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Country report

Gender equality

How are EU rules transposed into
national law?

Lithuania

Tomas Davulis

Reporting period 1 January 2019 – 31 December 2019

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1 Introduction

1.1 Basic structure of the national legal system

The Republic of Lithuania is a unitary state where legislative authority is vested in the central government. The regulatory authority is vested in the Parliament (the *Seimas*), whereas the implementation and execution of legislation is among the main competences of the Government (*Vyriausybė*) and its ministries and agencies. Local administration or regional institutions have no significant competence in the implementation of the principle of equal treatment.

The Parliamentary Human Rights Committee supervises implementation of equal opportunities policies and assesses legislative initiatives in this field. Draft legislation is mainly drafted at the level of the Executive by the Ministry of Social Security and Labour, which is responsible for implementation of the principle of equal treatment. The independent Equal Opportunities Ombudsperson is appointed by Parliament and is entrusted with supervising implementation of equality legislation. He/she is the head of a public authority – the Office of the Equal Opportunities Ombudsperson – which is also responsible for implementation of the principle of equal treatment on several other grounds. The principle of non-discrimination has also been developed in the legislation on employment, namely in the Labour Code. The task of supervision and monitoring of the implementation of employment legislation is vested in the State Labour Inspectorate.

1.2 List of main legislation transposing and implementing the directives

Lithuanian legislation transposing and implementing Directives:

- the Labour Code;¹
- the Equal Opportunities Act for Women and Men (EOAWM);²
- the Equal Opportunities Act (EOA).³

1.3 Sources of law

Legislation in the form of ordinary laws (*istatymai*) is adopted by Parliament. Ordinary laws constitute the major instrument for establishing imperative rules in the area of equal treatment. Resolutions (*nutarimai*) of the Government of the Republic of Lithuania constitute a limited source of gender equality law in Lithuania, since they may regulate relations between individuals only in specific cases and to the extent determined by the ordinary laws.

The decisions and opinions of the Equal Opportunities Ombudsperson are not considered a source of law. In court proceedings the Office of the Equal Opportunities Ombudsperson is recognised merely as an *amicus curiae*, either invited or on its own initiative. Case law in the field of equal opportunities is almost non-existent because of the reluctance of victims to initiate legal actions in the courts or pre-trial proceedings in employment cases. Scholarly interpretations are also not significant, as they are very rare.

¹ *Teisės aktų registras* (Register of Legal Acts) 2016, No. 23709. The annex to the Code indicates that it transposes Directives 2006/54/EC, 2010/18/EU.

² *Valstybės žinios* (Official Gazette) 1998, No. 112-3100. An unofficial (not updated) translation into English is available on the website of the Lithuanian Parliament at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/488fe061a7c611e59010bea026bdb259?ifwid=q8i88l7y0>. A new version of the Act was adopted on 8 November 2016. *Teisės aktų registras* 2016, No. 26966, available (in Lithuanian) at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/asr>. The annex to the Act indicates that it transposes Directives 2004/113, 2006/54/EC, 2010/14/EU, 2014/54/EU.

³ *Valstybės žinios* 2003, No. 114-5115. An unofficial (not updated) translation into English is available on the website of the Lithuanian Parliament at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.389500?ifwid=-oo3xf4tu>. A new version of the Act was adopted on 8 November 2016. *Teisės aktų registras* 2016, No. 26967, available (in Lithuanian) at: <https://www.e-tar.lt/portal/lt/legalAct/0dfc3020ac9311e6b844f0f29024f5ac>. The annex to the Act indicates that it transposes Directives 2006/54/EC and 2010/41/EU.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

The Constitution of 25 October 1992⁴ contains the general principle of equality. Pursuant to Article 29(1) of the Constitution all persons shall be equal before the law, the courts, and other state institutions and officials. Section 29(2) clarifies that this shall mean the prohibition of restriction of the rights of the human being, or the prohibition of privileges, in other words – prohibition of discrimination.⁵ In addition, Section 29(2) enumerates prohibited grounds of discrimination: sex, race, nationality, language, origin, social status, belief, convictions, or views. The Constitutional Court, however, has indicated that the said provision contains a non-exhaustive list of prohibited grounds of discrimination,⁶ thus leaving open the possibility for further grounds to be protected by the legislator. It also eliminates the possibility of any hierarchy among the different grounds for discrimination.

Although the Constitution contains a clause on the direct effect of constitutional provisions (Section 6), the Constitutional Court has not elaborated on the possibility of relying thereon in disputes between private persons (horizontal effect). The courts of general jurisdiction should then rely on ordinary laws, namely on the Labour Code or the Equal Opportunities Act (EOA) and the Equal Opportunities Act for Women and Men (EOAWM). Moreover, the jurisprudence of the Supreme Court⁷ requires the courts to stay proceedings and to refer a case to the Constitutional Court if there is uncertainty in regard to conformity of legislation with constitutional provisions.

2.1.2 Other constitutional protection of equality between men and women

Section 48(1) of the Constitution also lays down the right to fair remuneration for work, where the concept of 'fair remuneration' (in accordance with the jurisprudence of the Constitutional Court)⁸ also includes the principle of remuneration without discrimination.

2.2 Equal treatment legislation

There are several pieces of domestic equality legislation. The Labour Code of 19 September 2016 (in force since 1 July 2017) mentions, among the principles of labour law, the principle of fair remuneration and the general principle of the equality of employees irrespective of (inter alia) their gender, marital and family status as well as their intention to have children. There is also a special article devoted to implementation of the principle of equal treatment in the area of employment (Article 26 of the Labour Code).

The Equal Opportunities Act for Women and Men (EOAWM) of 1998 and the Equal Opportunities Act (EOA) of 2003 introduced the central concepts and provide basic rules, define the scope of their application, and establish the mechanisms for supervision and enforcement. One of the Lithuanian peculiarities, however, is a certain 'double coverage' of discrimination on the ground of sex in these two different Acts. The EOAWM is a special law dealing with gender discrimination in particular, while the Equal Opportunities Act (EOA) is intended to deal with discrimination on the grounds stipulated by the EU equality directives of 2000 and a number of other domestic grounds, such as nationality, language,

⁴ *Valstybės žinios* 1992, No. 333.

⁵ Constitutional Court of the Republic of Lithuania (Lietuvos Respublikos konstitucinis teismas), 11 November 1998, available (in Lithuanian) at: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta384/content>.

⁶ Constitutional Court of the Republic of Lithuania, 24 January 1995, available (in Lithuanian) at: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta422/content>.

⁷ Supreme Court of the Republic of Lithuania (Lietuvos Aukščiausiasis teismas), Survey No. A2-7, 2 June 1997. *Teismu praktika*, No. 7.

