with disabilities) and by the Law on Education.¹¹¹ 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 is responsible for ensuring that children with special educational needs 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 pre-school, basic and general education, as well as to their teachers. In addition, under the Law on the Minimum and Average Care of the Child, children who have socialisation challenges can be placed into special educational socialisation institutions only in exceptional cases, for temporary periods only and paying attention to the best interests of the child.¹¹²

¹¹⁰ Decision of the Equal Opportunities Ombudsperson No. (18)SN-193)SP-2, 4 January 2019 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos propagavimo lyties, lytinės orientacijos ir negalios pagrindu VŠĮ "Švietimo tinklas" skelbtoje mokymo programoje*), available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2019/01/sprendimas-nr.-18sn-193sp-2.pdf>.

¹¹¹ 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/asr>.

¹¹² 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>.

The practical implementation of these principles gives rise to 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 in adapting to the new model of inclusive education.¹¹³ Besides this, Article 29(10) of the Law on Education establishes an exception for schools that significantly affects children with disabilities and their ability to access schools providing compulsory education:

‘The school that, for objective reasons, is unable to provide a student who is studying under compulsory education programmes with psychological, special pedagogical, special or social pedagogical assistance, in agreement with his parents (guardians, caregivers), pedagogical psychological and the child rights protection service, shall make a suggestion to study at another school.’

Under the Law on Education, parents have the right to choose a form of education for their child, but only to a certain extent. If special educational/psychological institutions identify severe special needs that make a child’s education in a mainstream school impossible, that 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 the infrastructure or the specialists (or both) to accommodate children who have special needs and are in need of specialist support.¹¹⁴ According to the research implemented by the Ombudsperson for Children’s Rights, more than one third of municipalities in the country did not provide socialising classes, and 14 (out of 61) of the municipalities did not provide any type of further education opportunities for children with intellectual disabilities finishing compulsory basic education (on average, children usually finish their basic education at the age of 16).

The Department of Persons with Disabilities presents annual reports on the implementation of the Action Plan for 2016-2018 of the National Programme for the Integration of Persons with Disabilities 2013-2019. According to the report for 2018, the Ministry of Education has not, since 2016, adopted the Action Plan for Strengthening Primary and Basic Education and Developing Inclusive Education 2017-2019.¹¹⁵ However, it is clear that the annual allocation of EUR 150 000 for maintaining the physical and information environment of vocational schools for persons with disabilities was not used over a three-year period (2016-2018). The Action Plan on the Inclusion of Children in Learning and Multidisciplinary Education 2017-2022 envisages measures to create conditions whereby children at special needs schools can move safely to general education schools, however it does not set out the allocation of any money for this specific measure and indicates that legal amendments were drafted and the competences of teachers were strengthened.¹¹⁶ The Action Plan also sets out allocations of money for new buildings and providing facilities in older educational buildings for persons with disabilities, although the author is not aware of what has been achieved in 2018.

NGOs emphasise that, although there has been 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

¹¹³ Lithuania, Government decision to implement the National Programme for the 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.

¹¹⁴ According to a survey carried out in 2010, 78 % of schools said that they significantly lacked educational materials for children with special needs.

¹¹⁵ Information on implementation of the Action Plan for 2016-2018 of the National Programme for the Integration of Persons with Disabilities 2013-2019, available in Lithuanian at: <http://www.ndt.lt/nacionaline-programa/>.

¹¹⁶ Lithuania, Order of the Minister of Education on Adoption of the Action Plan on the Inclusion of Children in Learning and Multidisciplinary Education 2017-2022, 27 June 2017, No. V-527, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/aad10e305c3c11e7a53b83ca0142260e/EYYOzOEPXL>.

attention by the Ministry of Education.¹¹⁷ According to the report, one of the negative trends is the abuse of home schooling (which should be an exceptional practice, rather than a common one) both by parents and following the recommendations of specialists. This practice distorts the statistical information about pupils with disabilities in mainstream education, since home schooling also comes under the category of mainstream education (as opposed to education in special schools). According to the *Annual Report of the Ombudsperson for Children's Rights 2018*, the situation is not changing: the number of pupils with special needs who are fully integrated in mainstream schools has not changed; only the number of children who have been partially integrated (in special classes) has changed.¹¹⁸

In 2016, the Ombudsperson for Children's Rights Institution 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.¹¹⁹ 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 covering 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 Ombudsperson concluded that the right to education is not fully ensured at local level, either in pre-school education¹²⁰ or 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. Attendance at 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. In reality, however, accessibility is ensured only on the first floor of the school, no elevators for wheelchair users have been installed, etc.

As in previous years, the Ombudsperson for Children's Rights noted in 2018 that, based on the complaints, notices and requests received regarding the education of children with special education needs, many challenges arise when seeking to ensure the implementation of every child's right to education. Their *Annual Report for 2018* states: 'in practice cases of discrimination are identified – schools are discriminating against children with special educational needs. ... Despite changes that took place, the Ombudsperson made a conclusion that educational institutions still lack mutual tolerance, an empathetic approach to the child's individual educational needs and finally, teachers'

¹¹⁷ Lietuvos Neigaliųjų forumas (2015), *Alternatyvi ataskaita dėl Jungtinių Tautų konvencijos įgyvendinimo Lietuvoje*, pp. 34-35, available in Lithuanian at: http://www.lnf.lt/images/Dokumentai/Ataskaitos/JT_Neigaliuju_teisiu_konvencijos_Alternatyvioji_ataskaita.pdf.

¹¹⁸ *Annual Report of the Ombudsperson for Children's Rights 2018*, 1 April 2019, No. (4-36), available in Lithuanian at: <http://www.vtaki.lt/lt/administracine-informacija/veiklos-ataskaitos>.

¹¹⁹ *Report of the Ombudsperson for Children's Rights*, 2016-03- Nr. (6.7.-2014-16) PR, available in Lithuanian at: <http://www3.lrs.lt/docs2/DFFLQRXU.PDF>.

¹²⁰ Pre-school education is not obligatory in Lithuania, although pre-primary education is mandatory for children aged six to seven (or five to six in exceptional cases).

lack of competence, skills and understanding of how to create a learning environment for all children in the classroom.¹²¹

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 that discriminated against pupils whose special needs were caused by mental health issues. According to the ministerial order, after completing an individualised basic education curriculum, these pupils can 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 option to continue their education in regular secondary schools in a class together with other 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 Ombudsperson for Children's Rights and representatives of municipalities and NGOs, which would discuss the issues and come up with solutions. The author is unaware of the outcomes of this particular working group.

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, with the number dropping each year. The number of students with disabilities who received financial support decreased from 935 in 2016 to 686 in 2018, and the number of students with special needs who have received support to ensure the accessibility of their studies has also decreased, from 800 in 2016 to 527 in 2018.¹²² Only a limited number of universities and higher education institutions are fully accessible to people with disabilities.

b) Trends and patterns regarding Roma pupils

In Lithuania, there have been specific patterns in education regarding Roma pupils, such as segregation. However, according to a nationwide investigation by the Institution of the Ombudsperson for Children's Rights, nationwide segregation policies could not be identified.¹²³

In relation to the issues surrounding the education of Roma, the latest general census data indicated that half of Lithuanian Roma had not finished basic education. According to the later reports, the number of Romani pupils slightly increased in 2017, but decreased in 2018: from 419 pupils in 2015/2016¹²⁴ to 463 in 2016/2017, with most of the pupils still being in primary education (43 %), but numbers have slightly increased in basic (38 %) and secondary education (17 %).¹²⁵ The number of pupils was 413 in general education schools and 22 in vocational schools.¹²⁶

¹²¹ *Annual Report of the Ombudsperson for Children's Rights 2018*, 1 April 2019, No. (4-36), available in Lithuanian at: <http://www.vtaki.lt/lt/administracine-informacija/veiklos-ataskaitos>.

¹²² Information on implementation of the Action Plan for 2016-20 of the National Programme for the Integration of Persons with Disabilities 2013-2019, available in Lithuanian at: <http://www.ndt.lt/nacionaline-programa/>.

¹²³ Decision of the Ombudsperson for Children's Rights (*LR Vaiko teisių apsaugos kontrolieriaus pažyma Dėl Romų tautybės vaikų teisės į mokslą užtikrinimo*), 19 August 2014, No. (6.1- 2013-329) PR-156, available in Lithuanian at: <http://www3.lrs.lt/docs2/VAQOPBJE.PDF>.

¹²⁴ Petrušauskaitė V. (2016), *Romų situacijos Lietuvoje apžvalga* (Overview of the situation of Roma people in Lithuania), available in Lithuanian at: <https://duomenys.ugdome.lt/?veikla/migr/med=9/128>.

¹²⁵ Education Development Centre (2017), *Rekomendacijos dėl romų vaikų įtraukiojo ugdymo stiprinimo* (Recommendations on strengthening inclusive education of Roma children), available in Lithuanian at: <https://duomenys.ugdome.lt/?veikla/migr/med=9/128>.

¹²⁶ Information received by the author from a representative of the Department for National Minorities.

Despite positive developments, the acquisition of primary and secondary education remains a challenge for the majority of Roma pupils. The reasons why Roma children face difficulties with learning in schools (which are often simplified to 'unwillingness to learn') are complex. Many Roma children already face learning difficulties at primary level. The lack of preparation for school (weak motor skills and an absence of pre-school education), a lack of social skills and weak Lithuanian language skills are often referred to as the main causes of the complicated adaptation of Roma children in school. These factors, together with the limited ability of parents to help a child at home (a large proportion of Roma parents are illiterate or only completed primary school), determine the falling behind of Roma children at school – children start to lag behind their classmates quite quickly and cannot do their homework independently. Unsuccessful learning experiences begin to emerge quickly (such as missing lessons and behavioural problems), and unresolved problems often make it more difficult to involve children in the educational process.¹²⁷

Pre-primary education is compulsory for everybody. However, according to the legislation, compulsory pre-school education (from birth until 6 years of age) can be assigned to a child who is raised in a family at risk, or when parents lack social and/or positive parenting skills; to children with an established disability whose parents are not able to meet their special needs; or when parents are experiencing difficulties that prevent them from meeting the child's natural, cultural, social and cognitive needs.¹²⁸ The author does not have any information on how these norms are applied among members of the Roma community.

According to the research, which focused on the Roma community in the largest Roma settlement (Kirtimai) in the outskirts of Vilnius,¹²⁹ the 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 the diverse social problems surrounding the Roma, as well as a 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.

The data from 2008 indicated that pre-schooling was rare, and most Roma children (69 %) did not attend pre-school establishments or groups and did not participate in after-school activities. Although a state-funded Roma Community Centre 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. Nevertheless, the number of people residing in the encampment has significantly decreased with the implementation of Vilnius City Municipality's programme. The number of people still residing in Kirtimai is around 150, around half of them

¹²⁷ Education Development Centre (2017), *Rekomendacijos dėl romų vaikų įtraukiojo ugdymo stiprinimo* (Recommendations on strengthening inclusive education of Roma children), available in Lithuanian at: <https://duomenys.ugdome.lt/?veikla/migr/med=9/128>.

¹²⁸ Lithuania, Order of the Minister of Science and Education and the Minister of Security and Labour on the Adoption of the Description of Establishing and Assigning Compulsory Pre-School Education, 26 April 2012, No. V-735/A1-208, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.423753/asr>.

¹²⁹ 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.

children.¹³⁰ In 2016, Vilnius City Municipality adopted the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019.¹³¹ This programme sets out a number of measures aimed at providing educational assistance to Kirtimai pupils and various additional services for pre-school and informal education activities. The total planned budget for these measures is EUR 352 500, and the programme established a process for constant monitoring. However, no monitoring activities took place in 2018. According to the report that Lithuania submitted to the UN Committee on the Elimination of Racial Discrimination, in 2017, when implementing the Action Plan for Roma Integration into Lithuanian Society 2015-2020, the Ministry of Science and Education intensified the training for teachers, heads of schools, education support specialists and specialists in municipal education units, as envisaged in the Action Plan, and organised long-term activities targeted at improving competence and developing the skills necessary to understand the needs of Roma children and to organise inclusive education, taking cultural diversity into account. According to the monitoring of the Roma integration programme within the Department of National Minorities, the number of children involved in pre-school activities dropped to 14 in 2018 (because of the smaller number of inhabitants in Kirtimai), social workers are being financed mainly from EU funds, with transportation to schools and kindergartens financed by Vilnius City Municipality). Also in 2018, a 28-hour training programme was implemented on inclusive education for schoolteachers in municipalities where Roma pupils attend classes, and consultations were held with schools by the Education Development Centre (an affiliate to the Ministry of Education and Science) on strengthening relationships with parents.¹³²

In 2015 the Ministry of Culture approved a new Action Plan for Roma Integration into Lithuanian Society 2015-2020.¹³³ 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 and healthcare assistance measures. However, a significant part of the planned measures must be implemented as part of the regular functions of particular institutions (employment exchange, municipalities, etc.). In 2016, the re-established Department of National Minorities was appointed as the monitoring and coordinating body for the plan. According to the representative of the department, the plan itself does not have a separate budget, and all of its activities are being implemented by the participating institutions using their regular resources. However, the Department of National Minorities used EUR 69 000 from its budget, the Education Development Centre spent around EUR 10 000, and around EUR 30 000 came from an EU-funded project called Local Roma Platforms – the Path towards Cooperation with Municipalities.¹³⁴ Lithuania's state party report to the Committee on the Elimination of Racial Discrimination said: 'The Action plan for Roma integration into Lithuanian society for 2015-2020 is financed by funds from the State budget of the Republic of Lithuania and the European Union structural funds. The amount of EUR 867 000 under the EU financial perspective 2014-2020 is planned to be allocated for the implementation of the project aimed at integrating Roma into the labour market.'

¹³⁰ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015-2020, held on 22 January 2019 in the Department of National Minorities.

¹³¹ Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

¹³² Information received by the author from the Department of National Minorities, 13 May 2019; information provided to the Committee on the Elimination of Racial Discrimination for the combined ninth and tenth periodic reports submitted by Lithuania under article 9 of the Convention, due in 2018, 8 Feb 2018, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMcfI%2fjd5knkSMb52z2%2fJfiiU0kH%2bpSZJLncqAEIS8%2blykhrjNK0u76VpGle0uthCw0JLIQtVtMd6lx3BpW%2fb0tyDjTLN71>.

¹³³ Lithuania, Order of the Minister of Culture No. ĮV-48 of 29 January 2015 on approval of the Action Plan for Roma Integration into Lithuanian Society 2015-2020 (*LR Kultūros ministro įsakymas Dėl romų integracijos į Lietuvos visuomenę 2015-2020 metų veiksmų plano patvirtinimo*, 2015 m. sausio 29 d. Nr. ĮV-48), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682>.

¹³⁴ From communication letter obtained by the author, 13 May 2019.

Each year the Department of National Minorities under the Government of the Republic of Lithuania allocates the amount of nearly EUR 75 000 for various Roma integration measures; other institutions use appropriations in the general budget for the implementation of measures.¹³⁵

No investigations or analysis regarding discrimination against Roma persons or segregation in education were carried out in 2018.

An investigation regarding a possibly segregated class (3č) for different ages of Roma children within Saulėtekis school was carried out in 2011 by the Equal Opportunities Ombudsperson. The Ombudsperson issued a recommendation for Saulėtekis secondary school to integrate children attending class 3č in other classes in the school.¹³⁶ The decision also referred to the decision of the ECtHR in *Oršuš and other v. Croatia*, No. 15766/03, in which the Court held that segregation of Romani children into separate classes based on language was unlawful discrimination.

In 2014, the Ombudsperson for Children's Rights, in response to information in the media about two municipalities, launched an investigation aimed at evaluating possible segregation patterns involving Romani children being placed in educational institutions for children with severe or substantially severe special educational needs (so-called 'special schools').¹³⁷ The investigation discovered that at least 50 Romani children were being 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 that 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, so as 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 the parents allowed their children 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, returning 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 ensures greater attention from the teachers (the 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 in regular schools, and the relationship between parents and the school administration is more cooperative.

The Ombudsperson 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

¹³⁵ Committee on the Elimination of Racial Discrimination, *combined ninth and tenth periodic reports submitted by Lithuania under article 9 of the Convention*, due in 2018, 8 Feb 2018, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMcafI%2fjd5knkSMb52z2%2fJfiiU0kH%2bpSZJLncqAEIS8%2blykhrajNK0u76VpGle0uthCw0JLIQtVtMd6lx3BpW%2fb0tyDjTLN71>.

¹³⁶ Equal Opportunities Ombudsperson (2011), *Annual Report for 2011*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2015/12/lgkt-ataskaita-2011.pdf>.

¹³⁷ Decision of the Ombudsperson for Children's Rights (*LR Vaiko teisių apsaugos kontrolieriaus pažyma Dėl Romų tautybės vaikų teisės į mokslą užtikrinimo*), 19 August 2014 No. (6.1- 2013-329) PR-156, available in Lithuanian at: <http://www3.lrs.lt/docs2/VAQQPBJE.PDF>.

demonstrate severe special needs, and there was no need for their 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. The Ombudsperson for Children's Rights observed that the education system of special schools partly encourages Roma parents to take their children to special schools, but if their social assistance requirements are met in other ways, at least some of the pupils who are currently attending special schools could be integrated into the general education system.

In its reasoning, the Ombudsperson made references to the case law of the ECtHR in *D.H. v. Czech Republic*, *Sampanis v. Greece* and *Oršuš and Others v. Croatia*, as well as citing the recommendations of international organisations. However, the Ombudsperson 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 Ombudsperson 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 the education of Romani children should be on the list of priorities of the relevant institutions, and sufficient resources should be allocated to solve the complex issues surrounding Roma education problems.

The Action Plan for Roma Integration into Lithuanian Society 2015-2020 contained a measure to reduce the incidence of early school drop-out and to strengthen the inclusive education of Roma pupils with special needs. However, according to the information received, this measure was not implemented in 2018.¹³⁸

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

In Lithuania, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive. Article 8 of the Law on Equal Treatment explicitly states that providers of goods and services must ensure equal access to all customers, and the prohibition of discrimination extends to all anti-discrimination grounds.

The wording contained in national legislation does not imply that manufacturers or service providers are obliged to make goods or provide services that are accessible to people with disabilities. However, based on the practice of the Ombudsperson, it can be concluded that the Ombudsperson interprets the duty to 'ensure equal access to all consumers' as also being a duty to make goods and services accessible to persons with disabilities. In one decision, for example, the Ombudsperson recognised that there had been discrimination and obliged a café owner to make it possible for persons with disability to access the premises and to ensure conditions under which all persons, regardless of their disability, may access the services provided by the café.¹³⁹ Similar decisions were taken in other cases, with recommendations to ensure access to buildings where services available publicly or privately are provided.¹⁴⁰

Article 8(1) of the Law on Equal Treatment states:

¹³⁸ Information received by the author from the Department of National Minorities, 13 May 2019.

¹³⁹ Decision of the Equal Opportunities Ombudsperson No. (18)SN-80)SP-52, 24 May 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu teikiant paslaugas VŠĮ Vlniaus keistuolių teatre bei UAB "Malaga" kavinėje tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/05/sprendimas-18sn-80sp-52.pdf>.

¹⁴⁰ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

'When implementing equal treatment, a seller or producer of goods or a service provider ... must provide consumers with equal access to the same products, goods and services, including housing, as well as apply equal conditions of payment and guarantees for the same products, goods and services or for products, goods and services of equal value.'

The Ombudsperson has stressed that one of the more significant complaints on the ground of disability in the provision of goods and services concerned the 'non-adaptation of Kaunas Žalgiris Arena to persons with reduced mobility'. In the decision adopted, the Ombudsperson recommended that the Kaunas Žalgiris arena administration:

'ensure that there is a sufficient number of places within the arena adapted to persons with disabilities and when selling tickets to the events organised in the arena, ensure the possibility for persons with reduced mobility to choose seats adapted for their needs at different places within the arena.'¹⁴¹

The decision taken was interpreted as ensuring access to goods and services according to the Law on Equal Treatment and CRPD, with the recommendations given as measures to remove barriers to the accessibility of services. The arena was recognised to be a building of importance for persons with disabilities, and therefore was regulated by the relevant regulation (Construction Technical Regulation STR 2.03.01:2001).