⁸ Constitutional Court of the Republic of Lithuania, 18 December 2001, available (in Lithuanian) at: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta332/content>.

origin and social status. With the amendments of 2008, sex was also added to the list of prohibited grounds of discrimination under the EOA. This means that the ground of sex is currently covered by two equality acts simultaneously, but those two acts contain some differences (e.g. only (EOA) explicitly refers to public service, only one act mentions the self-employed (EOAWM) but only with regard to social pension schemes etc.). Because of the lack of legal proceedings, these discrepancies have not yet led to practical problems.

3 Implementation of central concepts

3.1 General (legal) context

3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

No such surveys were conducted in Lithuania.

3.1.2 Other issues

In defining major concepts, the Lithuanian legislator has tried to remain in line with relevant European directives. There are only a small number of slight language differences in transposing the central definitions of the directives, but they are rather insignificant.

For example, the Equal Opportunities Act (EOA) provides for the definition of direct discrimination (Article 2(7) of the EOAWM, Article 2(9) of the EOA). It defines discrimination as 'behaviour with the person where ...' (*'elgesys su asmeniu, kai'* – in Lithuanian) whereas the Lithuanian translation of the Directive reads 'Discrimination – it is when ...'. The national definition further takes the wording from the Article 2(1)(a) of Directive 2006/54/EC. In the definition of 'indirect discrimination' (Article 2(4) of the EOAWM, Article 2(5) of the EOA) the wording 'behaviour with the person' (as in case of direct discrimination) is not used, but instead, the formulation 'action and inaction, legal provision or criterion of assessment, apparently neutral provision or practice' is used. The legislator further clarifies that they should formally be the same but in the course of their implementation 'an actual restriction of rights occurs or may occur.' These verbal deviations from the directives have not yet been subject to thorough assessment by the courts.

3.1.3 General overview of national acts

In Lithuania the equality legislation, which in fact has the specific purpose of transposing the European legislation, plays the major role in providing the central concepts in the field of non-discrimination. Therefore, the Labour Code explicitly mentions only the principle of equality and non-discrimination but leaves it for the equality legislation to define the major concepts. This situation also leads to some lack of clarity in relation to what the outcome of potential conflict between the Labour Code (which says it shall be considered *lex posteriori* and *primus inter pares*) and equality legislation (which ought to transpose EU directives) could be. For example, the scope of application and the formulation of exceptions may be regulated differently in those two acts.

3.1.4 Political and societal debate and pending legislative proposals

Currently, there is no political or societal debate and there are no pending legislative proposals on the central concepts of gender equality.

3.2 Sex/gender/transgender

3.2.1 Definition of gender and sex

The notions 'gender' and 'sex' are not specifically defined in national legislation. There is also no case law on the meaning of 'gender' and 'sex'.

Moreover, the notion 'gender' has no equivalent in the Lithuanian language. The word 'sex' is translated as *lytis* (sex) but the word 'gender' has no specific translation. Instead, the

formulation *socialinė lytis* is used to indicate 'gender' and to distinguish it from 'sex' (in Lithuanian – *biologinė lytis*), when needed.⁹

3.2.2 Protection of transgender, intersex and non-binary persons

The prohibition of discrimination due to gender reassignment or discrimination against transgender, intersex and non-binary people is not provided for in Lithuanian legislation. This could be seen as a breach of EU law in light of the case law of the CJEU,¹⁰ as it does not explicitly prohibit discrimination based on gender reassignment.

The Civil Code of the Republic of Lithuania¹¹ recognises the right of transgender people to change their gender and their civil status. According to Article 2.27 of the Civil Code, an unmarried adult shall have the right to medically change his or her gender, if medically possible. The conditions and procedure for gender reassignment shall be laid down by law. However, since the adoption of the Civil Code in 2000, no special law on gender reassignment has been adopted and, in practice, this prevents these persons from starting the procedure. The lack of legislation regulating full gender-reassignment surgery was also condemned by the ECtHR. In 2007 the ECtHR held that there had been a violation of Article 8 of the ECHR¹² because the legislator had not taken steps to keep the promise to adopt necessary legislation and Lithuanian citizens had to undergo gender reassignment surgery in other countries. Since the judgement the need for a special law has been acknowledged by all experts and stakeholders, but the legislator lacks the political will to adopt the law because of negative public opinion and the position of the influential Catholic Church.¹³

The right of transgender people to change their gender in personal documents has been explicitly recognised in the case law of the administrative courts.¹⁴ Article 2.18 of the Civil Code and the secondary legislation¹⁵ also provide the possibility of changing the gender in the personal documents of an individual. Since there have been no cases, it remains unclear whether discrimination on the grounds of gender reassignment would be viewed as sex discrimination.

3.2.3 Specific requirements

In the absence of special legislation, the basic provisions governing gender reassignment are developed by the courts. In accordance with the principles established by the courts, gender reassignment surgery is a precondition for changing a person's legal gender. In order to claim a change to personal documents, transgender persons are required to present conclusive evidence from a medical expert that proves that the gender reassignment is irreversible.¹⁶

⁹ Petrenaite, D. (2017), '*Lytinio identiteto samprata ir jos problematika šiuolaikinėje teisėje*' (Concept of Gender Identity and Problems in Modern Law). *Jurisprudencija*, 24 (1), pp. 160-165.

¹⁰ Judgment of 30 April 1996, *P v S and Cornwall County Council*, C-13-94, ECLI:EU:C:1996:170.

¹¹ *Valstybės žinios* 2000, No. 74-2262.

¹² European Court of Human Rights (ECtHR), *L. v. Lithuania*, No. 27527/03, 11 September 2007.

¹³ Juškaitė, J. (2017), '*Istorinė byla prieš Lietuvą tapo vadovėliniu pavyzdžiu*' (Historical case against Lithuania has become a textbook example), *DELFI*, 10 October 2017, available (in Lithuanian) at: <https://www.delfi.lt/news/daily/law/istorine-byla-pries-lietuva-tapo-vadoveliniau-pavyzdziu.d?id=76007033>.

¹⁴ See, for example, Lithuania, Supreme Administrative Court (*Lietuvos vyriausiosios administracinės teismas*), eA-247-261/2017, 28 March 2017, available (in Lithuanian) at: <https://eteismai.lt/byla/215703173055631/eA-247-261/2017>.

¹⁵ Ministry of Justice of the Republic of Lithuania (*Lietuvos Respublikos Teisingumo ministerija*), Rules for changing the name and surname of a person, 28 December 2018. *Teisės aktų registras* 2016, No. 29704.

¹⁶ Kaunas Regional Court (*Kauno apygardos teismas*), 2S-639-658/2018, 22 February 2018, available (in Lithuanian) at: <https://eteismai.lt/byla/273204724329152/2S-639-658/2018>.