In another complaint regarding access of people with disabilities (persons with reduced mobility, with visual impairment or with intellectual disability, who required to be accompanied) to the Vilnius television tower, the decision taken recommended that all persons, regardless of their disability, should be able to receive the services provided.¹⁴²

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 Insurance¹⁴³ 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 at a particular risk level.

Religious communities or associations, as well as associations established 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 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 LGBT+ persons. For example, a same-sex couple might be refused service at a community centre run by a religious community, or a child of a same-sex couple might not be accepted at a children's day-care centre. However, as has already been stated, the author of this report is not aware of any such situations in practice.

As described above, the Equal Opportunities Ombudsperson proposed to amend the Law on Equal Treatment with provisions covering exceptions whereby the provision of goods and services exclusively (or primarily) to persons with certain characteristics would be

¹⁴¹ Decision of the Equal Opportunities Ombudsperson No. (18)SI-9)SP-80, 28 August 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu teikiant paslaugas Kauno "Žalgirio" arenoje tyrimo*), available in Lithuanian at: https://lygybe.lt/data/public/uploads/2018/08/d2_sprendimas-18si-9sp-80.pdf.

¹⁴² Decision of the Equal Opportunities Ombudsperson No. (18)SI-4)SP-56, 14 June 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu teikiant paslaugas Vilniaus televizijos bokšte*), available in Lithuanian at: https://lygybe.lt/data/public/uploads/2018/06/d1_sprendimas-18si-4sp-56.pdf.

¹⁴³ 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.

justified as a legitimate aim, to be achieved by appropriate and necessary measures, such that these cases would not be considered as less favourable treatment.¹⁴⁴

a) 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 or banks) and those that are only available privately (e.g. limited to members of a private association).

The Equal Opportunities Ombudsperson investigated a complaint by a person with a disability regarding access to the Centre for Quality Assessment in Higher Education. According to the applicant, he could not access the centre to submit a request regarding recognition of a diploma, as he could not park his car there in the absence of any spaces reserved for persons with disabilities. Therefore, he asked for the possibility of services being provided next to the building. The Equal Opportunities Ombudsperson recommended that access to the building be provided for persons with disability.¹⁴⁵

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

In Lithuania, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive.

When it comes to housing, the Law on Equal Treatment does not explicitly specify housing as falling under the scope of the law. However, housing is mentioned within the scope of consumer rights. Article 8 of the Law on Equal Treatment states:

‘When implementing equal treatment, a seller or producer of goods or a service provider, without regard to gender, race, “nationality”, citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, must: provide consumers with equal access to the same products, goods and services, **including housing**, as well as apply equal conditions of payment and guarantees for the same products, goods and services or for products, goods and services of equal value.’¹⁴⁶

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 2018 with regard to the provision of housing, and the author is not aware of any investigations at the Office of the Equal Opportunities Ombudsperson (involving citizens or third-country nationals/migrants). However, the author has been informed about a number of instances when refugees and migrants have been discriminated against by local property owners when they tried to rent accommodation. The same situation was reported to be still ongoing during the monitoring meeting for the Action Plan for Roma Integration into Lithuanian Society 2015-2020. On at least a few occasions, landlords have refused to rent premises to refugees, migrants or Roma people. No cases have been reported to the Ombudsperson, however.

Unfortunately, the national anti-discrimination measures do not specifically address the issue of migrants being discriminated against in relation to housing. Despite the lack of case law or formal complaints, preventive work and assistance would be beneficial.

¹⁴⁴ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*.

¹⁴⁵ Decision of the Equal Opportunities Ombudsperson No. (18)SN-123)SP-88, 11 September 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu teikiant paslaugas BĮ Studijų kokybės vertinimo centre tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/09/sprendimas-18sn-123sp-88.pdf>.

¹⁴⁶ Lithuania, Law on Equal Treatment (*Lietuvos Respublikos Lygių galimybių įstatymas*), 2003, No. 114-5115, entry into force 01.01.2005; latest amendments: 11.12.2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr>.

The Law on Equal Treatment 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”, citizenship, 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 housing into account. In 2016 it received a complaint regarding alleged discrimination on the basis of disability in the field of housing.¹⁴⁷ The claimant stated that the municipality had failed to provide him with social housing because of his disability. Although no discrimination was established in the end, the Ombudsperson accepted the complaint and started an investigation on the basis of Article 8 of the Law on Equal Treatment (equal opportunities in the sphere of consumer rights protection). It is not yet clear if the court would accept the interpretation of Article 8 as also encompassing social housing. No court cases with regard to discrimination in the field of housing have been brought to court.

Another complaint was examined in 2017, when a person submitted a complaint saying that a care home had refused to admit the applicant because she was infected with HIV. The Ombudsperson started an investigation based on Article 5 (Duty of State and Municipal Institutions and Agencies to Implement Equal Treatment) and found that the provisions regulating the care home rules established by Klaipėda District Municipality, which prohibit the admission of persons infected with HIV/AIDS to care homes, were discriminatory and in breach of Article 5(1) of the Law on Equal Treatment, based on the duty of state and municipal institutions and agencies to ensure that equal rights and opportunities are enshrined in all legal acts irrespective of disability.

The Ombudsperson also issued recommendations to amend the Draft Law on Support for the Acquisition or Rental of Housing, registered by the Ministry of Social Security and Labour.¹⁴⁸ According to the Ombudsperson’s assessment, due to a lack of respect for the individual needs of persons with disabilities, they are not fully entitled to participate in state housing programmes.¹⁴⁹

a) 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.¹⁵⁰ Under the Action Plan for Roma Integration into Lithuanian Society 2015-2020, approved by the Ministry of Culture in 2015,¹⁵¹ sociological research was carried out among Roma, and this has

¹⁴⁷ Decision of the Equal Opportunities Ombudsperson No. (16)SN-141)SP-114, 6 October 2016, available in Lithuanian at: <http://www.lygybe.lt/data/public/uploads/2016/10/nr.-16sn-141sp-114.pdf>.

¹⁴⁸ The amended draft law, which improved the conditions for the provision of financial assistance for persons with disabilities and their families, was adopted in 2019.

¹⁴⁹ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

¹⁵⁰ 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.

¹⁵¹ Lithuania, Order of the Minister of Culture No. IV-48 of 29 January 2015 on the Approval of the Action Plan for Roma Integration into Lithuanian Society 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>.

provided a more reliable overview of their housing situation.¹⁵² 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 national average of only 9 %), and 38 % live in social housing (the national average is 1 %). About a fifth of the Lithuanian Roma population live in premises without paying rent (in illegal housing, staying at relatives, etc.), in contrast to a national average of 4 %. Not surprisingly, therefore, living standards among Roma are much lower than the national average: the Roma live in much more crowded premises (12.6 m² per person, in contrast to an average 26.2 m²), and more than half of their premises are not equipped with a bathtub, shower or toilet (the national average is 15 %). Overall, 68 % of Roma residents express concerns 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. The number of residents in this slum-like settlement has been steadily decreasing in recent years. Based on information from the Department of National Minorities, 22 families left Kirtimai in 2017. In 2018, 24 families were given compensation for rent and 6 families were offered social housing.¹⁵³ According to representatives of the Roma community, quite a big number of people emigrated to other towns or countries, because of the living conditions and constant police searches.¹⁵⁴

According to Lithuania's report to the Committee on the Elimination of Racial Discrimination, the number of houses and residents in the Kirtimai settlement is constantly declining: in 2017 the settlement consisted of 45 houses with just over 200 residents (in comparison to 100 houses with approximately 500 residents in 2001).¹⁵⁵ Vilnius City Municipality estimates that there were 260 to 280 permanent residents as at the beginning of 2018. The Roma Community Centre and Department of National Minorities estimates that around 150 to 155 persons reside in Kirtimai settlement, as at the beginning of 2019.¹⁵⁶ The Kirtimai Roma community were forced to settle in the outskirts of Vilnius during the Soviet occupation by the state actors and, after independence, houses that the Roma built for themselves on state-owned land were not legalised. This is a unique situation, which is not replicated in any other part of the country. Most of the buildings therefore remain illegal and are constantly threatened with demolition or are in the process of being demolished. On at least a few occasions in the past, the way in which these demolitions were carried out was not in line with European Convention on Human Rights (ECHR) standards. However, the current administration of Vilnius City Municipality is trying to ensure that people are provided with social housing or rent compensation before demolitions are initiated by the State Territorial Planning and Construction Inspectorate. However, the Roma Community Centre and the

¹⁵² 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>.

¹⁵³ Information received by the author from the Department of National Minorities, 13 May 2019.

¹⁵⁴ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 22 January 2019 in the Department of National Minorities.

¹⁵⁵ Committee on the Elimination of Racial Discrimination, combined ninth and tenth periodic reports submitted by Lithuania under article 9 of the Convention, due in 2018, 8 Feb 2018, available in English at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsu4Y3oyIeXJMcafI%2fd5knkSMb52z2%2fJfiiU0kH%2bpSZJLncqAEIS8%2blykhrajNK0u76VpGle0uthCw0JLIQtVtMd6lx3BpW%2fb0tyDjTLN71>.

¹⁵⁶ Information received by the author during a meeting of the working group on implementation of the Action Plan for Roma Integration into Lithuanian Society 2015–2020, held on 22 January 2019 in the Department of National Minorities.

Lithuanian Roma Community Centre raised concerns several times in 2018 regarding families being evicted without alternative housing being provided.¹⁵⁷

Standards of living, housing and sanitation in Kirtimai are unsatisfactory. A previous 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 segregation of the Kirtimai Roma community and keeping their housing conditions unsatisfactory.¹⁵⁸

The housing problem faced in the Kirtimai Roma settlement is very well known and has been raised by national and international organisations numerous times in the past. In its most recent concluding observations for Lithuania, the Committee on the Elimination of Racial Discrimination recommended that Lithuania should:

'Continue its efforts to facilitate the access of Roma to adequate housing, including access to social housing and subsidies for house rental, and complete the resettlement of the Roma households living in the Kirtimai neighbourhood. It also recommends that the State party strengthen coordination mechanisms in order to ensure that no house is demolished unless alternative housing or monetary compensation has been provided to the inhabitants.'¹⁵⁹

In 2016, Vilnius City Municipality adopted the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019.¹⁶⁰ The programme sets out a number of measures aimed at providing social housing options to members of the Kirtimai Roma community. According to representatives of the municipality, the aim of the programme's housing measures is to adopt a new approach, avoiding forced evictions as had taken place in previous years (since most of the buildings in the settlement were built without permits, the previous city administration conducted forced evictions and the demolition of new buildings on state-owned land), and instead offering incentives, such as 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 EUR 44 160 in compensation/subsidies over a period of three years. The action plan seems to be working, as according to the information received from the Department of National Minorities, an estimated 62 families (around 225 persons) have moved out from Kirtimai since 2016, having been provided with compensation for rent or with social housing.

¹⁵⁷ Information received by the author. The last letters regarding these situations, dated 14 July 2018, were sent to the working group set up to monitor Vilnius City Municipality's Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019.

¹⁵⁸ *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>.

¹⁵⁹ Committee on the Elimination of Racial Discrimination (2019), *Concluding observations on the combined ninth and tenth periodic reports of Lithuania*, CERD/C/LTU/CO/9-10, 10 May 2019, available in English at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/CERD_C_LTU_CO_9-10_34868_E.pdf.

¹⁶⁰ Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

4 EXCEPTIONS

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 established by law where it is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
- 2) Requirement to know the state language, as established by law;
- 3) Prohibition of participation in political activities in cases specified by law;
- 4) Different rights applied on the basis of citizenship, as established by law;
- 5) Special measures in the field of healthcare, safety at work, employment and the labour market as established by law with the view of creating and applying conditions and opportunities guaranteeing and promoting integration into the working environment;
- 6) Special temporary measures, established by law, which are taken to ensure equality and prevent violation of equal treatment on the grounds of gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion;¹⁶¹
- 7) Where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, a particular human characteristic constitutes an essential [*genuine* – author] and determining occupational requirement, provided that the aim is legitimate, and the requirement is proportionate;
- 8) Where the legal regulation of restrictions, special requirements or conditions with regard to a person's social status are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
[According to Article 2(8), '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 states that the Law does not apply to a wide range of activities in relation to ethos-based organisations (membership, employment, educational activities) and/or education materials providing traditional religious teaching, and that it also does not apply in the spheres of family and private life. These provisions are described in Chapter 4.2 below.

In most cases, the Law on Equal Treatment requires that exceptions regarding particular grounds must be established by law and objectively justified by a legitimate aim, and that the means of achieving that aim must be appropriate and necessary.

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 contained in the Law on Equal Treatment in the form of a list of exceptions to direct anti-discrimination provisions (Article 2(9)). The national provision repeats the wording of the directive and does not elaborate on it.

¹⁶¹ However, special temporary measures are not defined in any other laws, except for those identified in relation to a person's disability. It is also unclear whether all of them could be identified as temporary measures.

The Equal Opportunities Ombudsperson has summarised complaints received in 2018 in which applicants complained about language requirements (knowledge of foreign languages) for a specific job. One of the examples concerned a job vacancy as an administrator with a requirement to know English and Russian. The Ombudsperson concluded that knowledge of foreign languages could be held as a genuine and determining occupational requirement, and that the aim (of providing services) would be reached through appropriate and proportionate measures – including a requirement to know English and Russian, being the most common foreign languages among clients in Vilnius. Therefore, no violation of equal treatment was recognised.¹⁶²

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

In Lithuania, national law provides 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 or members of religious communities, associations or centres, nor would it apply to associations or legal persons (whose ethos was based on a religion or belief and that had been established to serve its purposes) established 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, 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.

Similar wording is repeated in the Labour Code.¹⁶³

The first version 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 Lithuanian Bishops' Conference (Lithuanian Caritas, Family Centre of Lithuania), as well as shelter homes, children's day centres, cultural and youth organisations, media portals and 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 the national provisions 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 to the Law, 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.¹⁶⁴

¹⁶² Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

¹⁶³ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

¹⁶⁴ Transcript of the plenary session of the Parliament of the Republic of Lithuania of 18 September 2007, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466.

A similar exception under the Law on Equal Treatment is included for the provision of goods and services (Article 3(3)).

In opinion of the author, the Law on Equal Treatment could be amended, as the current exception is broader than that provided in the directive, where a 'person's religion or belief constitute a genuine, legitimate and justified occupational requirement'. Moreover, it is important to note that, in compliance with the directive, 'difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground', therefore it would be useful to review the Law on Equal Treatment and to consider adding that 'difference in treatment should not justify discrimination on another ground'.

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

In Lithuania, there are no specific provisions and/or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

There 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 the amendment to the Law focused on homosexuality rather than on religion or belief. The Catholic church played a significant role in the introduction of the provisions.¹⁶⁵ The openly negative attitude of church-affiliated organisations towards the LGBT community in Lithuania should be borne in mind. Conflict might also arise in relation to the ground of gender, as the Lithuanian Bishops' Conference expressed their opposition to separating gender from sex when expressing their opposition to the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence.¹⁶⁶

Therefore, quite broad provisions might be used as justifications to discriminate on grounds other than religion and belief.

Besides these aspects, the above-mentioned national law provides for many more exceptions in relation to religion and beliefs. For example, it is not applied in relation to admission to schools established by religious communities or schools fostering certain values, and it does not apply to the content of education programmes, textbooks and teaching aids where religious instruction is provided to traditional religious communities and associations (Article 3(4,5)).

These exceptions might cause problems, as some educational materials provided by teachers of religious classes have been recognised as discriminatory on the ground of sexual orientation.¹⁶⁷ Therefore, in a particular case, no exceptions were applied. Nevertheless, for clarity, the Law on Equal Treatment should also include the text of the directive, which says difference of treatment 'should not justify discrimination on another ground.'

- Religious institutions affecting employment in state-funded entities

¹⁶⁵ The Minister of Social Security and Labour publicly admitted that the inclusion of these provisions was discussed with the Lithuanian Bishops' Conference, and that the draft law and these particular provisions were approved by the Lithuanian Bishops' Conference. Transcript of the plenary session of the Parliament of the Republic of Lithuania of 18 September 2007, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466.

¹⁶⁶ Lithuanian Bishops' Conference, 'Regarding a proposal to submit the Convention on preventing and combating violence against women and domestic violence for ratification', No. 1-513/17, 25 October 2017.

¹⁶⁷ Decision of the Equal Opportunities Ombudsperson of 13 June 2017, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2017/06/sprendimas-telsiu-gimnazija-nr.-58.pdf>.

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 Article 31(5) of the Law on Education, in order to become a religious education teacher, a person must have a permit (appointment), issued by the traditional religious community or by the community leadership in order to teach religion.¹⁶⁸

In the case of the Catholic church, this is also regulated by an agreement with the Holy See,¹⁶⁹ which states that a person wishing to teach religion must have a written appointment letter 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 the courts. However, as was proven in 2017 by a case considered by the Equal Opportunities Ombudsperson, the content of religion classes and educational material used by particular church-approved teachers may be recognised as discriminatory towards the LGBT community. The case concerned the visual and spoken content used by a (Roman Catholic) teacher of a religion class, who, during a lessons for 10th-year pupils in Telšiai Žemaitė Gymnasium portrayed homosexuality and gays as persons practising sadomasochism for fun and as child abusers, and described them as serial killers who ate the body parts of their victims. The Ombudsperson recognised such behaviour as violating the Law on Equal Treatment, and recommended that the director halt any actions that violated equal opportunities.¹⁷⁰

Therefore, it would not be surprising if candidates for the position of a religion teacher could be discriminated against, not only on the ground of religion but on the basis of their sexual orientation as well. In practice, it is highly likely that an openly LGBT person would not be employed as a teacher of religion in a public school on the ground of his or her sexual orientation.

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

In Lithuania, national legislation does not explicitly provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78), however it does include different age and health requirements for statutory professions.

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 the Organisation of the National Defence System and Military Service,¹⁷¹ the minimum age of acceptance for military service is 18 years (upon request of the person; the usual age is 19). Retirement ages vary depending on the seniority status acquired by the individual (Article 45), from 35 to 65 years of age. The law provides rules for dismissal due to a person's disability or health conditions.

¹⁶⁸ Lithuania, Law on Education (*Lietuvos Respublikos Švietimo įstatymas*), 1991, No. I-1489, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>.

¹⁶⁹ International Agreement between Lithuania and Holy See (*Lietuvos Respublikos ir Šventojo Sosto sutartis 'Dėl bendradarbiavimo švietimo ir kultūros srityje'*), 9 August 2000, No. 67-2024, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106813>.

¹⁷⁰ Decision of the Equal Opportunities Ombudsperson of 13 June 2017, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2017/06/sprendimas-telsiu-gimnazija-nr.-58.pdf>.

¹⁷¹ Lithuania, Law on the 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,¹⁷² which sets out the principles and methodology for the evaluation of the state of health of persons willing to report for or continue working in the military service.

Other laws provide special requirements for persons joining certain statutory institutions. According to the Law on the Internal Service Statute,¹⁷³ the general age range for persons willing to join the internal service system (which includes the police, customs and emergency services) is from 18 to 60. Retirement ages vary from 55 to 65, depending on seniority, and it can be extended by up to five years.

In order to be accepted into and serve in the internal services, certain health requirements must be fulfilled. An extensive list of health criteria (from a person's height and body index to particular diseases) has been adopted by order of the Minister of Health and the Minister of the Interior.¹⁷⁴ 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, depending on the requirements for 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).

Article 2(9(4)) of the Law on Equal Treatment provides an exception to direct discrimination: 'different rights applied on the basis of citizenship as established by law'. Since the requirement for citizenship needs to be established by law, there are other laws that mention the requirement of nationality. For instance, Lithuanian nationality is required to join the civil service, compulsory military service, the armed forces, the intelligence services or any of the internal services (police, customs, probation officers, etc.).

In Lithuania, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law. Citizenship was added to the list of protected grounds in the Law on Equal Treatment in 2017 as a result of the transposition of Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. However, the ground of citizenship is explicitly defined as only applying to citizens of EU and EEA countries and their family members.

¹⁷² 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>.

¹⁷³ Lithuania, Law on Amendment of the Internal Service Statute (*Vidaus tarnybos statuto pakeitimo įstatymas. Vidaus tarnybos statutas*), 29 June 2018, No. XIII-1381, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/fae39102834511e89188e16a6495e98c/CsrnBFsow?jfwid=15c4pnfaf4>.

¹⁷⁴ 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 statutory internal 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://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.220127/asr>.

b) Relationship between nationality and 'racial or ethnic origin'

The term nationality can have two meanings in the Lithuanian language, and this is reflected in the Law on Equal Treatment. One meaning – *tautybė* – translated as 'nationality' as one of the protected grounds in the Law in addition to origin (*kilmė*) or ethnic belonging (*etninė priklausomybė*). In this context it means 'ethnicity' and refers to belonging to a national minority.

Another meaning of nationality – *pilietybė* – refers strictly to citizenship only. As mentioned previously, it was added among the protected grounds to the Law on Equal Treatment only in 2017, protecting only EU and EEA citizens and their family members from discrimination.

This mixture of terms can cause some confusion. Very often, complaints on the ground of citizenship are also investigated based on other grounds, such as language, 'nationality' (ethnicity) and ethnic origin. In the reports of the Equal Opportunities Ombudsperson, race, 'nationality', citizenship, language, origin and ethnic origin are summarised under the same headline and are dealt with as interrelated concepts. The Ombudsperson refers to the definition of racial discrimination provided in the UN Convention on the Elimination of All Forms of Racial Discrimination.

In their recent annual report, the Ombudsperson refers to nationality as in citizenship, and says that complaints on the ground of citizenship from third-country nationals could not have been examined because the protected ground refers to EU and EEA citizens and their family members only.¹⁷⁵ The report does not provide details on whether these particular complaints were examined on any other grounds – e.g. race, ethnic origin and/or language.

The concepts of 'nationality' (as ethnicity) and racial and ethnic origin have not been developed in the decisions of the Ombudsperson and, as mentioned above, have been treated as interrelated concepts.

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

a) Benefits for married employees

In Lithuania, it does not constitute unlawful discrimination in national law if an employer provides benefits to those employees who are married. A more detailed interpretation of the case law is needed in order to draw this conclusion.

The Law on Equal Treatment does not prohibit discrimination on the grounds of family status. However, the Labour Code mentions marital and family status among the non-discrimination grounds in the article describing the principle of equal opportunities. It is not mentioned in Article 26 on gender equality of employees and non-discrimination on other grounds, but family status (not marital status) is mentioned in Article 75(1(2)), on the application of non-discrimination, and in Article 59(2), prohibiting termination of an employment contract by an employer if proceedings are started against an employer regarding discrimination. Therefore, interpretation is needed as to whether the granting of benefits for married employees would constitute unlawful discrimination.

The granting of family-related benefits 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, whether to married employees or to those with opposite-sex partners who are not married, are not directly prohibited in the Law on

¹⁷⁵ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

Equal Treatment nor in any other legislation. Private employers may choose to provide extra benefits to workers. A collective agreement or individual employment contract that improves conditions for an employee can govern such benefits (e.g. extra paid holidays for workers when they get married, as the Labour Code guarantees a non-paid holiday for getting married upon the request of an employee).

The current parliamentary majority in Lithuania has included a principle of complementarity of man and woman within the family in the Law on Strengthening the Family and in the Civil Code. The Law on Strengthening the Family stipulates that the basis of the family is the free choice of a man and a woman to assume the family's moral and legal responsibilities, as well as the kinship between close relatives. This does not include same-sex families or families that do not consist of a man and a woman.¹⁷⁶ The provisions came into force in 2018, and the legislation was amended to ensure the so-called 'protection of traditional values'. There are various other initiatives that constantly return to and find their way through the Parliament in relation to the 'protection of traditional values', including the restriction (prohibition) of the right to an abortion, the exclusion of the clause on sex reassignment in the Civil Code, attempts to describe two partners of the same sex as a non-family and a form of joint venture, and so on. Therefore, if any political initiatives on marital status come up in Parliament, they are likely to be aimed at the protection of the 'traditional' family, meaning married opposite-sex couples and their children.

Based on the number of requests received, the Equal Opportunities Ombudsperson recommends including family status among prohibited grounds or including it in the definition of social status.¹⁷⁷

b) Benefits for employees with opposite-sex partners

It is not clear whether it constitutes unlawful discrimination in national law if an employer provides benefits to unmarried employees with opposite-sex partners only, as neither opposite-sex nor same-sex partnerships may be registered.

Nevertheless, an interpretation of case law is required regarding the principle of equal opportunities in the Labour Code, which prohibits discrimination on the grounds of family, marital status and sexual orientation among other grounds.

The Labour Code and other laws contain a number of social benefits that would apply to opposite-sex partners who do not have a registered partnership. These include 30 days of paternity leave, up to three months for the birth of a child (Article 133); parental leave, which may be shared among two opposite-sex partners (Article 134); a requested reduction of working hours to part-time work in order to care for a family member (including relatives of a married partner only) (Article 40); and priority for those caring for a family member when forming a calendar of annual leave – including relatives of a married partner only (Article 128(4)). These and many other social benefits are not available for same-sex partners.

The Civil Code, adopted in 2003, contains a chapter on opposite-sex partnerships, but the Law on Partnerships required to be adopted. Opposite-sex partnerships are not effective in practice, since the Law has not been passed, despite different versions of it being presented in the Parliament since 2003. Neither the Law on Equal Treatment nor the Labour Code explicitly forbids employers from limiting benefits to employees with

¹⁷⁶ Lithuania, Law on Strengthening the Family (*Šeimos stiprinimo įstatymas*), 19 October 2017, No. XIII-700, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/a92aa040c2bd11e79122ea2db7aeb5f0>.

¹⁷⁷ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>; Equal Opportunities Ombudsperson (2014), *Annual Report for 2014*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

opposite-sex partners. However, the question is theoretical, since partnerships are not legally recognised, and the author is not aware of any cases on the matter.

Of course, if a situation of difference of treatment between cohabiting partners of same-sex 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 regard to their sexual orientation, also taking into consideration the CJEU ruling in Case C-267/06, *Maruko*. Unfortunately, there has not yet been any case law in this respect. Under the current Government, it is unlikely that any political initiatives with regard to the recognition of same-sex unions would pass a vote in Parliament.

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

In Lithuania, there are exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78). These are not established directly for measures in relation to disability in the Law on Equal Treatment, however such a conclusion can be made taking different legislative provisions into consideration.

Article 2(9(5)) of the Law on Equal Treatment provides a general exception to direct discrimination, not mentioning disability separately, when:

‘special measures in the field of healthcare, safety at work, employment and the labour market as established by law with the view of creating and applying conditions and opportunities guaranteeing and promoting integration into the working environment.’

The Law on Equal Treatment does not elaborate on this in detail, except for the reasonable accommodation clause, as described above in Chapter 2.6.

Article 158 of the Labour Code contains a general statement on special provisions for health and safety at work for separate groups, including pregnant employees, those who recently gave birth or who are breastfeeding, persons under 18 years old and disabled people. The article refers to the Law on the Safety and Health of Workers, which is the main national law regulating the health and safety issues of workers. The provisions of Article 38 of the Law on Safety and Health are rather limited in relation to disability. They provide that certain guarantees apply, as covered in legislation, and that they can be regulated by collective or employment contracts. Article 38 also provides that a person with disability can be appointed to work overtime or night shifts only if this is not forbidden by the healthcare institution and only with the agreement of the employee.¹⁷⁸

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 if the assessment entirely rules out certain forms of work for the person concerned, the employer is obliged to dismiss the disabled person from that position. However, this does not depend solely on the interpretation of the employer and the decision of the Working Capacity Assessment Office. As described above in Chapter 2.6, the court concluded in one case that measures must be taken to realistically evaluate a person’s ability to work or to consider adjusting their working conditions.¹⁷⁹

¹⁷⁸ Lithuania, Law on the Safety and Health of Workers (*Darbuotojų saugos ir sveikatos įstatymas*), 31 July 2003, No. IX-1672, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.95C79D036AA4/asr>.

¹⁷⁹ Vilnius Regional Court decision of 27 February 2014, case No. 2A-557-640/2014, (*Vilniaus apygardos teismo 2014 m. vasario 27 d. nutartis Civilinėje byloje Nr. 2A-557-640/2014*), available in Lithuanian at: <https://eteismai.lt/byla/276850064617444/2A-557-640/2014>.

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

4.7.1 Direct discrimination

Article 2(9(1)) of the Law on Equal Treatment provides an exception for direct discrimination on the ground of age.

a) Justification of direct discrimination on the ground of age

In Lithuania, national law provides for justifications for direct discrimination on the ground of age. Article 2(7(1)) of the Law on Equal Treatment repeats the wording of the directive regarding the age exception, and states that restrictions on the grounds of age as established by law where justified by a legitimate aim, and where the means of achieving that aim are appropriate and necessary and do not constitute direct discrimination.

These restrictions are usually addressed in decisions of the Ombudsperson. In 2018, the Ombudsperson concluded that the requirement set out by the Minister of Education and Science to increase the number of teaching staff with less than 20 years of experience constituted indirect discrimination based on age. One of the reasons for this was that the requirement was not established by law and was neither justified nor necessary.¹⁸⁰

In another case in 2018, the Ombudsperson admitted a violation of equal treatment in the granting of privileges for athletes younger than 28 in the Klaipėda Fitness Centre, and recommended that the Council of Klaipėda City Municipality's decision be changed.¹⁸¹

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 the 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(9) 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 (as discussed below in Section 4.7.3). There are also prohibitions on access to some goods and services in order to protect minors.

Age-based exceptions have been challenged in the past. For example, 2012 provisions setting an age limit for university lecturers and heads of department under the Law on Higher Education were amended following a recommendation of the Equal Opportunities Ombudsperson.¹⁸²

¹⁸⁰ Decision of the Equal Opportunities Ombudsperson No. (18)SI-7)SP-86, 4 September 2018 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos amžiaus pagrindu Lietuvos Respublikos švietimo ir mokslo ministro 2018 m. kovo 26 d. įsakymo Nr. V-267 "Dėl Lietuvos Respublikos 2018 metų valstybės biudžeto lėšų, skirtų išlaidoms, susijusioms su pedagoginių darbuotojų skaičiaus optimizavimu, apmokėti, paskirstymo tvarkos aprašo patvirtinimo" nuostatų tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/09/sprendimas-86.pdf>.

¹⁸¹ Decision of the Equal Opportunities Ombudsperson No. (18)SN-138)SP-98, 4 October 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos amžiaus, negalios ir socialinės padėties pagrindais Klaipėdos miesto savivaldybės tarybos sprendime tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/10/18sn-138sp-98.pdf>.

¹⁸² Lithuanian Equal Opportunities Ombudsperson (2013), *Annual Report for 2012*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2015/12/lqkt-ataskaita-2012.pdf>.

- c) Fixing of ages for admission or entitlement 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 2(9) of the Law on Equal Treatment.

Generally, the question of occupational pensions is not of great relevance in a national context, since such pensions are not popular and no occupational pension funds have been established under the Law on Accumulation of Occupational Pensions.¹⁸³ According to this law, a person may, from the age of 16, be a part of an association establishing an occupational pension fund and may be entitled to a professional pension from the age established by the professional pension fund requirements, but that age cannot be more than five years lower than the general state pension age established by the Law on State Social Insurance Pensions (Article 32(1)). According to the Law on State Social Insurance Pensions, from 2026 the state pension age will be 65 for everybody. In 2018 the state pension age was 62 years and 4 months for women and 63 years and 8 months for men.

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.

The Law on the Safety and Health of Workers sets specific requirements for the working conditions of persons under 18, including requirements on working time, length of the working day, rest breaks, etc. These are described in more detail in the resolution adopted by the Government.¹⁸⁴

Several special provisions for young people, older people and persons with caring responsibilities are embodied in the Labour Code. Under Article 57, in the event of a reduction in the number of employees, the following employees have a right of priority in retaining their job: those who sustained an injury or contracted an occupational disease at the workplace; those who are raising more than three children (including adopted children), who are raising children (or adopted children) under 14 years of age on their own, or who care for other family members; those who have less than 55 per cent working capacity, or family members who have reached retirement age and who have been assessed in accordance with the procedure established by law as having high or moderate special needs; persons 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; those who will be entitled to the old-age pension in not more than three years' time; persons whose right of priority has been established by a collective agreement; and those who have been elected as board members of representatives of employees, acting on the employer's level.

Pregnant women, women who have just given birth or who are breastfeeding, employees with caring responsibilities and employees who have health issues or a disability have a right to flexible (reduced) working hours (Article 40), as well as an option to request remote working (Article 52). Some persons are guaranteed a longer warning time should their employment contract be terminated by their employer: persons with caring

¹⁸³ Lithuania, Law on Accumulation of Occupational Pensions (*Lietuvos Respublikos profesinių pensijų kaupimo įstatymo Nr. X-745 pakeitimo įstatymas*, 2018, No. XIII-1852), available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/760872b009b011e98a758703636ea610>.

¹⁸⁴ Lithuania, Law on the Safety and Health of Workers (*Lietuvos Respublikos darbuotojų saugos ir sveikatos įstatymas*), *Valstybės žinios*, 16 July 2003, No. 70-3170), available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.95C79D036AA4/asr>.

responsibilities, persons who have less than five years left before retirement age and persons with disabilities have double the usual time, and persons who have less than two years left to retirement age are guaranteed triple the length of warning time (Article 57). Additional guarantees are provided to pregnant women, men on paternity leave, persons taking care of children up to the age of three, and persons who are serving in compulsory military or alternative services in the case of dismissal – the general rule is that they cannot be dismissed, with certain exceptions (Article 61).

Similar groups are given priority when establishing the order of annual holidays (Article 128). Furthermore, the Labour code established a general principle of respect for a person's family life and a duty on employers to ensure the implementation of the principle of balancing family and work.

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.

Children younger than 16 are generally forbidden from working, except in certain straightforward jobs consistent with their physical abilities, and in jobs that would not have a negative impact on a child's safety, health or physical, mental, moral or social development under the conditions established by the Law on the Safety and Health of Workers and the resolution adopted by the Government.¹⁸⁵

Such jobs must not jeopardise the child's education, school attendance or attendance at educational programmes (Article 36), and work may not be undertaken in the mornings before school, etc. A number of limitations are also set for employees aged 16 to 18 (reduced working hours, prohibition of night shifts, etc.).

For specific professions, the age of competency differs, with the minimum age often set at 18; this is usually dependent on a material condition for 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 for the proper performance of the activity.

Most of the current, specific, age-based exceptions concerning the minimum and maximum age requirements for accessing employment are set for certain statutory bodies (customs, the state security department, etc.), specific professions (ship captains, pilots, members of the armed forces, etc.) or state services (judges, bailiffs, notaries, the Prosecutor General, members of Parliament, members of municipal councils, etc.).

4.7.4 Retirement

a) State pension age

In Lithuania, there is a 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.

¹⁸⁵ Lithuania, Law on the Safety and Health of Workers (*Darbuotojų saugos ir sveikatos įstatymas*), 31 July 2003, No. IX-1672, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.95C79D036AA4/asr>.

In 2018, the pension age in Lithuania was 62 years and 4 months for women and 63 years and 8 months for men. It will reach 65 years for both women and men in 2026.¹⁸⁶ 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, such as the right to work or the right to own property.¹⁸⁷

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 it was for others. This 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 pensions that are awarded and paid in order to secure the 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 may be reduced due to this to a greater extent compared with those people who do not have any job and do not conduct any business.¹⁸⁸ According to the Constitutional Court, having created (by means of the disputed legal regulation) the preconditions for reducing the state pensions of state pension recipients who have a certain job or who conduct a certain business to a greater extent than for those state pension recipients who do not have any job or do not conduct any business, 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.¹⁸⁹

Thus, when a person reaches the age when they are entitled to a state pension, this cannot be considered as a legitimate reason to terminate their employment. The anti-discrimination provisions in Article 56 of the new Labour Code explicitly state that an employment contract can be terminated upon the request of the employee if they reach the old-age pension age. According to Article 2 of the Labour Code, discrimination on the basis of age is prohibited in principle. Article 26 repeats a number of provisions on the prohibition of discrimination that were previously contained only in the Law on Equal Treatment.

b) Occupational pension schemes

In Lithuania, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

¹⁸⁶ Lithuania, Law on State Social Insurance Pensions (*Lietuvos Respublikos socialinio draudimo pensijų įstatymas*), *Valstybės žinios*, 3 August 1994, No. 59-1153), available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5901/asr>.

¹⁸⁷ Ruling of the Constitutional Court of the Republic of Lithuania No. 113-5057, 25 November 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*, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1213/content>.

¹⁸⁸ Constitutional Court of the Republic of Lithuania, Decision 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 in English at: <http://lrkt.lt/en/court-acts/search/170/ta932/content>.

¹⁸⁹ Constitutional Court of the Republic of Lithuania, ruling on the recalculation and payment of pensions upon the occurrence of an especially difficult economic and financial situation in the state, 6 February 2012, available in English at: <http://lrkt.lt/en/court-acts/search/170/ta1073/content>.

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 cannot be realised in practice yet, as no occupational pension funds have been established since the introduction of the first version of the Law on the Accumulation of Occupational Pensions. However, in theory, a person could be entitled to a professional pension from the age established by the professional pension fund requirements, but that age cannot be more than five years lower than the general state pension age established by the Law on State Social Insurance Pensions (Article 32(1)). In 2018, it could not be lower than 57 years and 4 months for women or 58 years and 8 months for men.

Again, there has been no practical application of occupational pensions.

c) State imposed mandatory retirement ages

In Lithuania, there are state-imposed mandatory retirement ages, which are 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 or state officials), which set a maximum age of employment. For instance, in general, the maximum retirement age for civil servants is 65, although it can be extended for a period of up to two years if the civil servant signs a fixed-term employment contract for mentoring (transfer of work experience).¹⁹⁰ This age limit does not apply to civil servants of political (personal) confidence (defined as 'a civil servant recruited for a term of office of the appointing state politician or the appointing collegiate state institution or for a term specified in other laws'), nor does it apply to acting public servants.

There is a compulsory maximum age limit for particular professions. For example, according to the Law on Courts, judges are appointed until the age of 65, with the possibility of continuing their term to complete the hearing of a case or until the hearing is postponed.¹⁹¹ According to the Law on Diplomacy, the maximum age of a diplomat is 65, and this can only be extended by two years. Again, the limit does not apply to civil servants of political confidence.¹⁹² Prosecutors must retire at the age of 65,¹⁹³ and bailiffs must retire at the age of 70.¹⁹⁴

Similar rules apply to other state officials and to particular professionals such as pilots and ship captains, as well as the chief administrators of universities and other educational and 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.

¹⁹⁰ Lithuania, Law on Public Service (*Valstybės tarnybos įstatymas*), *Valstybės žinios*, 30 July 1999, No. 66-2130, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/asr>.

¹⁹¹ Lithuania, Law on Courts (*Lietuvos Respublikos teismų įstatymas*), *Valstybės žinios*, 17 June 1994, No. 46-851, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/en/TAD/TAIS.5825>.

¹⁹² Lithuania, Law on Diplomatic Service (*Lietuvos Respublikos diplomatinės tarnybos įstatymas*), *Valstybės žinios*, 15 January 1999, No. 7-140, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.70992/asr>.