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

Pursuant to Article 2(7) of the EOAWM, direct discrimination means treatment where one person is treated less favourably on the ground of sex than another is, has been or would be treated under comparable circumstances. The Lithuanian definition is an almost literal translation of the corresponding provision in Directive 2006/54/EC.

3.3.2 Prohibition of pregnancy and maternity discrimination

There are currently no specific rules directly prohibiting discrimination in relation to pregnancy and maternity, maternity leave, parental leave, adoption leave and paternity leave. The majority of violations would definitely be covered by the general rules on non-discrimination in the Labour Code and the EOAWM. Less favourable treatment because of pregnancy, the birth of a child and breastfeeding is only directly prohibited in the area of the provision of services and the sale of goods (Article 7 No. 3 of the EOAWM).

3.3.3 Specific difficulties

There is no case law which would indicate that there are specific difficulties in applying the concept of direct sex discrimination.

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

According to Article 2(4) of the EOAWM indirect discrimination shall mean an act or omission, a legal provision, an assessment criterion or practice that is formally the same for women and men, but whose implementation or application would put persons of one sex at a particular disadvantage compared to persons of the other sex, unless such act or omission, legal provision, assessment criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. The provision fully corresponds with that provided by Directive 2006/54/EC.

3.4.2 Statistical evidence

There is no statutory requirement to use statistical data to establish the existence of indirect discrimination or the presumption of indirect discrimination. There have only been a few rather insignificant cases on indirect discrimination in the courts. In those cases, the courts required the claimant to provide at least 'the facts' concerning possible indirect discrimination¹⁷ and had no opportunity to take a position on the possibility of using statistical data. In the view of the Equal Opportunities Ombudsperson, indirect discrimination may be proved by 'statistics and research data that reflect the actual situation in the group of people in a certain area of social relations'.¹⁸

3.4.3 Application of the objective justification test

There are no cases where the concept of indirect discrimination has been scrutinised by the courts. The courts have not yet examined the exception of an objective justification.

¹⁷ Supreme Court of Lithuania, No. 3K-3-598/2012, 21 December 2012, available (in Lithuanian) at: <https://eteismai.lt/byla/62645914495659/3K-3-598/2012>.

¹⁸ Office of Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) (2013), Annual Report 2013, Vilnius, p. 88, available on the website of the Office of the Equal Opportunities Ombudsperson at: <https://www.lygybe.lt/data/public/uploads/2015/12/lygiu-galimybiu-kontrolieriaus-tarnybos-veiklos-2013-m.-ataskaita.pdf>.

3.4.4 Specific difficulties

There are no cases where the concept of indirect discrimination has been properly examined by the courts. The rare practice of the Office of the Equal Opportunities Ombudsperson of investigating cases related to discrimination on grounds other than sex/gender still suggests that the concept of indirect discrimination will also be correctly applied by the Office in sex/gender-related cases.¹⁹

3.5 Multiple discrimination and intersectional discrimination²⁰

3.5.1 Definition and explicit prohibition

There is no legislation on the prohibition of multiple or intersectional discrimination. There are also no proposals for new legislation in this regard. It seems that the legislative framework does not favour judicial recognition of multiple/intersectional discrimination because it provides for exact definitions suggested by the Directive. However, case law dealing with the notion of discrimination is lacking, therefore an exact assessment cannot be given.

3.5.2 Case law and judicial recognition

Although anti-discrimination provisions allow applicants to simultaneously invoke several grounds of discrimination in the same claim, there is no practice where the courts have adopted a firm position on multiple discrimination. On one occasion the Supreme Court of Lithuania was confronted with a claim based on (inter alia) possible multiple discrimination, when a woman challenged her dismissal because of discrimination based on pregnancy and disability. The court rejected the claim on the ground that the claimant's disability was not known to the respondent.²¹

3.6 Positive action

3.6.1 Definition and explicit prohibition

Positive actions are explicitly mentioned as exceptions to the principle of non-discrimination (Article 6(6) of the EOAWM). They are defined as specific temporary measures laid down by specific laws, aimed at accelerating the guaranteeing of factual equal rights for women and men, which must be repealed upon implementation of equal rights and equal opportunities for women and men. However, the reference to specific laws makes this action unenforceable in practice, since there are no other specific laws allowing such measures to be taken.

3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

The terms 'equal opportunities' and 'positive action' are not considered by the legislator or case law or the literature as either having the same objective or as different sides of

¹⁹ For example, the Office of the Equal Opportunities Ombudsperson in Annual Report 2016 indicated that length of service requirements for job candidates amount to indirect discrimination based on age. Taking parental leave can also negatively affect mainly women when they undergo periodical work assessment. Thus, the provisions on assessment of pedagogical workers were seen as constituting indirect discrimination if the length of parental leave were not taken into account in the procedures for such assessments.

²⁰ For more information, see Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

²¹ Supreme Court of Lithuania, No. 3K-3-199/2014, 11 April 2014, available (in Lithuanian) at: <https://eteismai.lt/byla/36700029009354/3K-3-199/2014>.

the same coin. In fact, 'positive action' is perceived more as an exception to the principle of non-discrimination, as it constitutes an 'allowed' or 'justified' discrimination.

3.6.3 Specific difficulties

In practice, positive action measures are forbidden in Lithuania (see above) – the reference to specific laws makes such positive action unenforceable in practice, since there are no other specific laws allowing these measures to be taken.

3.6.4 Measures to improve the gender balance on company boards

There are no measures adopted or envisaged to improve the gender balance on company boards. In 2017 the Minister of the Economy, M. Sinkevicius, publicly proposed women's quotas on the management boards of state and municipal companies, but this proposal was not implemented.

3.6.5 Positive action measures to improve the gender balance in other areas

Individual proposals to introduce quotas in political candidate lists are periodically made, but no such proposals have so far been implemented.

Back in 2008 the Social Democratic Party of Lithuania (*Lietuvos Socialdemokratu Partija*, LSDP) has inserted in its statutes a provision on equal representation of both genders (quotas) when drafting the lists of candidates for general and municipal elections. Recently, the Senate of Vilnius University approved a new procedure for elections to the Council of the University. The procedure includes the imperative that lists of proposed candidates shall be drafted in a way which ensures representation of both sexes.

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

Pursuant to Article 2(5) of the EOAWM, harassment is unwanted conduct where a violation of the dignity of a person, or the intention to do so, and the creation of an intimidating, hostile, degrading, humiliating or offensive environment occur because of sex. The national definition may be considered sufficiently precise, despite the fact that it slightly differs from the definition provided by Directive 2006/54/EC.