¹⁹³ Lithuania, Law on the Prosecutor's Office (*Lietuvos Respublikos prokuratūros įstatymas*), *Valstybės žinios*, 19 October 1994, No. 81-1514, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5956/IViwMSHAvI>.

¹⁹⁴ Lithuania, Law on Bailiffs, *Valstybės žinios*, 29 May 2002, No. 53-2042, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.167057/pPaWjkuXB?jfwid=rivwzvvpvg>.

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 law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

Age cannot be a legitimate reason for an employer to unilaterally terminate a working contract. The Labour Code provides people who have no more than five years until they reach pension age with additional guarantees. 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 are entitled to receive the old-age pension in no more than three years' time will enjoy a priority right to job retention (Article 57).

However, as mentioned above, there is a compulsory maximum age limit for particular professions in the public sector. This can be extended only by a limited time or cannot be extended in certain cases. These rules mostly apply to state officials and pilots (and those in other military or statutory institutions), as well as to chief administrators of universities and other educational and 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 mandatory retirement.

As was mentioned above, the general rule of the Labour Code is that mandatory retirement upon reaching pension age is not allowed, given that age alone cannot be considered as a legitimate reason to terminate an employment contract. Some laws fix certain age limits for particular professions (judges, diplomats, 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

In Lithuania, national law permits age or seniority to be taken into account in selecting workers for redundancy.

The general rule of the Labour Code is that age alone cannot be considered as a legitimate reason to terminate a labour contract (Article 26).

However, the Labour Code provides additional guarantees related to a person's acquisition of the right to a pension. Under Article 57, in the event of a reduction in the number of employees, some employees have a right of priority in retaining their jobs. Among other persons with caring responsibilities, one of the groups who have such a priority are those entitled to the old-age pension in not more than three years' time.

b) Age taken into account for redundancy compensation

In Lithuania, national law provides compensation for redundancy. Such compensation is not affected by the age of the worker.

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 the company or institution concerned, compensation does not vary for those who have worked in the same place for more than a year (Articles 56, 57 and 60 of the Labour Code). Employees who have reached the allowed pension age are also entitled to compensation (Article 56(1)).

During the investigation of a complaint in 2018, the Ombudsperson evaluated the order of the Minister of Education and Science establishing that the state budget funds to cover all or part of the dismissal compensation for state and municipal school teaching staff would be allocated when the school's application for state budget funding met certain conditions, including one to increase the number of teaching staff with less than 20 years of teaching experience, and one to increase the number of persons beginning teaching work with up to two years of experience, working in the same position as the employee with whom the employment contract was terminated.

The Ombudsperson found that the requirement imposed by the Minister of Education and Science to increase the number of teaching staff with less than 20 years of experience constituted indirect discrimination based on age. The requirement was not established by law and was neither justified nor necessary.¹⁹⁵

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 includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. The only exceptions that the author is aware of are related to the requirements for background checks on pilots and the requirement to check their health upon request, which are related to the aviation safety requirements established in Articles 47 and 66 of the Law on Aviation.¹⁹⁶

4.9 Any other exceptions

Other exceptions to the prohibition of discrimination (on any ground) provided in national law are as follows.

The requirement to know the state language and a prohibition on participation in political activities are listed as exceptions (see, for instance, Article 9 of the Law on Public Service),¹⁹⁷ and exceptions are elaborated in other laws. For example, the Equal Opportunities Ombudsperson has to suspend their membership in a political party (Article 18(4) of the Law on Equal Treatment), and persons serving in the armed forces cannot be members of a political party (Article 36 of the Law on the Organisation of the National Defence System and Military Service).¹⁹⁸ However, there are no specific exceptions in the field of private employment.

¹⁹⁵ Lithuania, Decision of the Equal Opportunities Ombudsperson No. (18)SI-7)SP-86, 4 September 2018 (*Lygių galimybių kontrolieriaus sprendimas Dėl galimos diskriminacijos amžiaus pagrindu Lietuvos Respublikos švietimo ir mokslo ministro 2018 m. kovo 26 d. įsakymo Nr. V-267 "Dėl Lietuvos Respublikos 2018 metų valstybės biudžeto lėšų, skirtų išlaidoms, susijusioms su pedagoginių darbuotojų skaičiaus optimizavimu, apmokėti, paskirstymo tvarkos aprašo patvirtinimo" nuostatų tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/09/sprendimas-86.pdf>.

¹⁹⁶ Lithuania, Law on Aviation (*Lietuvos Respublikos aviacijos įstatymas*), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.9D2F66B96EBC/asr>.

¹⁹⁷ Lithuania, Law on Public Service (*Lietuvos Respublikos Valstybės tarnybos įstatymas*), *Valstybės žinios*, 30 July 1999, No. 66-2130, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/asr>.

¹⁹⁸ Lithuania, Law on the 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; <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 is permitted in national law in respect of disability, gender, race, 'nationality', citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

Article 2(9) 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 disabled persons 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', citizenship, 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.¹⁹⁹ The Ombudsperson identified the need for a comprehensive approach to positive action measures, as well as highlighting the fact that the country lacks a clear mechanism for the implementation of positive measures. The Ombudsperson recommended that a law on positive action be passed.

In their *Annual Report for 2018*, the Ombudsperson recommends amending the Law on Equal Treatment so as to establish exceptions within the Law to allow for certain benefits for persons with disabilities, persons of certain ages, those in certain financial conditions or those with limited legal capacity when accessing goods or services. The report indicated that 'justification of such advantages is not established by Law' and recommended amending the Law so as to add an exception whereby access to goods and services may be provided only (or primarily) to persons of certain characteristics, when that can be justified by a legitimate aim and when the means of achieving that aim are appropriate and necessary.²⁰⁰ A similar idea was expressed in 2017.

There is no legislation that deals with positive action measures, and a definition of such measures is not provided in national law. A ruling of the Constitutional Court²⁰¹ made some time before the Law on Equal Treatment was passed gives some idea as to 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

¹⁹⁹ Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²⁰⁰ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

²⁰¹ Ruling of the Constitutional Court of the Republic of Lithuania 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*.

education, qualifications, health or work experience of citizens who enter the civil service. In its ruling, the Constitutional Court concluded:

'This principle (principle of equality) obligates one to apply a uniform legal assessment to homogeneous facts and prohibits against any arbitrary assessment of essentially homogeneous facts (the Constitutional Court's ruling of 24 January 1996). This is the principle of a formal legal equality. This constitutional principle does not deny the fact that different legal regulations may be established in respect to categories of certain persons that are in different situations.'²⁰²

The Law on Equal Treatment requires state and municipal institutions to draft measures ensuring equal opportunities:²⁰³

'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.'

This might be considered as some sort of equality mainstreaming obligation; however, it is brief, it is not elaborated upon, and no control mechanism has been put in place. Therefore, it is not surprising that when the Ombudsperson made an independent survey of 13 ministries and 60 municipalities in 2015, the results were rather disappointing.²⁰⁴ According to the results of the research, very few institutions had any understanding of equality mainstreaming in general or saw the ensuring of equal opportunities as their obligation (or function) at all. In many instances, municipalities declared completely irrelevant activities (such as promoting sport, healthy lifestyle activities and local community projects, redeveloping cemeteries and building a dovecot) 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 listed were still not relevant in many ways. In most cases, the duty to promote equal opportunities is understood as an obligation to refrain from discrimination.

In 2016, the Ministry of Agriculture was noted to be in breach of the equal opportunities principle. The Ministry had implemented a programme entitled 'Economic and Business Development', which was designed to promote social inclusion, poverty reduction and economic development in rural areas. Under the programme, a competition was published every year, the rules of which stipulated that applicants under the age of 29 were to be awarded an additional 25 points, with 15 points going to those aged between 30 and 40 years. The additional selection of applications was based on the applicant's age, with priority given to younger applicants. The Ombudsperson held that the measures taken to achieve a legitimate aim of promoting employment were disproportionate when it came to older persons.²⁰⁵ The competition was, however,

²⁰² Ruling of the Constitutional Court of the Republic of Lithuania No. 12/99-27/99-29/99-1/2000-2/2000, 8 May 2000, <https://www.lrkt.lt/en/court-acts/search/170/ta1160/content>.

²⁰³ 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 on which the law came into 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.

²⁰⁴ 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*) concerning the initiation of an independent review of efforts by governmental and municipal institutions to ensure equal opportunities in their strategic plans.

²⁰⁵ Decision of the Equal Opportunities Ombudsperson No. (16)SN-203)SP-136, 15 December 2016 (*Lygių galimybių kontrolieriaus pažyma dėl galimos diskriminacijos amžiaus pagrindu skiriant paramą tyrimo*), available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2016/12/16sn-203sp-136.pdf>; Decision of the Equal Opportunities Ombudsperson No. (18)SN-123)SP-88, 11 September 2018 (*Lygių galimybių kontrolieriaus sprendimas dėl galimos diskriminacijos negalios pagrindu teikiant paslaugas BĮ Studijų*

amended in 2018, so that priority would be given to 'applicants who have been registered in rural areas for more than one year, applicants younger than 40 or older than 54 and if applicant is a woman', with five extra points awarded during evaluation. The expert of the Office of the Equal Opportunities Ombudsperson commented that, in the given circumstances, the measures taken were proportionate and justified.²⁰⁶

The Labour Code, which entered into force in 2017, introduced an obligation on public and private entities employing more than 50 employees to adopt measures aimed at promoting and implementing equality policies in the workplace (Article 26).²⁰⁷ Following these legislative amendments, and noting its duty to carry out preventive educational activities and activities encouraging the implementation of equal opportunities, the Equal Opportunities Ombudsperson introduced recommendations, with training for companies and employers on how to create equality plans. This may be found at www.lygybesplanai.lt.²⁰⁸

The Law on Employment creates a system of additional support measures to ensure employment for persons with disabilities, unqualified workers, long-term unemployed persons, unemployed persons over 50 and under 29, unemployed persons starting their first job according to their qualifications, and persons with refugee status or subsidiary or temporary protection. Subsidies are allocated to employers who employ the above-mentioned categories of persons, and they are also granted for providing reasonable accommodation in the workplace for persons with disabilities and for creating posts for persons with disabilities and all others who are mentioned in the law. There are also various types of support for certain categories of persons themselves.²⁰⁹ Measures for integrating national minorities and immigrants into the labour market are also provided for under this law.

However, any quota system to promote the employment of people with disabilities or other groups is not set out in legislation in Lithuania. The subsidies for creating workplaces for specific categories of groups, even if they cannot be given to others, cannot be held to represent a quota system, as there is no duty for employers to start such a system in the first place. A reform is being discussed in the Parliament, which would change the current domination of so-called 'social enterprises' and would allow more flexible access to government subsidies for any employers. Nevertheless, discussions regarding these legal changes have already lasted for quite some time.

Currently, support related to the employment of the above-mentioned groups is regulated under a procedure approved by the Minister of Social Security and Labour, according to which special employment plans are to be produced for 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 or adapt jobs for them. Jobs may be established or 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.

kokybės vertinimo centre tyrimo), available in Lithuanian at:

<https://lygybe.lt/data/public/uploads/2018/09/sprendimas-18sn-123sp-88.pdf>.

²⁰⁶ Delfi.lt (2018), 'Moterys paramą gaus lengviau, bet tai nebus', 10.10.2018, available in Lithuanian at: <https://www.delfi.lt/agro/agroverslo-nauijenos/moterys-parama-gaus-lengviau-bet-tai-nebus-diskriminacija.d?id=79268351>.

²⁰⁷ Lithuania, Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), 2016, No. XII-2603, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89>.

²⁰⁸ Lithuanian Equal Opportunities Ombudsperson, '2018 – the year of promoting equality in Labour Market', available in Lithuanian at: <https://www.lygybe.lt/lt/nauijenos/2018-ieji-ir-lygybes-darbo-rinkoje-skatinimo-metai/1026>.

²⁰⁹ Lithuania, Law on Support for Employment (*Lietuvos Respublikos Užimtumo įstatymas*), 21 June 2016, No. XII-2470, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/422c8b5042b811e6a8ae9e1795984391/asr>.

b) Quotas in employment for people with disabilities

In Lithuania, national law does not provide for quotas for people with disabilities in employment.

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, a judicial procedure exists for enforcing the principle of equal treatment. In civil and administrative courts, criminal procedure is also possible in cases of discrimination, but this is rarely or never applied. There is also the quasi-judicial procedure of filing a complaint with the Equal Opportunities Ombudsperson, but this is considered to be an administrative procedure.²¹⁰

The Constitution guarantees the right of every person to appeal to a court for the protection of the constitutional rights that have been violated. The general principle of equality of persons is embodied in a number of laws, including 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. This does not preclude the person from 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 (under administrative or civil jurisdiction, depending on the matter at hand). The court offers the only option for a person to receive some sort of compensation for discriminatory actions and suffered harm, because none of the other available procedures provides compensation to the victims.

In the case of a labour dispute, a person may take advantage of certain pre-trial procedures established by the Labour Code. The Labour Code, adopted in 2017, significantly changed the previous labour dispute investigation procedure. According to the Labour Code, a person may apply to the employment disputes commissions or courts directly. Employment disputes commissions are now permanent bodies, working under the State Labour Inspectorate. They consist of three members: the chairman (a state official, appointed by the State Labour Inspectorate), a representative of an employer organisation, and a representative of a trade union. In cases of unfair dismissal, the commission can award the payment of salary for the duration of forced absenteeism (but for no more than one year) and pecuniary and non-pecuniary damages, as well as compensation worth a maximum of six times the average salary (Article 218).

According to the information provided by the State Labour Inspectorate on its website, the Employment Dispute Commissions received 6 712 requests in 2018. Out of the 7 637 requests that have been analysed, 13 concerned discrimination in employment.²¹¹

People who believe that their rights have been infringed by individual administrative actions or by the actions (or omissions) of civil servants or municipal employees in the sphere of public administration – including in relation to social protection, social advantages, education and access to and the 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 municipal employees in the sphere of public administration can also be challenged at the Seimas (Parliamentary) Ombudsmen's Office. According to the Constitution:

²¹⁰ There are further theoretical options that are not used in practice, such as filing a complaint to the Parliamentary Ombudsman when human rights violations have been committed by state officials or institutions, or to the State Labour Inspectorate in cases of labour law violations. However, the Parliamentary Ombudsman would not duplicate the function of the Equal Opportunities Ombudsperson.

²¹¹ Lithuanian State Labour Inspectorate, 'An Overview of Activity of Labour Dispute Commissions in 2018', available in Lithuanian at: https://www.vdi.lt/Forms/Tema.aspx?Tema_ID=63.

'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 the Seimas Ombudsmen, the purpose of the activities of the 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. In reality, therefore, most cases investigated by the 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 previous 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, the Equal Opportunities Ombudsperson is considered to be the national equality body in terms of Article 13 of the Racial Equality Directive 2000/43/EC. Complaints should be made in writing: the complainant or her or his representative may send a complaint to the Ombudsperson by post, fax or 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. In addition, Ombudsperson may decide to investigate anonymous complaints. The general rule is that complaints must be investigated within three months after being received, although an extra month can be added if the case is complicated and the Ombudsperson decides that this is necessary.

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, although they can be overruled by a court. In 2017, the Law on Equal Treatment was amended to include a provision that, within 30 days of receiving the decision of the Ombudsperson, the party is obliged to provide information about measures that have been taken with regard to the implementation of the Ombudsperson's decision. This does not mean that the recommendation is mandatory, although it gives the Ombudsperson a right to monitor its recommendations. Applying to the Equal Opportunities Ombudsperson does not prevent a complainant from lodging a claim with a court on the same matter. It is also possible to submit a complaint to the Administrative Disputes Commission regarding the decisions of the Ombudsperson.

The Ombudsperson often acts as a mediator in practice as, according to the Office, peaceful resolution of discrimination is one of its main objectives.²¹² 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 assess 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, including the creation of an administrative follow-up system. Since May 2017, a table of recommendations and the status of their implementation (a monitoring report) have been available on the website of the Ombudsperson.²¹³

²¹² See the annual reports of the Equal Opportunities Ombudsperson from 2008 to 2018, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²¹³ See the website of the Equal Opportunities Ombudsperson at: <http://www.lygybe.lt/lt>. Clicking on 'Monitoring the implementation of decisions' (*Sprendimų vykdymo stebėseną*) leads to the Google

According to the table, of the 25 recommendations that were issued to various institutions in 2018, 15 were implemented, 9 were in the process of implementation and one had not even begun to be implemented, as the case was pending in court. The case was brought to Vilnius Regional Court, questioning the decision of the Ombudsperson that found there had been a violation of equal treatment regarding access to health services in a Kaunas clinic on the ground of disability, due to the inaccessibility of the building. Although the table does not provide information about what has actually been done to implement recommendations, the creation of a monitoring mechanism is still 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, the Ombudsperson issued a fine on only one or two occasions during the past 10 years of its operation. There might have been more cases when fines were given, judging from information from media articles, but they are not mentioned in the annual reports.²¹⁴ One of the cases when an administrative fine of an unspecified amount was imposed in 2008 concerned discrimination in the field of employment – a person did not receive a job because of discrimination based on their age.²¹⁵

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, only a limited number of persons can receive it, and there are few independent legal aid clinics (mostly staffed by law students), so the legal aid mechanism needs to be strengthened in order to provide more opportunities for vulnerable groups to defend their rights in court. Furthermore, when filing complaints to courts, applicants need to pay a court fee, although applicants may get this back should their trial be successful.

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. The new Law on Mediation entered into force on 1 January 2019.

In practice, associations often initiate administrative proceedings with the Ombudsperson, although case law on the issue has confirmed that only persons whose rights have been directly infringed by particular decisions have the right to appeal to the

document: https://docs.google.com/spreadsheets/d/1NP38IHq2nzKzs-bbM2bnZBVfTL5_FVxhDqiR5oRXHo0/edit#gid=0.

²¹⁴ The staff of the institution claim that fines have in fact been issued at least a few times.

²¹⁵ Lithuanian Equal Opportunities Ombudsperson (2009), *Annual Report for 2008*, available in Lithuanian at: <https://www.lygybe.lt/data/public/uploads/2015/12/lqkt-ataskaita-2008.pdf>.

Ombudsperson.²¹⁶ 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 may 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.

c) Number of discrimination cases brought to justice

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

Exact statistics on the number of cases related to discrimination are not available. The author is aware of no more than 30 to 35 relevant²¹⁷ cases that were brought to court, concerning various grounds (other than gender), and discrimination was established by the courts and the perpetrators sanctioned only on a few occasions.

d) Registration of discrimination cases by national courts

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

Discrimination cases are not recorded separately; cases are not categorised as such by the national courts, so one has to search for them in the available databases by entering key words, and any such search cannot be considered complete. Therefore, it is difficult to find all the cases of discrimination that have been heard.

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 and trade unions are entitled in principle to act on behalf of victims of discrimination. However, legal provisions on the matter need judicial interpretation.

In practice, the Lithuanian human rights NGO scene is rather weak, in that most of the organisations that deal with non-discrimination issues or vulnerable groups are engaged in preventive work, education and awareness raising, and very few of them engage on behalf of victims. There is not a single NGO specialising in litigation, and only a few organisations have occasionally been involved in court cases during the last decade, with one organisation systematically trying to get involved in strategic litigation.

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.

²¹⁶ Supreme Administrative Court of Lithuania, case No. A⁶⁶²-665/2010, decision of 19 April 2010; Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, decision of 7 November 2013.

²¹⁷ Meaning those cases that deal with the scope of EU anti-discrimination law and are not necessarily based on the 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.