The differences in regard to definition of 'harassment' (Article 2(5) of the EOAWM, Article 2(7) of the EOA) are of a grammatical nature – the Directive defines 'harassment – when the unwanted behaviour (...) occurs' whereas the Lithuanian transposition law states that harassment itself is 'an unwanted behaviour'.

3.7.2 Scope of the prohibition of harassment

Theoretically, the definition of harassment covers all areas which fall within the scope of application of the EOAWM and EOA (actions by state institutions and the provision of services – consumer protection, education, employment, public service, professional organisations). However, provisions expressly addressing harassment as a prohibited act or behaviour are lacking in the legislation. The EOAWM *expressis verbis* only requires harassment to be actively prevented in an employment relationship. The EOA, which also covers discrimination on the grounds of gender, broadens the scope of this provision to include education.

3.7.3 Definition and explicit prohibition of sexual harassment

Sexual harassment is defined as unwanted insulting, verbal, non-verbal or physical conduct of a sexual nature by a person with the purpose or effect of violating the dignity of another person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 2(6) of the EOAWM). The Lithuanian definition requires that the unwanted conduct is also insulting, which cannot be found in Directive 2006/54/EC.

3.7.4 Scope of the prohibition of sexual harassment

Theoretically, the definition of sexual harassment covers all areas which fall within the scope of application of the EOAWM and EOA (actions by state institutions and the provision of services – consumer protection, education, employment, public service, professional organisations). However, provisions expressly addressing sexual harassment as a prohibited act or behaviour are lacking in the legislation. The EOAWM *expressis verbis* only requires harassment to be prohibited in an employment relationship. The EOA, which also covers discrimination on the grounds of gender, broadens the scope of this provision to include the area of education.

The Criminal Code of the Republic of Lithuania²² (Article 152) contains sanctions for the most severe cases of sexual harassment, where the victim is in a subordinate position.

3.7.5 Understanding of (sexual) harassment as discrimination

Article 2(1) of the EOAWM explicitly states that harassment and sexual harassment amount to discrimination. However, there is no provision to the effect that less favourable treatment based on a person's rejection of or submission to such conduct also amounts to discrimination (Article 2(2)(a) of Directive 2006/54/EC).

3.7.6 Specific difficulties

The deviations from the definitions mentioned above (that harassment might not be understood as discrimination and the requirement for harassment also to be insulting) might result in incorrect transposition of EU law, but there is no case law related to harassment or sexual harassment in the workplace. Methodology for how the courts should proceed with these kinds of cases has not yet been developed. The 'me too' movement has produced a few public accusations but without remarkable outcome, as society remained relatively divided with regard to those cases. It seems that, despite some individual efforts to organise social media campaigns, in general there is a lack of perception of sexual harassment as a phenomenon, and the victims of possible harassment remain without public, legal and psychological support.

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

An instruction to discriminate is clearly indicated as amounting to discrimination (Article 2(1) of the EOAWM and Article 2(1) of the EOA) but is not further defined in either the EOA or the EOAWM.

3.8.2 Specific difficulties

To date, there have been no cases related to instruction to discriminate.

²² Valstybės žinios 2000, No. 89-2741.

3.9 Other forms of discrimination

There is no domestic regulation on discrimination by association or on assumed discrimination.

3.10 Evaluation of implementation

In defining major concepts, the Lithuanian legislator has tried to remain in line with relevant European directives. There are only a few language differences in transposing the central definitions of the directives, but they have so far not been scrutinised by the courts, and no contradiction with EU law has been established. However, if the number of cases starts to increase, the question of conformity of transposition may arise alongside the evolution of techniques to deal with these cases.

3.11 Remaining issues

Non-discrimination does not receive much attention from legal scholars in Lithuania. There are no surveys that provide insights into the legal definition, implementation and limits of central concepts of gender equality law in Lithuania. The existing fragmental case law reveals that the central concepts enshrined in the directives or equality legislation are used in a simple way without in-depth analysis as to the limits of the concepts, their interrelationship, scope of application or direct (vertical or horizontal) effect.

4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

4.1 General (legal) context

4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

According to the most recent national data available, the annual gender pay gap reached 13 % in 2018 (as compared to 14.2 % in 2017).²³ Although Lithuanian figures appear comparable to average statistics throughout the EU, decomposition of the unadjusted pay gap indicates that the unexplained pay gap is 24 % and is the largest in the EU.²⁴ The difference between men's and women's earnings is largely explained through the concentration of women in low-paid sectors (sectoral gender segregation) and in certain categories. The largest wage differences are observed in the financial and insurance sector (38.3 %), and in information and communication, human healthcare and social work (33 %). Minor differences are recorded in construction and education, where they do not exceed 3 %.

4.1.2 Surveys on the difficulties of realising equal treatment at work

A survey in 2008 concluded that in all sectors of the economy women earn less than men; wages are generally higher in sectors where the majority of workers are male; the highest salaries are in the banking and financial intermediation sector. The difference between men's and women's salaries is particularly significant because women perform low-paid technical tasks and men do well-paid expert work.²⁵ Another survey suggested that the transformation to the market economy and privatisation has fundamentally changed gender segregation in the professions in Lithuania. Occupational segregation rates here are much higher than in most developed western countries, but similar to those in other Eastern and Central European countries.²⁶ According to the group of researchers led by G. Purvaneckienė, the participation of Lithuanian women in the labour market is often determined by the traditionally based attitude of women and men to the family and society. The study revealed that there is competition in the field of work for jobs, positions, salaries. Socio-demographic factors (gender, age, marital status and roles) often do not seem obvious, but they are in fact very important. An analysis of the situation of women and men in the labour market revealed that men have better opportunities in the labour market for a variety of reasons. Despite the higher education levels of women, men are more likely to be in higher positions on the career ladder and with higher salaries. The stereotypical view of the role of women in the family, which prevents women from integrating into the labour market, persists to this day.²⁷

More recent studies also confirmed that differences in the salaries of men and women are based on unjust and unfair setting of salary rates without considering most of the internal and external factors. Employers are more likely to assign men to more responsible and better-paid job positions, although the educational indicators of women are higher than those of men in today's society. It is more difficult for women to pursue careers, as they are often forced to agree to occupy job positions requiring lower levels of education and qualifications. Analysis of differences in the pay of both genders in different age groups,

²³ The website of the Lithuanian Bureau of Statistics, available at: <https://www.stat.gov.lt>.

²⁴ Leythienne, D., Ronkowski, P. (2018), 'A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data', Eurostat WP, 2018, Table 3.

²⁵ Brazienė, R., Guščinskienė, J., Jankauskaitė, M., Pečiūrienė, J., Purvaneckienė, G., Šeduikienė, J. (2008), *Veiksmų planas, skirtas vertikaliai ir horizontaliai darbo rinkos segregacijai mažinti, ypač jaunų žmonių tarpe (18–29 m.)* (Action plan to minimise the vertical and horizontal segregation on the labour market, in particular among young people (18-29 years)), Kaunas.

²⁶ Brazienė, R. (2005), *Socialinės stratifikacijos skaitiniai* (Readings of social stratification), Kaunas. KTU, p. 80.

²⁷ Purvaneckienė, G., Purvaneckas, A. (2001), *Lietuvos visuomenės požiūrio į moteris politikoje kaita 1994–2000 metais* (The changing attitude of Lithuanian society towards women 1994-2000), Vilnius, pp. 43–48.

conducted on the basis of the results of a survey, showed that the gender pay gap in the 31-40-year-old age group is greater than that of the 21-30-year-old group, i.e. once a male employee establishes himself in the labour market, his salary increases more. When analysing the gender pay gap in respect of marital status and work experience in the current workplace, no clear dependence of the higher salaries of men and women on these factors was observed.²⁸

4.1.3 Other issues

There are no other issues to report.

4.1.4 Political and societal debate and pending legislative proposals

There is no current political debate or pending legislative proposals on the issue.

4.2 Equal pay

4.2.1 Implementation in national law

Under labour legislation (Article 26(2) p. 4 of the Labour Code) employers must observe the principle of equal pay for men and women for equal work and work of equal value. A breach of labour legislation may be investigated by the State Labour Inspectorate, but this body is rather reluctant to evaluate cases of discrimination as a breach of labour legislation. Instead, people are encouraged to use the pre-trial procedure for labour disputes over rights.

In addition, the payment of different wages is prohibited by the EOA and EOAWM. For example, Article 6 Paragraph 3 of the EOAWM stipulates that the employer is obliged to provide equal pay for work of equal value and to provide equal working conditions and equal benefits. Subjecting an employee to less (or more) favourable terms of employment or payment for work is considered a 'violation of equal rights for women and men' (Article 11 Paragraph 1 of the EOAWM) and this is sanctioned according to administrative law rules. Administrative fines ranging from EUR 40 to EUR 1 200 for a breach of the EOAWM may be imposed by the Equal Opportunities Ombudsperson,²⁹ but in many cases the Ombudsperson issues a simple warning.

4.2.2 Definition in national law

The Labour Code contains two different definitions of pay, the general definition (Article 139 of the Labour Code) and the discrimination-related definition (Article 26(4) of the Labour Code). Under the general rule, a wage is remuneration for work performed by an employee under a contract of employment. Article 139(2) of the Labour Code states that the employee's wage shall include:

- 1) the base rate wage (an hourly wage or a monthly salary);
- 2) an additional wage agreed upon by the parties or paid in accordance with labour law norms or the system of remuneration for work applied at the place of employment;
- 3) bonuses for qualifications;
- 4) additional pay for additional work or the performance of additional functions or assignments;
- 5) bonuses which are agreed upon by the parties or paid in accordance with labour law norms or the system of remuneration for work applied at the place of employment;

²⁸ Žiogelytė, L. (2012), 'Vyrų ir moterų darbo užmokesčio skirtumų Lietuvoje vertinimas' ('Assessment of Differences in Male and Female Earnings in Lithuania'), *Ekonomika ir vadyba: aktualijos ir perspektyvos*, 2012, 2 (26), pp. 6–16, available at: http://www.nedaryk.lt/user_files/projects/3387_2_straipsnis_analizei_mano.pdf.

²⁹ Article 81 of the Code on Administrative Offences, *Teisės aktų registras* 2015, No. 11216.

- 6) bonuses which are intended by the employer to provide incentives for good performance, as well as activities or performance results of the employee, the company, the subdivision or the group of employees.

Under a special rule (Article 26(4) of the Labour Code), in cases of discrimination concerning wages, remuneration for work or any other consideration, including remuneration in cash or in kind, which the worker receives directly or indirectly in respect of his or her employment from the employer is considered to be a wage. This special definition of pay is in line with EU law. Article 140(6) of the Labour Code also clarifies that, in implementing the principles of gender equality and non-discrimination on other grounds, the employee's wage without discrimination shall mean a non-discriminatory base rate wage and all the additional payments in cash or in kind which the employee receives directly or indirectly from the employer for his or her work.

4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

In addition to the provisions of Article 26 of the Labour Code, Article 140(5) of the Labour Code states that, when applying the work classification system for determining wages, the same criteria shall be applied equally to both men and women, and the system must be developed in such a way as to avoid discrimination on the grounds of sex.

4.2.4 Related case law

There are no cases related to the issue.

4.2.5 Permissibility of pay differences

As there is no case law, there are no indicators that would allow decisions on permissible factors for pay differences. It can only be assumed that these would be related to work performance, qualifications, or length of service.

4.2.6 Requirement for comparators

National law or case law does not explicitly require a comparator in establishing a violation of the principle of equal pay.

4.2.7 Existence of parameters for establishing the equal value of the work performed

As there is no case law, there are no parameters for establishing the equal value of the work performed.

4.2.8 Other relevant rules or policies

There are as yet no other relevant rules or policies related to implementation of the principle of equal pay.

The Lithuanian system of remuneration is considered to be among the most liberal systems in the world, ranking 11th in the Global Competitiveness Report.³⁰ This can be mainly explained by the overwhelming dominance of individual agreements in the setting of wages and the absence of collective agreements. The major difficulty related to practical implementation of the principle of equal pay lies in the fact that there is no case law. In the view of the author, it can also be assumed that the rules on confidentiality contribute to the reluctance of employees to challenge discriminatory practices in the area of pay. In practice, a difference in pay for women and men is considered instead to be a problem of

³⁰ World Economic Forum (2015), *The Global Competitiveness Report 2015–2016*, available at: <http://wef.ch/gcr15>.

equality law, which is governed by public law instruments, and not a problem related to individual labour law.

4.2.9 Job evaluation and classification systems

Jobs and positions evaluation methodology (in Lithuanian – *Darbu ir pareigybių vertinimo metodika*)³¹ was proposed by the Institute of Labour and Social Research and even approved in a form of recommendation by the Tripartite Council of the Republic of Lithuania. However, it has had no or little impact on practices of wage setting in the private and public sector.

4.2.10 Wage transparency

In principle, the wage system in Lithuania is not transparent. On one hand, individual wages belong to the sensitive data protected by statutory or contractual confidentiality clauses. On the other hand, a wage is usually set by individual agreement and not collectively by a collective agreement. Even in the public sector, with rigid regulation of wage policies, employers are given wider discretion (payrate brackets, e.g. from EUR 1 000 to EUR 1 400 or not transparent system of performance gratification) to decide individually on the exact level of remuneration of an individual employee.