The latest amendments to the Law on the Proceedings of Administrative Cases do not mention associations among the list of possible representatives of persons in an administrative procedure, unless they are representing the association itself or its members.²¹⁸

When it comes to civil proceedings, a similar provision in the Code of Civil Procedure has a narrower wording. Article 56(1)(6) states that such associations may engage in judicial proceedings on behalf of their members only and that they must be represented by a person holding a law degree or by a member of the Bar. Although this particular provision has not been tested in the courts in any civil cases yet, an unofficial interpretation provided by the Ministry of Justice²¹⁹ suggested a narrow interpretation of this provision as well, in that 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 that of the Code of Civil Procedure.

According to Article 56(1(5)) of the Civil Procedure, trade unions can engage in a civil procedure only on behalf of their members and in labour disputes only. According to the Law on Trade Unions,²²⁰ a trade union is established if it has no less than 20 founders, or if 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), the articles of association are approved and the governing bodies have been elected at a meeting of the trade union. In addition to this, it must have elected governing bodies and must have adopted a decision on its registered office.

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, a court ruled that only persons whose rights were directly affected by particular decisions had the right to appeal to the Ombudsperson.²²¹ According to the court's interpretation, associations can thus lodge a complaint with the Ombudsperson only when their rights have been directly violated. This was reaffirmed in 2013, when the Supreme Administrative Court ruled that, although an association could initiate an investigation (by informing the Ombudsperson), they did not have a right to complain unless the rights of the association had been directly affected.²²² However, in practice, such situations are handled in a less formal way. In 2018, 34 % of the complaints on the ground of age that were received by the Ombudsperson (12 in total) came from various non-governmental organisations, and 3 complaints on the ground of disability were submitted by organisations representing persons with disabilities. Usually in such cases, the Ombudsperson would 'start an investigation on its own initiative' after 'receiving information'. In some situations, associations are involved in legal court actions as third parties, even when they try to initiate a legal action in support of victims of discrimination, such as the case mentioned in Chapter 12.2.²²³

²¹⁸ 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/asr>.

²¹⁹ Official Letter from the Ministry of Justice, 10 November 2011, No. (1.11) 7R-9117, replying to an inquiry dated 18 October 2011.

²²⁰ 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.

²²¹ Supreme Administrative Court of Lithuania, decision in case No. A⁶⁶²-665/2010, 19 April 2010.

²²² Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, decision of 7 November 2013.

²²³ Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas), *Edmundas Buklis and Ramunė Šidlauskaitė v. State of Lithuania, Vilnius City Municipality and Vilnius District Municipality*; third

b) Engaging in support of victims of discrimination (joining existing proceedings)

In Lithuania, associations, organisations and 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 not clear. The Code of Civil Procedure allows an association, as a third party, to get involved in both civil and administrative proceedings 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 party in support of the complainant.

According to the interpretation by the Supreme Administrative Court, associations can take part in an administrative procedure only when their rights have been directly violated.²²⁴

There have been very few cases when equality and non-discrimination NGOs have 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 have been violated, NGOs would usually provide assistance, such as help to find a lawyer, and would participate in support of the victim (applicant). Some cases in 2018 demonstrated this.

c) *Actio popularis*

In Lithuania, national procedural legislation allows associations, organisations or 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 on this 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' do have a right to pursue *actio popularis*. 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 the possible challenges. In 2013, the Supreme Administrative Court of Lithuania ruled²²⁵ that, according to the Law on the Proceedings of Administrative Cases, only those persons whose rights are directly

parties: Lithuanian Disability Forum and Office of the Equal Opportunities Ombudsperson, administrative case No. eI-1659-331/2018, decision of 28 April 2018.

²²⁴ Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, decision of 7 November 2013.

²²⁵ Supreme Administrative Court of Lithuania, *Europos žmogaus teisių fondas v. Lygių galimybių kontrolieriaus tarnyba*, administrative case No. A⁴⁹²-2078/2013, 7 November 2013.

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 salesperson to work at a women's clothes shop. The EFHR claimed that the job advertisement was 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 but, over the course of two months, the company failed to respond to any queries. The Ombudsperson stopped 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.

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 contradicted 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 in its entirety. It stated that an administrative act that 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 had not been affected by the decision of the Ombudsperson in any way, 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 among the administrative courts in the interpretation and application of statutes and other legal acts.

d) Class action

According to amendments to the Code of Civil Procedure that entered into force on 1 January 2015,²²⁶ the law does allow associations or trade unions to act directly in the interest of more than one individual victim (class action) for claims arising from the same event. However, it does allow class action through the representation of a lawyer.²²⁷ 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

²²⁶ 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=>.

²²⁷ The amendments came into effect on 1 January 2015.

consistent with the goals and interest of the organisation, (2) no less than 10 members of the group pursuing the class action are members of the organisation, and (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 (on the protection of consumer rights), and none concerning discrimination.

Lithuania has chosen an opt-in model of class action, meaning a person has to express a will to join the group.

The Law on the Proceedings of Administrative Cases allows associations and trade unions to act in the interest of a class action together with a lawyer of the group.²²⁸

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

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

The current wording of Article 4 of the Law on Equal Treatment repeats the provision of the directives and does not go into details. A similar provision (although restricted to cases in the field of employment) with regard to the shift in the burden of proof is repeated in Article 26(5) of the Labour Code, which entered into force in 2017.

The Code of Civil Procedure sets out the general rule that the burden of proof falls upon the applicant. However, Article 182(4) of the Code contains a provision that states that parties are not obliged to prove circumstances that are presumed by law. 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. There were attempts to include a shift in burden of proof in the Code of Civil Procedure in the past, but they were dismissed by the Parliament.²²⁹ Nevertheless, court cases reaffirm that the courts generally do accept the shift in the burden of proof in discrimination cases.²³⁰ The Code of Civil Procedure and the Law on the Proceedings of Administrative Cases does not explicitly mention burden of proof in discrimination cases, but they contain clauses referring to presumptions regulated by other laws.

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 that could occur as a reaction to a complaint or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

The Labour Code requires an employer to take measures to ensure that employees are not subjected to harassment, hostile behaviour or negative consequences when they submit a complaint regarding discrimination or participate in a case regarding discrimination (Article 26(2)(5)). Article 59(2) protects a person from dismissal when they start proceedings against an employer regarding discrimination.

²²⁸ 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/asr>.

²²⁹ Transcript of the plenary session of the Parliament of the Republic of Lithuania of 27 June 2007, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=300811.

²³⁰ Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas), '*Eglės sanatorija*' v. *Lygių galmybių kontrolieriaus tarnyba*, case No. I-2531-643/2018, 9 July 2018.

However, national legislation does not provide protection from victimisation in other fields such as education or the provision of goods and services.

The shift in the burden of proof would also apply in cases of victimisation, since the national provision of the shift in the burden of proof is broad enough to interpret it in a way that can be applied in all disputes with regard 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 proceedings 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 an administrative procedure at the Equal Opportunities Ombudsperson, who can issue warnings (admonish the perpetrator) or impose a fine under the Administrative Violations Code, although they cannot compensate the victim in any way.

Under paragraph 2 of Article 6.250 of the Civil Code, non-pecuniary damages can be claimed in a civil case only in cases prescribed by law. A person has the right to bring a civil action against an employer and to claim compensation in the case of discrimination in a workplace. Therefore, the claimant is able to seek compensation in two ways – either by claiming violation of the Labour Code (in the field of employment) or by claiming violation of the Law on Equal Treatment (in 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.

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 the actions that are violating equal opportunities;
- To recommend that a person or an institution change or repeal an administrative act (or part of it) related to such violations;
- To begin proceedings on administrative violations;
- To declare the complaint unfounded if the alleged violations referred to in the complaint have not been established;
- To admonish those who have committed a violation (in such cases, the Ombudsperson issues a warning or recommendation to halt the discriminatory practices, although these are not essentially binding);
- To issue binding decisions to stop discriminatory advertising campaigns, establishing the applicable terms and conditions;
- To address an application to the administrative court, asking it to establish whether a normative administrative act (or a part of it) or a rule adopted by a religious community, a political party, a political organisation or an association complies with the Law on Equal Treatment or the Law on Equal Opportunities for Women and Men.

When the Ombudsperson examines cases of administrative offences, they can 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.

Decisions of the Equal Opportunities Ombudsperson are binding, so they can therefore be challenged in court or at the Administrative Disputes Commission.

Although the Equal Opportunities Ombudsperson has been given the authority to investigate complaints of discrimination, the decisions of the Ombudsperson do not include granting any form of compensation (including reinstatement) to the victim of discrimination for the damage caused. In practice, the Ombudsperson usually issues a recommendation (which is essentially non-binding) to stop discriminatory actions or occasionally warns those who have committed violations. According to the annual reports of the institution, during the past 10 years of its operation, the Ombudsperson issued only two fines;²³¹ other instances can be found, however, via media articles. The amount of the fine issued in 2008 is not indicated; the fine issued in 2014 was of LTL 1000 (EUR 290) and concerned an advertisement that degraded women.²³² Fines can range from EUR 40 to 560 (or from EUR 560 to 1 200 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 they did not consider a fine to be an effective solution to discriminatory situations. The author notes, however, that, if the Ombudsperson issued fines, they could be challenged in court, which would result in litigation, thus placing an extra burden on the Ombudsperson's staff. However, other decisions of the Ombudsperson are currently challenged in court.

The administrative procedure allows for injunctive relief measures under Article 70 of the Law on Administrative Procedure, such as the prohibition of certain activity, the temporary suspension of the validity of an individual administrative act, the suspension of recovery of enforcement or other measures applied by the court. The Code of Civil Procedure also allows injunctive relief measures under Article 145.

Finally, Lithuanian criminal law provides protection from severe discriminatory acts amounting to crimes, and also provides sanctions. Article 169 of the Criminal Code provides sanctions for severe discriminatory behaviour comprising (a) community service; (b) a fine; (c) detention; or (d) imprisonment for up to three 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, only one investigation on the basis of this article has been started since 2003, 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.

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. The Labour Code sets limits for compensation in cases of unlawful dismissal, and these limits are different in cases when a person can be reinstated and in those when a person cannot be reinstated. When unlawful dismissal has been recognised, the competent body shall make an order to reinstate an employee and to pay them an average wage for the period of involuntary

²³¹ The staff of the institution claim that fines have in fact been issued at least a few times.

²³² 'A 1000 Lt fine for a discriminatory meat ad' ('Už diskriminuojančią mėsos reklamą skirta 1000 Lt bauda'), 3 December 2014, available in Lithuanian at: <https://www.lygybe.lt/index.php/lt/pranesimai-ziniasklaidai/uz-diskriminuojancia-mesos-reklama-skirta-1000-lt-bauda/253>.

damage starting from the date of dismissal (but for no longer than one year), as well as pecuniary and non-pecuniary damages (Article 218(2)). When a person cannot be reinstated in their employment for reasons established in the Labour Code, the competent body shall order the payment of an average wage for the period of involuntary damage starting from the date of dismissal (but for no longer than one year), as well as pecuniary and non-pecuniary damages. There is also compensation equal to the average salary for every two years of employment, but for no more than the average salary of six employees (Article 218(4)). Therefore, the compensation can vary, from the average salary for 12 months to that of 18 months, together with the other pecuniary and non-pecuniary damages.

According to the law, there is no limit on compensation for non-pecuniary damages 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.²³³ In 2011, the court of first instance awarded EUR 7 802 to a man who had allegedly been discriminated against on the basis of sexual orientation,²³⁴ however the court of appeal overruled the decision entirely and concluded that there had been no discrimination at all.²³⁵ 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).²³⁶ In 2018, a woman was awarded EUR 3 000 for unlawful dismissal (discriminatory on the grounds of disability) for being forced to miss working days from the time of her dismissal until the adoption of the Court's decision, plus EUR 48.96 for every day until the full implementation of the court's decision for five days a week up to a maximum period of one year.

Therefore, judicial compensations for victims of discrimination currently range from EUR 579 to 3 000.

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. Firstly, they are very rarely issued. However, even if the Ombudsperson did issue fines, such administrative sanctions can hardly be considered effective, proportionate and dissuasive, even though they have been increased. They do not depend on the revenue of the offender, for instance, and they are also rather limited in their nature. 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 the limited application of administrative sanctions by the Ombudsman in cases of sex- and gender-based discrimination was causing great concern.²³⁷

²³³ 2nd County Court of Vilnius, *S. Marcinkevič v. UAB Disona*, No. 2-1189-545/2008, 30 June 2008.

²³⁴ 2nd County Court of Vilnius, *Vilnius College v. A.Z.*, civil case No. 2-101-294/2011, 31 March 2011.

²³⁵ Vilnius Regional Court, *Vilnius College v. A.Z.*, civil case No. 2A-2140-464/2011, 11 November 2011, available in Lithuanian at: <https://eteismai.lt/byla/238747699876412/2A-2140-464/2011>.

²³⁶ For more information about the case, please see Section 12.2 (Case law).

Vilnius Regional Administrative Court (Vilnius apygardos administracinis teismas), *Edmundas Buklis and Ramunė Šidlauskaitė v. State of Lithuania, Vilnius City Municipality and Vilnius District Municipality*; third parties: Lithuanian Disability Forum and Office of the Equal Opportunities Ombudsperson, administrative case No. eI-1659-331/2018, decision of 28 April 2018.

²³⁷ 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.

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, as defined by the Administrative Violations Code, did 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.²³⁸

This was also highlighted by an in-depth report published in 2017 on the status of the national equality body, which was based on interviews with key stakeholders (such as decision makers and representatives of civil society, academia and state and municipal institutions).²³⁹ As many as 23 respondents out of 30 pointed out that the sanctions and penalties set out in the current legislation were not sufficiently effective, proportionate and dissuasive. In addition, half the respondents said that they believed that the Equal Opportunities Ombudsperson lacked the powers to ensure the enforcement of his/her decisions, and only a third said that the statutory powers were sufficient. A third of respondents commented on possible ways of strengthening the impact of the Ombudsperson's decisions.

²³⁸ Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²³⁹ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

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 main national institution dealing with equality and non-discrimination and is the national anti-discrimination body established 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 of 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 contained in Directives 2000/43/EC and 2000/78/EC as well as the ground of gender, started operating on 1 January 2005.

Initially, the Ombudsperson monitored the implementation of the Law on Equal Treatment in the manner prescribed by the Law on Equal Opportunities for Women and Men. As of 1 January 2017, both laws have been amended and all procedural aspects (appointment criteria and procedure, as well as competence and provisions on investigations of complaints) have been moved from the Law on Equal Opportunities of Women and Men to the Law on Equal Treatment.

The national equality body follows the traditional model of an Ombudsman institution. It is governed by the head officer, the Ombudsperson for Equal Opportunities, who is appointed and accountable to the Parliament and, according to the law, the main activity of the institution is the handling of complaints. Although awareness raising and promotion of equality were always a part of the Ombudsperson's activities, these activities were added as part of the mandate of the institution under amendments to the Law in 2017. The Law on Equal Treatment was also amended in 2018, adding the function of monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities (entering into force on 1 July 2019). The Ombudsperson now considers its mandate to be mixed (functioning as both a tribunal and a promotional body), although the quasi-judicial function continues to dominate.

- b) Political, economic and social context for the designated body

The institution of the Equal Opportunities Ombudsperson is considered to be the main national institution dealing with equality and non-discrimination. It was initially established based on international commitments to the UN regarding gender equality, and was further expanded based on the requirements of the Racial Equality Directive and the Employment Equality Directive – and, most recently, in relation to the UN Convention on the Rights of Persons with Disabilities.

Therefore, the existence of the institution is widely seen by politicians as a commitment to international human rights standards and obligations, rather than resulting from a genuine need for development in equality from within the country. Open hostility to the existence of the institution has been avoided for a considerable time. However, in 2018, the Ombudsperson received a written request and was invited to the Parliament to provide answers regarding the 'Support' campaign, which had been implemented by the institution with the aims of inspiring the public to support women who open up about the experience of abuse and violence and of avoiding victim-blaming attitudes. Various different people (a friend, the mother, a judge, a police officer, the children's rights protection service and a priest) were depicted in a campaign video as blaming the victim,

using the words victims said they had heard during research.²⁴⁰ The Ombudsperson was invited to a plenary session in the Parliament and had to answer questions on whether, through its campaign, the Ombudsperson was not undermining state institutions, discrediting society's trust in state institutions and the state itself or violating the rights of religious persons.²⁴¹ During the campaign, the Ombudsperson was widely criticised by church-affiliated groups and NGOs for violating 'traditional values'. However, following the criticism, the Ombudsperson has received support from around 50 specialised centres, women's organisations and human rights organisations,²⁴² and a number of politicians, including both Opposition and Government-supporting members of the Parliament, expressed their support.

The underfunding of various governmental programmes is common practice in Lithuania. Most of the national anti-discrimination programmes, as well as many public bodies, were severely underfunded during the years of economic crisis (2008-2012).

Public support for the national equality body remains rather limited. It is certain that most of the human rights NGOs support the existence of the institution as such, but the general public still lack knowledge and understanding of its role, as reported in previous reports. More than half of the population in Lithuania say that, if they were discriminated against or harassed, they would exercise their rights and would report the discrimination to the police (37 %) or to the national Equal Opportunities Office (35 %).²⁴³ On the other hand, when people are actually discriminated against, they rarely report the fact: according to a public opinion poll, 95 % of individuals who said they had been victims of human rights violations did not complain to any institution.²⁴⁴

There has been definite improvement since the appointment of the Ombudsperson in 2015 – the efficiency of the institution has increased, its work has become much more open to the public, its role has become much more visible in the media and, during the last few years, it has instigated a few widely discussed awareness-raising campaigns and has spoken out against discriminatory attitudes expressed by high-level politicians. According to the public opinion poll authorised by the Ombudsperson in 2018, 73.7 % of persons indicated that they had heard of the Equal Opportunities Ombudsperson, and 28 % responded that they would contact the Ombudsperson in the case of discrimination. However, it should be noted that the level of trust in the Ombudsperson has fallen from 29.1 % in 2017 to 24.1 % in 2018.²⁴⁵

c) Institutional architecture

In Lithuania, the designated body does form part of a body with multiple mandates. However, the Equal Opportunity Ombudsperson was appointed other mandates in 2018.

Equality and non-discrimination on all grounds listed in the directives and on the ground of gender are the main areas of work of the Office of the Equal Opportunities Ombudsperson.

²⁴⁰ 'Support' campaign, video by the Office of the Equal Opportunities Ombudsperson, available in Lithuanian at: https://www.youtube.com/watch?time_continue=15&v=2KrHsqiwnQY.

²⁴¹ Transcript of the plenary session of the Parliament of the Republic of Lithuania of 13 November 2018, available in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/91184541e7f911e894a78279b4c56611>.

²⁴² Letter from NGOs to the Parliament of the Republic of Lithuania, 13 November 2018, available in Lithuanian at: <http://manoteises.lt/wp-content/uploads/2018/11/D%C4%97I-LR-Lygi%C5%B3-galimybi%C5%B3-kontrolieriaus-tarnybos-vykdytos-kampanijos-%E2%80%9EPalaikyk%E2%80%9C.pdf>.

²⁴³ European Commission, Eurobarometer survey, 'Discrimination in the EU in 2015', available online at: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68110>.

²⁴⁴ Human Rights Monitoring Institute, public opinion poll on how society evaluates the situation of human rights in Lithuania, conducted by Vilnius from 3 to 12 October 2014, available online at: <http://www.hrmi.lt/musu-darbai/tyrimai/178/visuomenes-nuomones-apklausa/>.

²⁴⁵ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>.

In 2010 the Government issued a decision to assign an additional function to the Office of the Equal Opportunities Ombudsperson,²⁴⁶ obliging it to 'monitor the implementation of the provisions of the UN CRPD related to safeguarding equal opportunities, without providing additional funding'.

Organisations representing the interests of people with disabilities criticised the decision and described the mechanism for monitoring the implementation of the CRPD in Lithuania as inefficient, given that no sufficient human and financial resources had been allocated for monitoring adherence to the Convention. Recommendations 67 and 68 of the UN Committee on the Rights of Persons with Disabilities²⁴⁷ stated that the Office of the Equal Opportunities Ombudsperson and the Council for the Affairs of the Disabled, which had been appointed to function as Lithuania's independent monitoring mechanisms, were 'not in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights'.