Currently there are no provisions which are intended to make pay schemes or exact pay transparent for other persons who are not party to contracts of employment.

4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

One of the recommended transparency measures was inserted in the Labour Code. Two special provisions have been introduced to strengthen transparency of the implementation of the principle of equal treatment:

- 1) The Labour Code now requires companies with more than 50 employees to adopt a specific internal document – a policy on equal opportunities (Article 26(5) of the Labour Code). The Labour Code is silent on the content and status of this internal document, but it is believed that the adoption of this document (in information and consultation procedures) will not be formal, but will at least trigger discussions on what must be done to promote equal opportunities at the workplace. A works council becomes obligatory in companies employing 20 or more employees, and the dialogue between representatives of the workforce and the employer will have to cover these issues.
- 2) Article 23(2) of the Labour Code obliges companies with more than 20 employees to provide anonymised data on the average wages of employees according to gender and professional groups, except those in managerial positions, to works councils and trade unions. This information will indicate problematic differences in pay for men and women, which potentially have to be dealt with by the social partners.

4.2.12 Other measures, tools or procedures

No other measures, tools or procedures can be identified in Lithuania.

³¹ *Darbu ir pareigybių vertinimo metodika*, available at: <http://www.lpsk.lt/lpsk-web/wp-content/uploads/2014/06/Darbuirpareigybiuvertinimometodika2004.pdf>.

4.3 Access to work, working conditions and dismissal

4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

National law provides for the scope of application of anti-discrimination legislation, but its *ratione personae* does not encompass all persons who fall under the notion of a 'worker' in accordance with the case law of the CJEU. The scope of application of the principle of equal pay and equal treatment at work is quite confusing in Lithuania. The Labour Code and the EOAWM are applicable to 'employees' *stricto sensu*, i.e. persons involved in a relationship based on a contract of employment only. Therefore, the reference to 'employees' (*darbuotojai*) means that the scope of application of the EOAWM³² does not explicitly include 'public servants' and other persons having a legal status other than that of an employee (e.g. notarial assistants, trainees, professional sportsmen/women, self-employed persons etc.). As a result, public servants will be covered by equality legislation, either directly by the EOA or by the EOAWM by way of an analogy. Politicians, the highest-ranking government officials, judges, public prosecutors and military personnel do not fall within the categories of employees or public servants *stricto sensu*, but again, by way of a legal analogy, they may enjoy the same protection as public servants. However, court practice is lacking on this point.

4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

The Labour Code expressly prohibits discrimination on the ground of sex in concluding, executing and terminating employment (Article 26(2) of the Labour Code). The Labour Code contains further provisions expressly prohibiting direct or indirect discrimination as regards access to employment, vocational training and promotion, and working conditions (Article 26(2) of the Labour Code). These are also repeated in the EOAWM and EOA. According to Article 6 No 1 of the EOAWM, an employer is obliged to apply gender-neutral recruitment and promotion criteria and conditions. In addition, the EOAWM obliges employers to provide equal working conditions and equal opportunities to improve qualifications, to provide equal benefits and to apply the principle of equal pay for equal work, including all payments. The special protection of women during pregnancy, childbirth and breastfeeding, as well as requirements for safety at work which are applicable to women and are aimed at protecting women's health, have been withdrawn from the scope of application of the principle of non-discrimination.

Another piece of equality legislation, namely the EOA, states in Article 7 that when implementing equal treatment, an employer, without regard to (inter alia) sex, must:

- 1) apply uniform selection criteria and conditions when appointing employees, or recruiting for public service, except for cases specified in Paragraph 7 of Article 2 of the EOA;
- 2) provide equal working and public service conditions and opportunities for vocational training, advanced vocational training, retraining, practical work experience, as well as providing equal benefits;
- 3) apply uniform criteria for assessing the work of employees and the performance of public servants;
- 4) apply uniform criteria for dismissals from work and from public service;
- 5) offer equal pay for the same work or for work of equal value;
- 6) take measures to prevent harassment or instructions to discriminate against any employee or civil servant at the workplace;
- 7) take measures to prevent sexual harassment against any employee or public servant;
- 8) take measures to ensure that an employee or public servant who has filed a complaint relating to discrimination or is participating in discrimination proceedings,

³² However, the EOA contains fragmental mention of 'public servants' alongside 'employees'.

- his or her representative or any person who is testifying or making statements on behalf of another person are not subjected to persecution and are protected from any adverse treatment or adverse consequences;
- 9) take appropriate measures to enable disabled persons to have access to, participate in, or advance in employment, or to undergo training, including the adaptation of premises, unless such measures would impose a disproportionate burden on the employer.

Non-discriminatory access to employment and promotion for self-employed people are not stipulated in the EOAWM nor in the EOA, and there is therefore a substantial lack of conformity with EU law. The scope of Lithuanian law in this regard is therefore more limited than the scope of Article 14(1) of the Recast Directive.

4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

According to Article 6 No 1 of the EOAWM, an employer is obliged to apply gender-neutral recruitment and promotion criteria and conditions, except where the work can only be performed by persons of a particular sex, where the necessity for a particular sex may be based on the nature of the activity or the context in which it is carried out, provided that the objective sought is legitimate and complies with the principle of proportionality (the exception in Article 14(2) of Directive 2006/54/EC). There is no further legislative or administrative elaboration of this provision. Case law is also lacking. The Lithuanian Government has also not assessed the occupational activities referred to in Article 14(2) of Directive 2006/54.

4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

The non-hiring, non-prolongation of contracts and dismissal of women, connected to their state of pregnancy and/or maternity are not specifically addressed in the labour legislation or equality legislation in Lithuania. Claims involving violation of the rights of pregnant workers are among the most numerous cases investigated by the Equal Opportunities Ombudsperson, but no specific measures are taken at the level of legislation.

4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

Article 10 Paragraph 1 of the EOAWM contains exceptions to the principle of equal treatment – special protection for women during pregnancy, childbirth and breastfeeding, as well as special requirements related to physical conditions and health and safety at work applied to women and aimed at protecting women's health owing to their physiological properties shall not be considered to be a violation of equal treatment.

4.3.6 Particular difficulties

The lack of case law and reluctance of victims to bring cases of discrimination before the court (Commission of Labour Disputes) or the Equal Opportunities Ombudsperson are particular difficulties.

4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

No positive action measures are allowed under current legislation.

4.4 Evaluation of implementation

The central concepts were transposed sufficiently and correctly. There are no problems of interpretation or concerning the scope of application of those concepts in practice. The main problem is related to fear and the reluctance of victims to claim their rights before the courts or the Labour Dispute Commission. The role and competences of the Equal Opportunities Ombudsperson and social partners could be also reinforced.