Amendments to the Law on Equal Treatment were made in 2018, adding the monitoring of CRPD to the mandate of the Ombudsperson. However, it is too early to conclude how this function is being carried out, as the amended Law was set to enter into force only on 1 July 2019.²⁴⁸

d) Status of the designated body/bodies – general independence

i) Status of the body

Lithuania took the decision to establish the Office of the Equal Opportunities Ombudsperson under a separate law, thus providing it with the status of a separate entity, full legal personality and independence from the executive branch. As an ombudsman-type institution, it is accountable to the Parliament only and is run by the chief officer of the institution – the Ombudsperson.

The Ombudsperson is appointed by Parliament for a term of five years. The current head of the institution advocated placing a limit of two consecutive terms, and amendments made in 2017 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 duty to follow the principle of pluralism or to consult any board or body when appointing the Ombudsperson, the Speaker of the Parliament suggests 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.²⁴⁹

The requirements for the candidate, as set out in the Law on Equal Treatment, are that they have an impeccable reputation, a university degree in law and a minimum of 10 years' experience in law. The requirement of

²⁴⁶ Government of the Republic of Lithuania, Decision No. 1739 on the Implementation of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, 8 December 2010, available online at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D9347683010E>.

²⁴⁷ UN Committee on the Rights of Persons with Disabilities (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, 11 May 2016, available in English at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fLTU%2fCO%2f1&Lang=en.

²⁴⁸ Lithuania, Law amending the Law on Equal Treatment, No. IX-1826, Articles 1, 16 and 17, and introducing Article 15-1 (*Lietuvos Respublikos lygių galimybių įstatymo Nr. IX-1826 1, 16 ir 17 straipsnių pakeitimo ir įstatymo papildymo 15-1 straipsniu įstatymas*), 11 December 2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/b52da81002c211e9a5eaf2cd290f1944>.

²⁴⁹ Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas), case No. eI-9300-811/2015, *D.G.-K. v. Lithuanian Parliament, Lithuanian State*.

'impeccable reputation' is not explained in detail in the Law on Equal Treatment. However, it is elaborated upon in detail in Article 4 of the Law on Public Service, which states that a person would not be considered as having an 'impeccable reputation' if he or she had a current conviction record for a serious crime, a crime of corruption or crimes against the state service, had previously been dismissed from a state office or work or had lost the ability to carry out independent activities due to particular violations and a period of three years from that dismissal has not passed, if he or she had been dismissed or removed from an appointed office having breached an oath or pledge, was a member of an organisation forbidden by law, etc.²⁵⁰ 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 having 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 Parliament only if the Ombudsperson is ill for a certain period of time, as specified by law, if 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, but this provision was removed from 1 January 2017, thus strengthening the Ombudsperson's independence.

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. 2016 marked an important turning point in moving towards increased efficiency and strengthening the Office's institutional structure. The institution was re-structured with three internal divisions (a legal division, an equal opportunities mainstreaming division and an operational management division), with a communication division formed in 2017, in addition to a financial adviser and the Ombudsperson herself. Therefore, it currently consists of four internal divisions.

The Office of the Equal Opportunities Ombudsperson is financed from its pre-approved budget; thus, its financial independence is also ensured by law. The Ombudsperson has a right to use its general funding according to its needs and priorities, and 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 the allocated funding according to the needs of the institution as well as to manage staff, to hire or fire personnel, etc.²⁵¹

However, this does not mean that the funding for each year remains unchanged. Every 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 2018 was EUR 507 000 (EUR 31 000 less than in

²⁵⁰ Lithuania, Law on Public Service (*Valstybės tarnybos įstatymas*), *Valstybės žinios*, 30 July 1999, No. 66-2130, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/asr>.

²⁵¹ 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*, 26 November 2003, No. 111-4930.

2017); out of this sum, the staff budget was EUR 272 000 (EUR 232 000 in 2017).²⁵²

In addition, the Office of the Ombudsperson receives substantial additional funding for particular projects from EU structural funding or programmes financed by the European Commission – approximately EUR 417 400. The institution employed 19 people in 2018 (the same as the previous year).

However, the Equal Opportunities Ombudsperson is challenged by the fact that, while some of its functions are attributed to the Ombudsperson by separate programmes approved by the Government or individual ministries, these are not necessarily allocated additional funding or are allocated very limited funding. Many proactive promotional and other strategic activities are funded because of the constant application for EU funding, either by the Office itself or by NGOs. Sometimes, challenges occur, ensuring the co-funding required from the state budget. Therefore, the financial independence of the Office of the Equal Opportunities Ombudsperson is limited, and the institution has limited ability to plan its promotional functions several years ahead.

As previously mentioned, the institution is accountable to Parliament and must deliver an annual report by the middle of March each year.

ii) Independence of the body

From the legal perspective, the independence of the Equal Opportunities Ombudsperson is stipulated by the Law on Equal Treatment as well as being ensured by its separate legal personality and institutional structure. However, the process of appointment, which does not involve any consultation with experts or civil society, is considered as lacking transparency and could potentially be an obstacle to the Office's independence. Despite its formal independence, the Office of the Equal Opportunities Ombudsperson has not been able to avoid an institutional crisis: there was a failure to appoint an Ombudsperson at the end of the regular term of office, and two failed attempts to appoint respected experts in the field to the post a few years ago gave rise to doubts concerning the independence and impartiality of the institution from 2013 to 2015. Both attempts gave rise to doubts concerning the transparency of the appointment procedure as well as the candidate selection criteria. When experienced and highly principled candidates were rejected without any explanation, people got the message that the institution was politicised and that principled individuals who did not accommodate a specific political ideology would not be appointed despite their professional qualifications. The appointment procedure cast a shadow over the status of the Office as an independent equality body and potentially dissuaded several competent experts from even considering the position of Equal Opportunities Ombudsperson. The current statutory procedure and its practical implementation make the impartiality of the appointment of any new Ombudsperson open to question (even when doubt about the impartiality of the Ombudsperson is unfounded).

This was highlighted by an in-depth report published in 2017 on the status of the national equality body, which was based on interviews with key stakeholders (such as decision makers and representatives of civil society,

²⁵² Lithuanian Equal Opportunities Ombudsperson, *Strategic Action Plan for 2018-2020*, adopted by Order of the Ombudsperson No. V-46, 29 December 2017, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/01/v-46-lqkt-2018-2020-strateginis-veiklos-planas.pataisytas.pdf>.

academia and state and municipal institutions).²⁵³ Respondents were asked to evaluate the independence of the Office of the Equal Opportunities Ombudsperson on a scale of 1 to 10. The average score given by the 29 respondents was 5.91.

It has to be noted, however, that much depends on the person appointed to the Office – the de facto independence of the Ombudsperson. However, under the amendments to the Law that entered into force in 2017, provisions were adopted to ensure the independence of the institutions. In particular, the same person cannot be appointed for more than two consecutive terms.

e) Grounds covered by the designated body/bodies

The Ombudsperson exercises its functions with respect to all grounds covered by the Law on Equal Treatment: gender, race, 'nationality',²⁵⁴ citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion.²⁵⁵

Article 2(9) of the Law on Equal Treatment provides an exception to direct discrimination with regard to nationality (as in citizenship, *pilietybė*). The other term, *tautybė*, even though it may be translated as 'nationality', refers to ethnicity and is listed among the protected grounds, in addition to origin (*kilmė*) or ethnic origin/belonging (*etninė priklausomybė*).

On the basis of the number of inquiries and complaints received, the Ombudsperson has recommended expanding the definition of social status so as to include family status.²⁵⁶

A balance between the Ombudsperson's work in relation to gender and in relation to other grounds listed in Article 13 of the directive (or all grounds in general) is not discussed in public or reflected in the Ombudsperson's own strategic plans²⁵⁷ or annual reports.²⁵⁸ The grounds of gender, age and disability are mentioned in the strategy, however other measures cover all grounds. The legal staff of the institution specialise in particular grounds, although when it comes to other areas (such as awareness raising, research, etc.) it appears that the expertise does not relate to the specifics of different grounds and debates, meaning that it is not possible to ascertain whether sufficient attention is given to each ground. The Ombudsperson continues to function in a rather reactive way when investigating complaints, addressing issues that arise from complaints, but also tries to address different issues, carrying out opinion polls or research. The number of investigations into complaints on different grounds cannot be considered a sufficient measure to assess whether all grounds receive equivalent attention.

²⁵³ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimybu_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

²⁵⁴ The term used in LET is *tautybė*, which refers to belonging to a national minority and is not used with the meaning of 'citizenship'.

²⁵⁵ 'Citizenship' was added to the list in 2017 as a result of the transposition of Directive 2014/54/EU and only applies to citizens of the EU and EEA countries and their family members (partners, however, are not explicitly included).

²⁵⁶ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lgk-2018-m.-veiklos-ataskaita-.pdf>.

²⁵⁷ The strategic action plans of the Office of the Equal Opportunities Ombudsperson for 2016–2021 are available in Lithuanian at: <https://lygybe.lt/lt/administracine-informacija/planavimo-dokumentai/366>.

²⁵⁸ The Equal Opportunities Ombudsperson's annual reports are available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

According to the number of inquiries and complaints, gender (378), age (121) and disability (107) were the grounds on which the highest number of complaints and inquiries were received in 2018. The number of complaints and inquiries on the ground of social status remains similar. This has slightly changed compared with previous years, and the Ombudsperson has tried to give more attention to the grounds of disability and sexual orientation. The number of inquiries might be growing, but not necessarily that of complaints: the numbers of inquiries and complaints regarding disability (107 inquiries and 48 complaints) and sexual orientation (39 inquiries and 5 complaints) have slightly increased compared with the previous year (when there were 98 inquiries and 52 complaints on disability and 14 inquiries and 3 investigations on sexual orientation). Therefore, in the opinion of the author, these grounds might require more attention from the Office of the Ombudsperson, as they might be the areas where people still do not feel able to complain when their rights are infringed, in addition to the grounds of race, ethnic origin and others in a similar category (such as language, origin and citizenship) or belief, convictions or views and religion.

f) 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 providing 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;
- 4) Conducting awareness raising, educational and preventive work;
- 5) Exchanging information with analogous institutions in other Member States;
- 6) Monitoring the UN Convention on the Rights of Persons with Disabilities (included in the Law in 2018, entering into force in 2019).

i) Independent assistance to victims

In Lithuania, the designated body does not formally have the authority to provide independent assistance to victims in pursuing their complaints of discrimination in the courts or using another administrative procedure. The Ombudsperson itself is a quasi-judicial institution, so taking the side of the victim is rather problematic. Therefore, assistance to victims should be viewed from the perspective of a tribunal-type body and its functions.

According to the Law on Equal Treatment, the Equal Opportunities Ombudsperson 'provides independent consultations' with regard to various inquiries. The procedure, possible outcomes, length or scope of these consultations is not detailed in the Law or any other act. Therefore, in the opinion of the author, individual victims do not know what exactly to expect from these consultations. It entirely depends on the attitude and position of a particular consultant (no particular staff member or department is tasked with such consultancy work). Although this is the only provision that could be interpreted as 'independent assistance' to victims of discrimination, it is rather vague. Since most discrimination complaints reach the Ombudsperson first, in practice, the Ombudsperson carries out consultancy work and potentially advises the applicants on which procedural approach to use to pursue justice.

On a few occasions, the Office of the Ombudsperson has been involved in judicial proceedings as an expert witness on the side of the complainant, providing its expertise on the matter, but in most cases it is involved as a third party or in some cases as a defendant when complaints are submitted to the courts to rebut a decision of the Ombudsperson.

In practice, according to the representatives of the Office, the staff devote much of their time to providing consultations and information to ensure that victims of discrimination receive free consultations on possible actions in each situation. Indeed, both the law and the staff of the Office perceive these consultation activities as fulfilling the function of 'assisting victims', as required by the Racial Equality Directive. According to the respondents to the stakeholder survey in 2016, the ability of victims of discrimination to take advantage of the services of the Office to remedy their rights could give them a sense of security and provide at least a theoretical possibility of assistance and hope (in the opinion of nine respondents). Quite a few of the respondents said that the Office was open and ready to provide information, but some did not know what specific assistance the Office of the Equal Opportunities Ombudsperson provided to victims of discrimination (nine respondents). When asked to evaluate the efficiency of the assistance provided to victims of discrimination, harassment and sexual harassment on a scale of 1 to 10, one third of respondents said that they could not give an evaluation, and the rest rated the efficiency of the assistance provided at 5.92.²⁵⁹

It has to be noted that the Ombudsperson itself does not have the authority to go to the court for compensation of damages or represent victims in the courts.

In the opinion of the author, the lack of available effective, proportionate and dissuasive sanctions and legal tools that would help to fully enforce the Ombudsperson's recommendations results in a situation that does not always serve the victims well.²⁶⁰

It is hard to evaluate the effectiveness of the consultations provided, as no monitoring mechanism has been created for this. The annual reports mention the numbers of inquiries and complaints received. The annual reports indicate that, in many instances, people want to share their stories, but they do not want to submit complaints; sometimes, they simply ask for advice.

As the strategic documents do not mention any resources being formally allocated for holding consultations, it is impossible to address the matter.

ii) Independent surveys and reports

The Equal Opportunities Ombudsperson has competence to conduct independent surveys on the situation of discrimination, and to publish independent reports, in accordance with Article 17(2) of the Law on Equal Treatment.

²⁵⁹ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kkontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

²⁶⁰ For more details, please see Section 7(h).

The publications,²⁶¹ surveys and other analyses²⁶² that have been carried out can be found on the Ombudsperson's website.

In 2018, the Ombudsperson commissioned an opinion poll to assess people's attitudes towards transgender people; it carried out a survey on 'Choices for reconciling family and work in the public and private sectors'; it assessed the situation on equal opportunities in its annual report; and it carried out an Independent Review of the Action Plan for 2018-2021 on the Implementation of the State Programme on Equal Opportunities for Women and Men 2015-2021.²⁶³

The *Annual Report for 2018* indicated that not enough equal opportunities statistics are collected in Lithuania to assess the situation of persons with disabilities, and that it is difficult to plan and carry out independent surveys based on the budget allocated to the Ombudsperson. Therefore, the Ombudsperson has to rely on other governmental programmes, including on non-discrimination, but the Government does not always allocate enough money for an assessment of the situation. Therefore, it is impossible to strategically plan these activities, as most of them are carried out using external project funding, which needs to be applied for but is not guaranteed.

Most surveys and analyses are outsourced to external experts, institutes or agencies, or are carried out by non-governmental organisations. The Ombudsperson does not have sufficient funding to hire experts to carry out analysis or surveys.

Annual reports are submitted to the Parliament by 15 March each year. The Ombudsperson puts additional effort into presenting the results from previous years to the public, inviting stakeholders to their presentations. In addition, all the annual reports are available on the website of the Ombudsperson.

iii) Recommendations

The Equal Opportunities Ombudsperson has authority to make independent recommendations on discrimination issues. This can be done as a result of investigations of complaints (Article 29(2)), and the Ombudsperson can provide conclusions and recommendations on any discrimination-related issues with regard to the implementation of the law, as well as making proposals to state and municipal institutions and agencies of the Republic of Lithuania concerning the improvement of legal acts and priorities for the implementation of equal rights policy (Article 17(2)).

The author is not aware of any information that would lead to doubts about the independent implementation of this function by the current Ombudsperson or the Office. However, efficiency and the impact of the recommendations have been areas of concern.

The Equal Opportunities Ombudsperson usually makes recommendations to stop discriminatory behaviour and to carry out certain actions to do this, following the investigation of a particular complaint. Recommendations are essentially non-binding but, according to the Ombudsperson, its recommendations to stop discriminatory behaviour or to change certain

²⁶¹ Publications by the Equal Opportunities Ombudsperson, see <https://lygybe.lt/lt/tarnybos-leidiniai>.

²⁶² Surveys and analysis either commissioned or carried out by the Equal Opportunities Ombudsperson, see <https://lygybe.lt/lt/tyrimailygybessrityje>.

²⁶³ Surveys and analysis either commissioned or carried out by the Equal Opportunities Ombudsperson, see <https://lygybe.lt/lt/tyrimailygybessrityje>.

practices are usually adhered to without 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. After administrative changes in 2016, follow-up of recommendations has been introduced for decisions taken from 2017. A table showing the status of implementation (a monitoring report) and the status of each recommendation can be viewed online by the general public.²⁶⁴ In practice, these recommendations are followed up by staff in the legal department of the Office (comprising five civil servants in 2018).

Recommendations to amend specific acts or policies can also be issued as a result of an investigation if a certain act has been found to be discriminatory. The Ombudsperson also issues recommendations regarding certain legal acts or policies in its annual reports, when it gets involved in working groups with different ministries, or sometimes in separate cases, after analysing the provisions of a draft law.

However, most recommendations to amend legal acts, when not relating to the investigation of complaints, usually do not have deadlines set for them, therefore they cannot be monitored in the same manner.

On stakeholder perception, representatives of the academic community, NGOs and state and municipal institutions were asked whether the Office of the Equal Opportunities Ombudsperson was active enough in submitting proposals on possible legislative improvements. Almost half of the respondents believed that it was not active enough, and most respondents commented that the Office of the Equal Opportunities Ombudsperson should be more active in making suggestions on possible improvements of legal acts, but also pointed out that more human resources would be necessary to fulfil this function.²⁶⁵

iv) Other competences

Awareness raising and the promotion of equal opportunities was formally added to the competence of the Ombudsperson only on 1 January 2017, even though awareness raising and preventive work have been an integral part of the everyday work of the institution since its foundation. In the current office, three members of staff work for the communications department, and four deal with various awareness-raising and education projects. It should be noted that this particular element of the mandate is being implemented quite effectively. With the support of EU funds, the Ombudsperson carried out a number of effective awareness-raising campaigns, which increased the visibility of the Ombudsperson. In cooperation with NGOs, the Equal Opportunities Ombudsperson introduced a number of initiatives: a training course for employers on the introduction of principles of equality in the labour market, as well as equality plans for the workplace.

The Ombudsperson was involved by the Government in implementing and/or monitoring a number of action plans and strategies implemented now and

²⁶⁴ Equal Opportunities Ombudsperson, 'The implementation of the decisions of the Equal Opportunities Ombudsperson', available at: https://docs.google.com/spreadsheets/d/1NP38IHq2nzKzs-bbM2bnZBVfTL5_FVxhDqiR5oRXHo0/edit#gid=0.

²⁶⁵ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

previously. The most recent are the Action Plan for the Promotion of Non-discrimination for 2015-2020²⁶⁶ and the Action Plan for Roma Integration into Lithuanian Society 2015-2020.²⁶⁷ Therefore, the Government considered the Ombudsperson as the de facto key institution for awareness raising and the promotion of equal opportunities, despite the fact that the law provides for a much narrower, mainly quasi-judicial mandate and the fact that, until 2017, awareness raising was not part of the de jure mandate of the Ombudsperson.

It should be noted that awareness raising and the promotion of equal treatment are considered by stakeholders as very important tasks of the Office of the Equal Opportunities Ombudsperson. When asked if awareness-raising and discrimination prevention activities should be included as part of the mandate of the Office, as many as 77 % of respondents to the stakeholder survey replied that it should, and only 13 % of respondents believed that it should not. Respondents said that educational activities carried out by the Office had the strongest impact on safeguarding equal treatment, followed by complaint investigation activities (13 out of 30 respondents).²⁶⁸

In 2014, the performance of the Ombudsperson was criticised by the UN Committee on the Elimination of Discrimination against Women for the lack of visibility of the Office.²⁶⁹ The Office of the Ombudsperson has greatly reformed its promotional and communication activities, establishing a separate division in 2017 (employing three persons). The website of the Ombudsperson is being updated on a regular basis, a number of awareness-raising campaigns are organised, all the decisions of the Ombudsperson are being uploaded online, and an active Facebook page has been launched, used not only for communication but for holding consultations on discrimination. The implementation of recommendations made by the Ombudsperson following the investigation of complaints can be observed by the public.

The worrying trend is that many promotional activities have to be carried out without funding from the state budget. Therefore, the UN Committee on the Elimination of Racial Discrimination recommended in its recent concluding observations 'that the State party allocate sufficient funding to the Office of the Equal Opportunities Ombudsperson so that it can take up its preventive and education competences.'²⁷⁰

Besides the functions described above, Article 17(3) says that the Ombudsperson shall exchange any available information with other

²⁶⁶ 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: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363/UBCsaHNOQf>.

²⁶⁷ Lithuania, Order of the Minister of Culture of 29 January 2015 No. IV-48 on approval of the Action Plan for Roma Integration into Lithuanian Society 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/asr>.

²⁶⁸ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionalin_e_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

²⁶⁹ For more information, see Section 2.1.2 on multiple discrimination.

²⁷⁰ 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.

institutions and bodies functioning in the Republic of Lithuania or other states or international organisations.

As per the amendments of 11 December 2018, the Equal Opportunities Ombudsperson will be monitoring compliance with the UN Convention on the Rights of Persons with Disabilities from 2019.

g) Legal standing of the designated body/bodies

In Lithuania, the designated body does not have legal standing:

- to bring discrimination complaints (on behalf of identified victim(s) to court;
- to bring discrimination complaints (on behalf of non-identified victims) to court;
- to intervene in legal cases concerning discrimination.

In Lithuania, the designated body does have legal standing to bring discrimination complaints ex officio to court. This can be done only when applying to the administrative court asking it to establish whether a normative administrative act (or a part of it), or a rule adopted by a religious community, a political party, a political organisation or an association complies with the Law on Equal Treatment or the Law on Equal Opportunities for Women and Men.

The Ombudsperson can be involved in court proceedings as a third party or, in some situations, as an expert witness on the side of the complainant, providing expertise on the matter and assisting the victim or institution in reaching a conclusion in court. The Ombudsperson, as any other person, can request to join the legal proceedings in court in cases where the conclusion of a particular case might have an impact on their rights and duties.

The Ombudsperson participated in the case mentioned in part 12.2 of this report as a third party.²⁷¹ Besides this, according to its annual report, the Office participated in 26 administrative cases (12 more than in 2017). In 19 administrative cases, the Office participated as a defendant, in 4 as an applicant and in 3 as a third party. No information about the grounds that were addressed in the court cases is provided within the annual report.

h) Quasi-judicial competences

In Lithuania, the body is a quasi-judicial institution. It also has other functions, as described in this report; therefore, it is a mixed-type institution. For many years, the handling of complaints has been the main function of the institution, therefore most of its human resources were allocated to this task. After restructuring in 2016, the legal department was reduced to five people.

Despite the fact that the Ombudsperson has been involved in many promotional-type activities, from a legal point of view, the main function of the Office of the Ombudsperson has always been quasi-judicial. Although, in 2017, awareness-raising, promotional and preventive work were finally added to the list of competences of the institution, the Law on Equal Treatment still places most emphasis on the quasi-judicial work of the body and contains 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.

²⁷¹ Vilnius Regional Administrative Court (Vilnius apygardos administracinis teismas), *Edmundas Buklis and Ramunė Šidlauskaitė v. State of Lithuania, Vilnius City Municipality and Vilnius District Municipality*; third parties: Lithuanian Disability Forum and Office of the Equal Opportunities Ombudsperson, administrative case No. eI-1659-331/2018, decision of 28 April 2018.

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 the actions that are violating equal opportunities;
- To recommend that a person or an institution change or repeal an administrative act (or part of it) related to such violations;
- To begin proceedings on administrative violations;
- To declare the complaint unfounded if the alleged violations referred to in the complaint have not been established;
- To admonish those who have committed a violation (in such cases, the Ombudsperson issues a warning or recommendation to halt the discriminatory practices, although these are not essentially binding);
- To issue binding decisions to stop discriminatory advertising campaigns, establishing the applicable terms and conditions;
- To address an application to the administrative court, asking it to establish whether a normative administrative act (or a part of it), or a rule adopted by a religious community, a political party, a political organisation or an association complies with the Law on Equal Treatment or the Law on Equal Opportunities for Women and Men.

In opinion of the author, it ought to be possible to issue a binding decision in any cases of discriminatory practice (not just discriminatory advertising). However, in the opinion of the staff of the Office of the Ombudsperson, the issuing of recommendations to discontinue discriminatory practices is a sufficient tool.

The author is not aware of any information that would cast doubt on the independent implementation of this function by the current Office and the Ombudsperson. However, some cases have been lost in court purely because of procedural mistakes – the staff of the Ombudsperson were not used to pursuing litigation in the past and lack practical litigation skills. Therefore, there is room for improvement when it comes to the quality of investigations as well as litigation.

The decisions of the Ombudsperson can be appealed to the Administrative Disputes Commission or the courts. See part 12.2 (Case law) – *"Eglës" sanatorija v. Equal Opportunities Ombudsperson*. There is no procedure to appeal decisions to the Ombudsperson itself.

The decisions of the Equal Opportunities Ombudsperson do not include compensation for damages to the victim of discrimination. In practice, the Ombudsperson usually issues a recommendation (which is essentially non-binding) 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 adhered to without 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, including the creation of an administrative follow-up system. The follow-up procedure is hence a rather new practice, and its methods are currently being developed.

The Equal Opportunities Ombudsperson has a right to apply binding administrative sanctions. According to its annual reports, during its years of operation the

Ombudsperson has issued a fine only a couple of times.²⁷² Fines can range from EUR 40 to 560 (or EUR 560 to 1 200 for repeated offences) and are provided for in the Administrative Violations Code (Article 81). However, the Administrative Violations Code provides that the initial fine issued should be for half the minimum amount (which would be EUR 20 for a violation of the Law on Equal Treatment), and only if the offender does not voluntarily pay this fine can a further (bigger) fine be imposed. The former Ombudsperson stated numerous times in the Office's previous annual reports that it did not consider a fine to be an effective solution to discriminatory situations.

In 2014, this issue was raised by the UN Committee on the Elimination of Discrimination against Women, which stated that the 'limited application of administrative sanctions by the Ombudsman in cases of sex- and gender-based discrimination' caused great concern.²⁷³ In the past, the Ombudsperson recommended that the Parliament should expand the list of sanctions and allow multiple sanctions in order to ensure the discontinuation of discriminatory acts and also to serve as dissuasive sanctions.²⁷⁴ In 2014, the Ombudsperson herself (a temporary substitute) identified the issue of sanctions in the annual report. According to the Ombudsperson, the current situation and sanctions, as defined by the Administrative Violations Code, do not constitute effective, proportionate or dissuasive sanctions, as required by the directives.

In the opinion of the author, the sanctions imposed by the Equal Opportunities Ombudsperson are not effective, proportionate or dissuasive. The need to review the mechanism for enforcing sanctions and decisions by the Equal Opportunities Ombudsperson is supported by the 2016 stakeholder survey results.²⁷⁵ As many as half of the respondents believed that the Equal Opportunities Ombudsperson lacked the powers to ensure the enforcement of his/her decisions, and as many as 23 respondents out of 30 pointed out that the sanctions and penalties set out in legislation were not sufficiently effective, proportionate and dissuasive.

According to the staff of the Ombudsperson, its recommendations are followed in most situations. However, the lack of available effective, proportionate and dissuasive sanctions, the lack of a variety of decisions to be taken and the lack of legal tools to enforce the Ombudsperson's recommendations may be contributing to the lack of respect for the authority of the Ombudsperson. This can be illustrated by a case in 2017, when the mayor of the capital city of Vilnius publicly stated that he would not follow the Ombudsperson's recommendation and would put it in the bottom drawer of his desk, calling it 'absurd' and 'an example of bureaucratic stupidity'.²⁷⁶ The Ombudsperson had issued a recommendation to Vilnius City Municipality to change the requirements of a job description for the director of the Pavilniai Regional Park Administration, which stated that riding a bicycle was a professional requirement of the job. According to the Ombudsperson, the internal rules and procedures at the park administration did not require the director to conduct on-site visits to inaccessible park locations, so this

²⁷² Around one to three times according to the annual reports available to the public from 2008 to 2018, although the staff of the institution claim that fines have in fact been issued at least a few times.

²⁷³ 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.

²⁷⁴ Equal Opportunities Ombudsperson (2009), *Annual Report for 2009*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²⁷⁵ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_u_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

²⁷⁶ 15 min (2017) 'Reikalavimas regioninio parko vadovui važinėti dviračiu diskriminavo neįgaliuosius', 9 March 2017, media article available in Lithuanian at: <https://www.15min.lt/naujiena/aktualu/lietuva/reikalavimas-regioninio-parko-vadovui-vazineti-dviraci-diskriminavo-neigaliuosius-56-766068>.

requirement was not objective and necessary and therefore it was discriminatory – the Ombudsperson found indirect discrimination after investigation of a complaint. Since the mayor publicly ridiculed the recommendation and refused to take it into consideration, the Ombudsperson then made a decision to address the administrative court as to whether the administrative enactment of the municipality was in conformity with the provisions of the Law on Equal Treatment or the Law on Equal Opportunities. The court of first instance dismissed the claim (for procedural reasons).²⁷⁷ The case was then appealed to Supreme Administrative Court, and a decision is pending.

Based on the table showing the implementation status of the recommendations provided by the Equal Opportunities Ombudsperson in 2018, 9 out of 25 recommendations are in the process of implementation, 15 recommendations have been implemented, and 1 recommendation is pending, as the decision has been appealed to the administrative court.²⁷⁸

i) Registration by the body/bodies of complaints and decisions

In Lithuania, the equality body registers the number of complaints of discrimination made and the number of decisions (by ground, field, type of discrimination, etc.). These data are available to the public. The data on the number of complaints and other inquiries is usually provided in the annual reports of the Ombudsperson. Decisions are uploaded on the website of the Ombudsperson, grouped by grounds of discrimination.²⁷⁹ 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 some of its decisions online. The trend continued in 2016, and currently all decisions are being regularly uploaded to the official website of the institution.

In 2018, the Ombudsperson received 232 complaints (compared with 261 in 2017), 460 written inquiries (an increase from the 314 such inquiries in the previous year) and 255 inquiries via Facebook (compared with 182 in 2017), and it started 34 investigations on its own initiative (compared with 25 in 2017).²⁸⁰ It is common practice for the Ombudsperson to start an investigation 'on its own initiative' after receiving particular information either from an NGO or from an individual. The majority of investigations in 2018 concerned consumer rights protection; in 2017, they mainly concerned job vacancy requirements.

j) Stakeholder engagement

In Lithuania, the designated body does engage with stakeholders as part of implementing its mandate. However, this is not covered in the Law on Equal Treatment, therefore it depends on the Ombudsperson appointed. Since its establishment, the Office of the Equal Opportunities Ombudsperson has been striving to be open to cooperation. This is an understandable aim, given that, without help from partners, it would have been difficult to implement many of the equality promotion-type functions that were entrusted to the institution but that were not formally a part of its mandate for many years.

Cooperation with a wider circle of stakeholders increased after 2007 and gained significance in recent years when the informal national equality and diversity forum,²⁸¹ a

²⁷⁷ Vilnius Regional Administrative Court, Decision of 4 October 2017, case No. I-3795-596/2017.

²⁷⁸ Equal Opportunities Ombudsperson, 'The implementation of the decisions of the Equal Opportunities Ombudsperson', available at: https://docs.google.com/spreadsheets/d/1NP38IHq2nzKzs-bbM2bnZBVfTL5_FVxhDqiR5oRXHo0/edit#gid=0.

²⁷⁹ Official website of the Equal Opportunities Ombudsperson, decisions of the Ombudsperson, available in Lithuanian at: <https://lygybe.lt/lt/veikla/kontrolieriaus-sprendimai/369>.

²⁸⁰ Lithuanian Equal Opportunities Ombudsperson (2017), *Annual Report for 2017*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²⁸¹ The National Equality and Diversity Forum website: <http://nlif.lt/apie-foruma/>.

network of various equality organisations representing different discrimination grounds, was established under the auspices of the Ombudsperson. This network helps to organise the annual national equality and diversity awards event²⁸² – an example of good practice, which means that the topic of equality hits the headlines at least for a short while.

In 2018 the Ombudsperson organised public meetings with representatives of various NGOs, as well as planned events aimed at municipalities, universities and the business community. The Ombudsperson has also held meetings with the Ministry of Health and the Ministry of Social Security and Labour. In addition to this, the Ombudsperson was involved in organising the Human Rights Forum in 2018, in cooperation with academia (Vytautas Magnus University) other state institutions (the Ministry of Foreign Affairs), the Coalition of Human Rights Organisations and the Lithuanian Disability Forum.

This engagement was confirmed by the in-depth stakeholder survey: during interviews, respondents were asked whether their institution, body or organisation cooperated with the Office of the Equal Opportunities Ombudsperson, and most of the respondents (87 %) indicated that they did.²⁸³ The Ombudsperson made significant efforts to reach out to municipalities in 2016-2017. Since 2015, it also has signed collaboration agreements with the country's major universities.²⁸⁴ Strengthening collaboration with various stakeholders is listed among the priorities in the institution's strategic plan.²⁸⁵

In 2017 the Ombudsperson initiated the establishment of a consultative board, consisting of academia, experts, activists and representatives of trade unions, which would advise the Ombudsperson. A consultative board was formed by the Ombudsperson and functions on a voluntary basis, but is not regulated under the Law on Equal Treatment. The members of the board are not paid. According to the regulations for the board, other experts may be invited to the meetings, the board will provide its opinions and recommendations on various issues which may arise, the meetings of the board may be initiated by the members of the board, and organisational and administrative support will be provided by the staff of the Equal Opportunities Ombudsperson.²⁸⁶

k) 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 from 2012 to 2014, only a few complaints were made from 2015 to 2017, and no complaints were made in 2018), the Ombudsperson has placed no special emphasis on addressing Roma problems. Representatives of the Office of the Equal Opportunities Ombudsperson are involved in the working group monitoring the Action Plan for Roma Integration into Lithuanian Society 2015-2020. They attend the working group's annual meetings, where concerns have been raised regarding prevalent discrimination against Roma persons, mostly in housing and employment, although no complaints were submitted or investigations started on the initiative of the Ombudsperson. The representative encouraged Roma associations to submit complaints and consult the Office if there is a need to do so. Roma issues were not explicitly

²⁸² See <http://nlif.lt/category/nauijenos/apdovanojimai/>.

²⁸³ Andriukaitis, G., Sabatauskaite, B., Lietuvos žmogaus teisių centras (2017), *Lygių galimybių kontrolieriaus tarnyba, kaip nacionalinė lygybės institucija: teisinis reglamentavimas ir veikla*, Lietuvos žmogaus teisių centras, Vilnius, available at: http://www.lygybe.lt/data/public/uploads/2017/04/lygiu_galimyb_kontrolieriaus_tarnyba_kaip_nacionaline_lygybes_institucija_teisinis_reglamentavimas_ir_veikla.pdf.

²⁸⁴ Available in Lithuanian at: <http://www.lygybe.lt/lt/teisine-informacija/tarpzinybiniai-susitarimai/691>.

²⁸⁵ Lithuanian Equal Opportunities Ombudsperson, *Strategic Action Plan for 2018-2020*, adopted by Order of the Ombudsperson No. V-46, 29 December 2017, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/01/v-46-lgkt-2018-2020-strateginis-veiklos-planas.pataisytas.pdf>.

²⁸⁶ Lithuanian Equal Opportunities Ombudsperson, Order of the Ombudsperson establishing the Working Regulations of the Independent Board of Equal Opportunities Experts, No. V-24, 19 May 2017.

mentioned in the strategic plan of the Office of the Equal Opportunities Ombudsperson for 2018-2020.²⁸⁷

²⁸⁷ Lithuanian Equal Opportunities Ombudsperson, *Strategic Action Plan for 2018-2020*, adopted by Order of the Ombudsperson No. V-46, 29 December 2017, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2018/01/v-46-lqkt-2018-2020-strateginis-veiklos-planas.pataisytas.pdf>.

8 IMPLEMENTATION ISSUES

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

A number of awareness-raising initiatives have been implemented, mostly by the Office of the Equal Opportunities Ombudsperson, to disseminate information about legal protection from discrimination.

The Ombudsperson's website and Facebook page are being updated on a regular basis, a number of awareness-raising campaigns have been organised, and all the decisions of the Ombudsperson are being uploaded online. The Facebook page is used not only for communication, but for holding consultations on discrimination. The implementation of recommendations made by the Ombudsperson after investigations of complaints can be observed by the public.

The worrying trend is that many promotional activities have to be carried out without funding from the state budget. Therefore, the UN Committee on the Elimination of Racial Discrimination recommended in its recent concluding observations 'that the State party allocate sufficient funding to the Office of the Equal Opportunities Ombudsperson so that it can take up its preventive and education competences.'

Initiatives are often also implemented by civil society organisations, mostly without funding from the state budget.

Two organisations are involved in awareness-raising activities funded through the Action Plan for the Promotion of Non-discrimination 2017-2019.

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

Most of the initiatives aimed at fostering dialogue with NGOs in the past were taken by 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 as seriously as partners. NGOs operate on very limited human and financial resources, and 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 policy making.

According to the author's understanding, one of the projects implementing the Action Plan is being carried out by the Equal Opportunities Ombudsperson in cooperation with two non-governmental organisations.

There is no more information available on the wider involvement of NGOs in conducting activities to promote principles of equal treatment, despite initiatives taken by the Equal Opportunities Ombudsperson. NGOs are not involved in monitoring the Action Plan. Thus,

it can be said that the Government has not implemented the directives properly in this respect.

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

Codes of practice to give effect to the principle of equal treatment in workplace practice and workforce monitoring are not commonly implemented in the country. It is possible to assess gender equality. However, in the last year, a number of companies joined Diversity Charters, and the Equal Opportunities Ombudsperson launched a website for employers on equality plans (<http://www.lygybesplanai.lt/>) and promoted equal opportunities in the labour market. These initiatives continued to encourage other companies and employers to implement similar practices.

- d) Addressing the situation of Roma and Travellers

There is no single body or entity appointed on the national level to address Roma issues. Even though the Department of National Minorities is coordinating the implementation of the Action Plan for Roma Integration into Lithuanian Society 2015-2020, it does not have any role to oblige certain institutions to take actions. The situation of Roma is addressed by many institutions from different angles – the municipalities (mainly social, housing and employment issues), the Department of National Minorities (various functions – from funding the non-formal education of children to carrying out research and/or funding cultural activities), the Equal Opportunities Ombudsperson and others. In 2015 the Ministry of Culture approved the Action Plan for Roma Integration into Lithuanian Society 2015-2020,²⁸⁸ which is described in other chapters of this report. The action plan sets out various measures, but a significant part of these must be implemented as part of the regular functions of particular institutions (employment exchange, municipalities, etc.).²⁸⁹

At least two large-scale EU-funded projects have been taking place in 2018, involving various Roma organisations and aimed at improving access to employment (involving training sessions, consultation and legal aid during a four-year project, with a total budget of EUR 866 000). Education-related activities were funded from the budgets of the Education Development Centre (EUR 10 000) and the Department of National Minorities (EUR 69 000).