4.5 Remaining issues

The major problem lies in the practical implementation of the principle of equal treatment. The role and competences of Equal Opportunities Ombudsperson and social partners should also be reinforced. Gender equality has not become a topic of political debate. Gender mainstreaming strategy has not been implemented in public administration and legislation procedure.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)³³

5.1 General (legal) context

5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

No surveys and/or reports providing insights into difficulties that workers face in practice in relation to work-life balance have been published in Lithuania over the last five years.

5.1.2 Other issues

No other issues can currently be identified.

5.1.3 Overview of national acts on work-life balance issues

Work-life balance is regulated by the Labour Code. In accordance with Article 28(1) of the Labour Code, employers must take measures to help employees fulfil their family commitments. This means that, in the cases established by the Labour Code, requests relating to implementation of family commitments submitted by employees shall be considered and reasonably responded to in writing by employers. In addition, the Labour Code explicitly requires that employees' conduct and their actions at work shall be assessed by their employers with a view to practically and effectively implementing the principle of work-life balance. Other obligations on employers to ensure a certain level of protection are regulated in more detail by the Labour Code (see below).

5.1.4 Political and societal debate and pending legislative proposals

Currently there is no significant debate with regard to work-life balance, except for the issue of child benefit. Following the example of Poland, Lithuania has abolished the income tax relief and introduced the 'children money' allowance, which is granted without any precondition upon request made by parents. Current political debate merely focusses on the level of the allowance. These issues are quite well-accepted in Lithuanian's post-socialist society. The allowance also reduces the willingness of women to return to work or encourages families to take such decisions.³⁴ Because long and relatively well-financed parental leave schemes are used overwhelmingly by women, the stereotypes of parental roles and division of family-related obligations and work do not change.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

Article 2(24) of the Law on the Safety and Health of Workers³⁵ provides a definition of a pregnant worker: a pregnant worker is a worker who has provided her employer with a

³³ See Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A. (2015), *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

³⁴ See the report on the conclusions of a conference at the Parliament. Office of Equal Opportunities Ombudsperson (2017), 'Dabartinė vaiko priežiūros atostogų tvarka neskatina grįžti į darbo rinką – ją būtina keisti' (Current parental leave stipulations do not encourage women to return to the labour market – it needs to be changed), available in Lithuanian at: <https://www.lygybe.lt/index.php/lt/dabartine-vaiko-prieziuros-atostogu-tvarka-neskatina-grizti-i-darbo-rinka-ja-butina-keisti>.

³⁵ *Valstybės žinios* 2003, No. 70-3170.

medical certificate confirming her pregnancy. This definition is completely consistent with the definition in Article 2 of Directive 92/85.

Article 2(19) of the Law on the Safety and Health of Workers provides that a breast-feeding worker is a worker who has given the employer a certificate from a healthcare institution that she is breastfeeding. A worker who has recently given birth shall mean an employee who has given the employer a certificate of childbirth from a healthcare institution and is raising a child until it reaches one year of age (Article 2(20) of the Law on the Safety and Health of Workers).

5.2.2 Obligation to inform employer

A pregnant worker must inform her employer of her condition by providing a medical certificate of pregnancy in accordance with the established form.

5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no case law dealing with the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding.

5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

Article 37 of the Law on the Safety and Health of Workers regulates maternity protection. There is a general prohibition on assigning pregnant women or women who have recently given birth or are breastfeeding to perform work in conditions that may be hazardous and affect the health of the woman or her child. The list of hazardous conditions and dangerous factors which are prohibited for pregnant women, women who have recently given birth or are breastfeeding was approved by the Government. The list was adopted in 2003 and was newly approved by the Resolution No 469 of the Government on 21 June 2017³⁶ to fully implement Directive 92/85 as modified by Directive 2014/27. In addition, in compliance with the list of hazardous conditions for work and working environment risk assessment results, the employer must establish the nature and duration of a potential effect on the safety and health of a woman who has recently given birth or is breastfeeding. Upon assessment of this potential effect, the employer must take the measures necessary to ensure that such a risk is eliminated. Where the elimination of dangerous factors is impossible, the employer shall implement measures to adjust the working conditions so that a woman who has recently given birth or is breastfeeding can avoid such risks. If the adjustment of her working conditions does not result in preventing her exposure to risks, the employer must transfer the woman (with her consent) to another job (place of work) in the enterprise, establishment or organisation. After her transfer to another job (place of work) in the enterprise, establishment or organisation, the pregnant woman, or woman who has recently given birth or is breastfeeding shall not be paid less than the average pay which she received before being transferred to the other job (place of work). If transferring a pregnant woman to another job (place of work) to avoid her and her unborn child's exposure to risks is not technically feasible, the pregnant woman shall, with her consent, be granted leave until she takes her maternity leave and shall be paid her average monthly salary during this period of extra leave. After maternity leave, if it is not technically feasible to transfer a woman who has recently given birth or is breastfeeding to another job (place of work) to avoid her or her child's exposure to risks, the woman shall, with her consent, be granted unpaid leave until her child reaches the age of one year and her maternity insurance contributions, as prescribed by law, shall be paid during this period.

³⁶ *Teisės aktų registras* 2017, No. 10532.

There are some additional guarantees; for example, in addition to the general rest and meal breaks, a breastfeeding woman shall be given, at least every 3 hours, a break of at least 30 minutes to breastfeed. At the mother's request the breaks for breastfeeding may be joined or added to the rest and meal breaks, or given at the end of the working day, thereby shortening the working day accordingly. Payment for these breaks to breastfeed shall be calculated according to the average daily pay of the employee. Pregnant women, women who have recently given birth or are breastfeeding may not be assigned to work overtime without their consent.

5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

No significant cases were examined by the courts or equality body.

5.2.6 Prohibition of night work

Pregnant women, women who have recently given birth or are breastfeeding may only be assigned to work at night, on rest days or on holidays, or posted to perform different work with their consent; if such employees refuse to work at night and submit a certificate that such work would affect their health and safety, they shall be transferred to daytime work (Article 37(8) of the Law on the Safety and Health of Workers). Where it is not possible due to objective reasons to transfer such employees to daytime work, they shall be granted leave until they take maternity leave or childcare leave until the child reached the age of one year. During the period of leave granted before the employee takes maternity leave, she shall be paid her average monthly pay.

5.2.7 Case law on the prohibition of night work

No cases on prohibition of night work were examined by the courts or equality body.

5.2.8 Prohibition of dismissal

There is a general prohibition on dismissing pregnant women. Article 61(1) of the Labour Code provides that a pregnant woman's employment contract may be terminated from the day on which her employer receives a medical certificate confirming her pregnancy, and until her child reaches the age of four months, but only in following cases:

- upon mutual agreement;
- resignation;
- resignation during a trial period;
- on objective grounds, where the law requires termination of the contract;
- upon expiry of the contract.