Vilnius City Municipality continued to carry out the Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019.²⁹⁰ 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 Kirtimai pupils and employment access assistance. 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, and the results from the beginning of 2018 suggest that the plan has been making progress, since financial support for renting housing and a social housing assistance programme have funded over 50 families leaving the Kirtimai Roma settlement. However, no meetings to monitor the implementation of the programme took place in 2018, and

²⁸⁸ Lithuania, Order of the Minister of Culture of 29 January 2015 No. ĮV-48 on approval of the Action Plan for Roma Integration into Lithuanian Society 2015-2020 (*LR Kultūros ministro įsakymas Dėl romų integracijos į Lietuvos visuomenę 2015–2020 metų veiksmų plano patvirtinimo*, 2015 m. sausio 29 d. Nr. ĮV-48), available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/4a774b20a7c711e4a82d9548fb36f682/asr>.

²⁸⁹ For more details, see sections 3.2.8(b) and 3.2.10.

²⁹⁰ Vilnius Kirtimai Roma Community Integration into Society Programme 2016-2019, available in Lithuanian at: <http://www.vilnius.lt/vaktai2011/Defaultlite.aspx?Id=3&DocId=30278696>.

further implementation remains uncertain. Currently, the slum-like settlement consists of approximately 150 to 155 residents (compared with 500 a decade ago).

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. Article 26 of the Labour Code sets a number of obligations for employers: to ensure the implementation of gender equality and non-discrimination principles; to apply the same selection criteria, ensuring that working conditions and the opportunities to improve one's qualifications are equal; to take the necessary measures to ensure that employees do not experience harassment or sexual harassment and that instructions to discriminate are not given; and to protect employees from other hostile behaviour. There is also an obligation for employers that employ more than 50 employees to adopt measures aimed at promoting and implementing equality policies in the workplace. Even though some of these obligations on employers are set out by the Law on Equal Treatment and the Labour Code, no formal mechanisms have been created to monitor their implementation and therefore to check whether the policies adopted are sufficient and effective and are being implemented in practice.

As noted above, the principle of non-discrimination is enshrined in the Constitution. According to the Constitution, the Constitutional Court ensures constitutional legality by deciding whether laws and other legal acts adopted by the Parliament are in compliance with the Constitution and whether the acts adopted by the President or the Government correspond to the Constitution and legislation. Of course, any lower-level acts must be in compliance with the Constitution, international treaties 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, some provisions of laws, regulations and rules that are still in force 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 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.²⁹¹

In addition to this, there are a number of laws (particularly those regulating statutory office), which contain various provisions on age (see the sections on age above), which may not be in line with the directives. However, since no legal audit has been undertaken and there is no mechanism of review for all this legislation, these inconsistencies appear on a case-by-case basis.

Some draft laws have been assessed by the Equal Opportunities Ombudsperson in 2018.

²⁹¹ Lithuania, Law on Religious Communities and Associations, 1995. According to Article 5, the recognised religious communities are the following: Roman Catholic, Greek Catholic, Lutheran, Reformed, Orthodox, Old Believers, Jewish, Muslim (Sunni) and Karaite.

9 COORDINATION AT NATIONAL LEVEL

In May 2017 an Action Plan for the Promotion of Non-discrimination 2017-2019 was adopted by the Ministry of Social Security and Labour.²⁹² It replaced the previous version of the Action Plan for the Promotion of Non-discrimination for 2015-2020, which was approved by the Government, but which was formally discontinued at the end of 2016.²⁹³ The cancellation of non-discrimination programmes prior to their dates of implementation is not an unusual practice and has happened in the past. This time, however, the action plan was taken from Government level to the level of the Ministry of Social Security and Labour. Moreover, previous plans would be allocated a certain budget (or planned budget), while the current plan envisages the implementation of all the measures outlined using the regular resources of the institutions involved and potential EU structural funding.

The Equal Opportunities Ombudsperson, who has a significant role in the plan, expressed doubt about its efficiency, given that no additional funding was allocated for its activities in the framework of the plan in 2017.²⁹⁴ However, underfunding has been a fairly regular practice in the past. The previous action plan in 2016 was given only 35 % of its original budget, according to rough estimates. The previous version of the plan, the Inter-institutional Action Plan for the Promotion of Non-discrimination 2012-2014,²⁹⁵ was not implemented in full – in 2014 it received EUR 51 627 (or 44.3 % of the initially planned funding), and 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 %. In this respect, 2015 was an exception (97 % of the funding was actually allocated), although the total budget for anti-discrimination measures that year was only EUR 192 000.

The current version of the Action Plan for the Promotion of Non-discrimination 2017-2019 sets out improvements to legislation, awareness raising and education, research and the strengthening of inter-institutional cooperation as key areas of activity.

The Ministry of Social Security and Labour is the coordinating institution, while the Equal Opportunities Ombudsperson, the Department of National Minorities under the Government and the Department of Affairs of the Disabled under the Ministry of Social Security and Labour are the main institutions involved in the implementation of the plan.

The Equal Opportunities Ombudsperson implements many of the activities set out in the plan. They include measures such as amending legislation, awareness raising and education, research, the strengthening of inter-institutional cooperation and non-discrimination in the labour market as key areas of activity. No monitoring measures involving civil society organisations are envisaged. No reports are issued on the implementation of the action plan, which sets certain outcomes that have to be achieved each year. Therefore, an independent assessment and evaluation of its implementation would be useful, with suggestions provided.

²⁹² Lithuania, Order of the Minister of Social Security and Labour on the adoption of the Action Plan for the Promotion of Non-discrimination 2017-2019, 15 May 2017, available at: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363/UBCSaHNOQf>.

²⁹³ 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: <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363/UBCSaHNOQf>.

²⁹⁴ Lithuanian Equal Opportunities Ombudsperson (2017), *Annual Report for 2017*, available in Lithuanian at: <https://www.lygybe.lt/lt/veikla/metines-ataskaitos/405>.

²⁹⁵ 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*, 10 November 2011, No. 134-6362, available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_p?p_id=410523.

10 CURRENT BEST PRACTICES

The following measures could be identified as good practices in 2018:

- In the autumn, the country's businesses signed a 'Diversity Charter', with a public commitment to a culture of equality. Thus, Lithuania became the 22nd member of the EU Platform of Diversity Charters. Over 20 companies and organisations signed the Charter during the launch event. Among the ambassadors of this document are such companies as Western Union Processing Lithuania, Swedbank, Rimi Lithuania, the Barclays Group Operations Centre in Lithuania, Lithuanian Airports, 'Beetroot and Dill'.²⁹⁶
- The Equal Opportunities Ombudsperson launched a website on equality plans for employers (<http://www.lygybesplanai.lt/>), and carried out a number of activities to promote equal opportunities in the labour market.
- The National Equality and Diversity Awards, an awareness-raising initiative implemented jointly by the Equal Opportunities Ombudsperson and a group of NGOs working with vulnerable groups, was continued, having been taking place since 2014. In March 2018, the winners from among various nominees were presented with awards for their achievements in the field of promoting equality or protecting people from discrimination. The award ceremony was broadcasted live on national television and received substantial media attention and social media coverage. A number of organisations, companies and institutions participated in the selection of nominees, in voting and in organising and presenting the awards. Organisers are planning to continue the initiative in future years, as the awards function as a tool to raise awareness and carry out promotional activities. The awards were mainly financed by the Office of the Equal Opportunities Ombudsperson.
- A Human Rights Forum was held on 10 December 2018, organised by Vytautas Magnus University, a number of civil society organisations (including the Coalition of Human Rights Organisations and the Lithuanian Disability Forum) and state institutions (the Ministry of Foreign Affairs, the Equal Opportunities Ombudsperson and the Seimas Ombudsmen's Office), and many different stakeholders were invited. Many activities covered non-discrimination issues.
- One of the biggest media portals (www.15min.lt), in cooperation with the Equal Opportunities Ombudsperson, launched a set of articles called 'Radar of discrimination', encouraging people to recognise and report cases of discrimination.

²⁹⁶ All the companies and institutions that signed the Diversity Charter in Lithuania can be found online. Available in Lithuanian at: <http://www.ivairove.lt/>.

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, the transposition into national law is still insufficient with regard to the following aspects:

- The existing Law on Equal Treatment does not explicitly prohibit harassment in access to and the provision of goods and services, only in only in employment and education – see Chapter 1.4. 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. Tenants, customers and employees cannot be held liable. For more information, please see sections 2.2, 2.4, 2.5 of this report.
- The duty to provide reasonable accommodation, as it is phrased in the Law on Equal Treatment and the Labour Code, lacks precision and is somewhat more 'narrow' than that of the directive, and is therefore more difficult to enforce in practice, even though the Equal Opportunities Ombudsperson and the courts often refer to the UN Convention on the Rights of Persons with Disabilities. For more information, please see Section 2.6.
- Neither the Law on Equal Treatment nor the Labour Code provisions explicitly state that failure to provide reasonable accommodation would constitute discrimination. See Chapter 2.6.
- 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 but, on the other hand, the Labour Code is a *lex generalis* in the occupational sphere and therefore its principles would apply in the absence of specific rules in other legislation. See Chapter 3.2.1.
- 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 Chapter 3.2.6-3.2.7.
- 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. However, it is applied not only to recruitment but to education materials and other matters. The first version of 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. Besides, the exception in the Law is much broader than that of the directive, where a 'person's religion or belief constitute a genuine, legitimate and justified occupational requirement'. It remains unclear which organisations can take advantage of this exception. There is no mention of the provision that 'difference of treatment ... should not justify discrimination on another ground.' Therefore, the exception can be applied in cases of discrimination on the ground of sexual orientation, as was discussed during consideration of the draft Law in Parliament. Such a broad exception might be not compatible with the provisions of the directive. See Chapter 4.2.
- 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

proceedings only, but not in civil cases. For more information, please see Chapter 6.2.

- National legislation provides protection from victimisation in the field of employment only; it does not provide protection from victimisation in other fields (education and the provision of goods and services). See Chapter 6.4.
- 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 Chapters 6.5 and 7(i)(h).
- 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 Chapter 7(i)(i) of this report.

11.2 Other issues of concern

The problematic provision within the Law on the Protection of Minors against the Detrimental Effect of Public Information remains in force. Article 4(2)(16) 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. This provision has been subjected to constant criticism by major international human rights and LGBT organisations.²⁹⁷ 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, with one person wearing a T-shirt with the slogan ‘For family diversity’. They refused to show the advert, explaining that it might be considered as being in breach of the Law on the Protection of Minors against the Detrimental Effect of Public Information. Another example is the censorship of a book of fairy tales, 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. The case is pending in the Lithuanian courts. In addition, the Inspector of Journalist Ethics concluded that two fairy tales promoting tolerance for same-sex couples were harmful to minors and should be marked by the index ‘N-14’, indicating that the stories were suitable only for readers aged 14 or over.

The current Parliament has included a principle of complementarity of man and woman within the family in the Law on Strengthening the Family and in the Civil Code. The laws were amended to ensure the so-called ‘protection of traditional values’. There are various other initiatives that find their way through the Parliament in relation to the ‘protection of traditional values’, including the restriction (prohibition) of the right to an abortion, the exclusion of the clause on sex re-assignment in the Civil Code, attempts to describe two partners of the same sex as a non-family and a joint venture, and so on.

It would be useful to unify the grounds of non-discrimination in the Labour Code and the Law on Equal Treatment – adding family status among prohibited grounds, even if it is not mentioned by the directives. Based on the number of requests received, the Equal Opportunities Ombudsperson recommends including family status among the prohibited grounds or including it in the definition of social status.²⁹⁸ Family status is mentioned in the Labour Code.

²⁹⁷ 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.

²⁹⁸ Lithuanian Equal Opportunities Ombudsperson (2019), *Annual Report for 2018*, available in Lithuanian at: <https://lygybe.lt/data/public/uploads/2019/04/lqk-2018-m.-veiklos-ataskaita-.pdf>;

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

In December 2018 the Law on Equal Treatment was amended, broadening its aim to include the monitoring of compliance with the UN CRPD²⁹⁹ (Article 1 LET) and the competence of the Equal Opportunities Ombudsperson – including the monitoring of CRPD (Article 17, part 4).

For the purpose of monitoring CRPD, the Commission of People with Disabilities was established alongside the Office of the Equal Opportunities Ombudsperson (Articles 1 and 15-1). The Commission of People with Disabilities is supposed to comprise five members, four of them representing associations of people with disabilities and one being a representative of the Office of the Equal Opportunities Ombudsperson. Article 15-1 elaborates on the appointment procedure for the Commission, its working principles, and its role in monitoring compliance with CRPD and rights. The Commission also sets duties for other legal persons, organisations and institutions to analyse its recommendations and respond regarding the results.

12.2 Case law

A few cases were brought to the court in 2018, some of which questioned decisions taken by the Equal Opportunities Ombudsperson. Cases with some significance for the interpretation of the principle of equal treatment are mentioned below.

Name of the court: Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas)

Date of decision: 28 April 2018

Name of the parties: *Edmundas Buklis and Ramunė Šidlauskaitė v. State of Lithuania, Vilnius City Municipality and Vilnius District Municipality*; third parties: Lithuanian Disability Forum and Office of the Equal Opportunities Ombudsperson

Reference number: eI-1659-331/2018

Link: -

Brief summary: The case does not directly fall under the remit of the two directives, nevertheless the ruling might be important in regard to the application of a reasonable accommodation clause in the future and might fall under the scope of the pending horizontal directive.

The applicants asked the State of Lithuania to compensate non-pecuniary damage that they had experienced, in their opinion, when the state did not ensure the rights of persons with disabilities to fully participate in the 2016 parliamentary election. The decision included the information that, according to the official data from 1 996 polling districts, only 699 had the appropriate accommodation for persons with disabilities (in reality, this number will be lower, according to the data obtained by the Lithuanian Disability Forum). The Equal Opportunities Ombudsperson, in its decision of 26 December 2016, found violations of the UN Convention on the Rights of Persons with Disabilities. The court noted that the relevant legal acts provided that public buildings and premises shall be adapted to the needs of disabled persons, and the right to vote must be guaranteed for disabled and elderly voters. The court referred also to the UN Convention on the Rights of Persons with Disabilities and to the Law on the Social Integration of People with Disabilities. The court held that, based on all the circumstances and the legal framework, it followed that the right to vote was not properly ensured for the applicants,

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

²⁹⁹ Lithuania, Law amending the Law on Equal Treatment, No. IX-1826, Articles 1, 16 and 17, and introducing Article 15-1 (*Lietuvos Respublikos lygių galimybių įstatymo Nr. IX-1826 1, 16 ir 17 straipsnių pakeitimo ir įstatymo papildymo 15-1 straipsniu įstatymas*), 11 December 2018, available in Lithuanian at: <https://www.e-tar.lt/portal/lt/legalAct/b52da81002c211e9a5eaf2cd290f1944>.

as the premises were not properly adapted. The court noted that the applicants had a right, not a duty, to choose alternative means of voting, and the relevant public authorities had a duty to provide the appropriate form of voting. The Court awarded each of the applicants EUR 1 000 in non-pecuniary damages and ordered the defendants to pay the costs of litigation.

Name of the court: Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas)

Date of decision: 19 July 2018

Name of the parties: Applicant: "Eglės" sanatorija; Defendant: Equal Opportunities Ombudsperson

Reference number: I-2531-643/2018

Link: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=24abc91f-0a24-4a9f-8ebe-dc7ee6f02759>

Brief summary: The Ombudsperson made a decision on 29 December 2017 that Eglės sanatorija (the applicant) had violated equal treatment in the area of goods and services when providing rehabilitation treatment based on the persons' disability, and it issued a warning to the administration's director regarding the violation.

The decision of the Ombudsperson was appealed to the Administrative Disputes Commission, which annulled the decision of the Ombudsperson on 18 February 2018. The Ombudsperson did not agree with the decision. The court satisfied the request of the Ombudsperson and reinstated the decision. The court also elaborated on the importance of the burden of proof in discrimination cases.

The Ombudsperson examines complaints from persons with disabilities regarding the violation of equal opportunities, and in order to establish such a violation, it is necessary to establish that the person is or was discriminated against in the provision of services due to his or her disability because of less favourable conditions being applied to him or her than those provided in similar circumstances to another person. The obligation to refute the fact of discrimination referred to in a personal complaint or to prove that the principle of equal opportunities has not been violated lies with the person complained against. In this case, the sanatorium had to prove that the actions of its doctors, in refusing to provide M.K. with certain services in the swimming pool, were justified by a legitimate aim pursued by appropriate and necessary measures.

The court stressed that discrimination is highly latent. It is for this reason that the burden of proof in such cases is shifted to the defendant (the offender), in order to facilitate the situation of those who have suffered discrimination, by indicating to the claimant the circumstances permitting the presumption of discrimination.

'Thus, as the Office [of the Ombudsperson] rightly pointed out in the decision, the following data must be provided to the person giving *prima facie* circumstances: that the claimant belongs to a particular group defended by the law, to indicate that they belong to a group of ... disability; to indicate the relationship between the claimant and the defendant when he experienced effects of discrimination – employment, public services, etc.; indicate that the defendant is the subject of unfavourable effect of the defendant and indicate how this unfavourable effect on the defendant manifests; to provide factual information that the defendant acted more favourably with other persons in similar circumstances than with the claimant.'

Roma

To the knowledge of the author of this report, no cases of discrimination against Roma were brought to courts from 2015 to 2018. No complaints regarding discrimination against Roma were brought to the Equal Opportunities Ombudsperson or started by the Ombudsperson in 2018.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Country: Lithuania
Date: 31 December 2018

Title of the law: Law on Equal Treatment

Abbreviation: LET

Date of adoption: 18.11.2003

Latest relevant amendment: 11.12.2018

Entry into force: 01.01.2005

Web link: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/asr>

Grounds covered: gender, race, "nationality",³⁰⁰ citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion/

Civil/administrative law

Material scope: private and public employment, access to goods or services (including housing), education

Principal content: The main national law, implementing Directives, prohibition of direct and indirect discrimination, harassment, instruction to discriminate and regulation of competences of a specialised body

Title of the law: Law on Equal Opportunities for Women and Men

Abbreviation: LEOWM

Date of adoption: 01.12.1998

Latest relevant amendment: 11.05.2017

Entry into force: 01.03.1999

Web link: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/asr>

Grounds covered: gender

Civil/administrative law

Material scope: employment, access to goods or services, education, social protection, including social security

Principal content: prohibition of direct and indirect discrimination, harassment based on gender, sexual harassment and instruction to discriminate

Title of the law: Law on Social Integration of People with Disabilities

Abbreviation: LSIPD

Date of adoption: 28.11.1991

Latest relevant amendment: 18.10.2018

Entry into force: 31.12.1991

Web link: <https://www.e-tar.lt/portal/lt/legalAct/TAR.199156E4E004/ToFjWDnFJH>

Grounds covered: Disability

Civil/administrative law

Material scope: private and public employment, access to goods or services (including housing), education, social protection

Principal content: Prohibition of discrimination on the ground of disability, various measures on social inclusion, provision of services etc.

Title of the law: Labour Code

Abbreviation: LC

Date of adoption: 14/09/2016

Latest relevant amendment: 20/12/2018

Entry into force: 01/07/2017

Web link:

<https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/asr>

³⁰⁰ The term used in LET is *tautybė*, which refers to belonging to a national minority and is not used with the meaning of 'citizenship'.

Grounds covered: gender, race, "nationality", citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, family and marital status, membership of political parties or other organisations

Civil law

Material scope: Employment

Principal content: General prohibition of discrimination in employment, duties for employers

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Lithuania
Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	14.05.1993	27.04.1995	No derogations / reservations	Accepted	Yes
Protocol 12, ECHR	No	No	NA	NA	NA
Revised European Social Charter	08.09.1997	15.05.2001	No derogations / reservations	Ratified collective complaints protocol	Yes
International Covenant on Civil and Political Rights	12.03.1991	20.11.1991	No derogations / reservations	Accepted	Yes
Framework Convention for the Protection 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

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
ILO Convention No. 111 on Discrimination	27.13.1996	27.13.1996	No derogations / reservations	Accepted	Yes
Convention on the Rights of the Child	08.01.1992	03.07.1995	No derogations / reservations	Accepted	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	27.05.2010	No derogations / reservations	Accepted	Yes

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