If the person is on maternity leave, the termination of employment is prohibited except in the case of the expiry of the contract (Articles 131(2), 65(6) of the Labour Code).

5.2.9 Redundancy and payment during maternity leave

Redundancy of a worker on maternity leave is prohibited (see above).

An employer has no duty to pay maternity benefit during the maternity leave of an employee. This duty is vested in the State Social Insurance Fund, which provides for maternity benefit for insured employees (see below).

5.2.10 Employer's obligation to substantiate a dismissal

There is a general requirement for an employer to provide substantial grounds for dismissal, if the dismissal is initiated on his/her initiative.

5.2.11 Case law on the protection against dismissal

There is no significant case law so far.

5.3 Maternity leave

5.3.1 Length

The duration of maternity leave is 70 calendar days before childbirth and 56 calendar days after childbirth (in the event of a complicated childbirth or the birth of two or more children this is extended to 70 calendar days) (Article 132(1) of the Labour Code). The length of maternity leave taken is completely voluntary and is very often linked to a person's willingness to receive the statutory maternity allowance.

5.3.2 Obligatory maternity leave

The new Labour Code consolidates a new provision that if a woman does not use her maternity leave, her employer must grant a 14-day instalment of leave immediately after childbirth, regardless of the wishes of the woman (Article 132(1) of the Labour Code).

5.3.1 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

Pursuant to Article 37 of the Law on the Safety and Health of Workers, after having been transferred to another job (place of work) in an enterprise, establishment or organisation, a pregnant woman, or a woman who has recently given birth or is breastfeeding shall not be paid less than the average pay she received before being transferred to another job (place of work). If transferring a pregnant woman to another job (place of work) to avoid her and her unborn child's exposure to risks is not technically feasible, the pregnant woman shall, with her consent, be granted leave until she takes her maternity leave and shall be paid her average monthly salary during this period of extra leave. If it is not technically feasible to transfer a woman who has recently given birth or is breastfeeding after her maternity leave to another job (place of work) to avoid her or her child's exposure to risks, the woman shall, with her consent, be granted unpaid leave until her child reaches the age of one year and her insurance contributions, as prescribed by law, shall be paid during this period.

5.3.2 Legal protection of rights ensuing from the employment contract

Pursuant to Article 131(2) of the Labour Code, the employer shall ensure the right of an employee to return to the same or an equivalent job (position) after a special-purpose leave on conditions which are no less favourable than the former working conditions, including wages, and to benefit from any improvement in working conditions, including the right to a pay rise, to which he or she would have been entitled if he or she had been working. The maternity allowance is paid by the State Social Insurance Fund (see below).

5.3.3 Level of pay or allowance

Pursuant to Article 18 of the Law on Sickness and Maternity Social Insurance, the amount of maternity allowance during a period of maternity leave is fixed to 77.58 % of the allowance beneficiary's remuneration, subject to minimum and maximum requirement. The amount of sickness allowance paid by the State Social Insurance Fund is set to 62.06 % of the remuneration of the allowance beneficiary. The maternity allowance is higher than that provided in the case of sickness, but the preconditions are more difficult to meet. Only employees who have worked for more than 12 months over the previous 24 months qualify for maternity allowance. In order to qualify for sickness allowance this period is only 3 months in the previous 12 months (or 6 months in the previous 24 months).

According to Article 6 of the Law on Sickness and Maternity Social Insurance, there is a minimum maternity allowance (EUR 234). After a recent ruling by the Lithuanian Constitutional Court,³⁷ the upper limit for maternity allowance was abolished as it was unconstitutional. In the Court's view, the legislator cannot impose a limit on maternity allowance if the contributions themselves are not subject to a maximum limit. However, this line of argumentation was not upheld in a later ruling concerning parental leave allowances.³⁸ The Court stressed the necessity of ensuring the financial stability of the state's social insurance system and higher unlimited contributions to the state's social insurance scheme were justified by the principles of the state's social orientation and social solidarity.

5.3.4 Additional statutory maternity benefits

Additional supplements provided by the employer in the case of maternity leave are rare in practice.

5.3.5 Conditions for eligibility (Article 11(4) of Directive 92/85)

There is a general requirement of 12 months of employment during the previous 24 months: women are entitled to a maternity allowance during maternity leave if by the first day of the maternity leave they have the necessary sickness and maternity social insurance record of no less than 12 months during the previous 24 months, except for young medical doctors (who are residents) and persons under 26 years of age who have not acquired the necessary social insurance record because of their full-time studies, if the maternity leave is granted within 12 months after the completion of their studies.

5.3.6 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

Pursuant to Article of 131(2) of the Labour Code, an employer shall ensure the right of employees to return to the same or an equivalent job (position) after this leave and subject to conditions which are no less favourable, including their wages, as well as to benefit from any improvement in conditions during their absence, including wages, to which they would have been entitled.

5.3.7 Legal right to share maternity leave

No legal right to share maternity leave has been consolidated in Lithuanian law.

5.3.8 Case law

No significant case law can be identified in Lithuania.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

If a person adopts or fosters a baby or child, she/he is entitled to parental leave of three months (Article 134(2) of the Labour Code). Adoption leave is granted subject to the wishes of the family and may be taken as a single period or be split into blocks.

³⁷ Constitutional Court of the Republic of Lithuania, 15 March 2016, available (in Lithuanian) at: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1578/summary>.

³⁸ Constitutional Court of the Republic of Lithuania, 24 January 2018, available (in Lithuanian) at: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1786/content>.

5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

Protection against dismissal and any violation of the other rights of adoptive parents is granted to the same extent as others who are taking maternity or parental leave simply due to the fact that the same legal provisions would apply.

5.4.3 Case law

No significant case law can be identified in Lithuania.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Parental leave until a child has reached the age of three years is granted to the mother, the father or to other relatives who are in fact raising the child until he/she reaches the age of three years (Article 134(1) of the Labour Code).

Parental leave is granted subject to the wishes of the family and may be taken as a single period or be split into several blocks. During parental leave the employee receives a social benefit – a parental allowance paid by the State Social Insurance Fund for a period of up to two years. The person concerned retains his/her job, with the exception of cases where the employing enterprise has been dissolved. At the end of the parental leave, workers have the right to return to the same job on the same terms as before their leave. Unlike the stipulations regarding maternity leave, there is no explicit provision that the worker shall benefit from any improvement in working conditions during his/her absence because of parental leave to which he/she would have been entitled. In addition, the law does not provide for a minimum non-transferable period of parental leave, as required by Directive 2010/18/EC.

5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

The laws governing the status of public servants and state officials do not explicitly stipulate the rights to and particularities of taking parental leave. Therefore, the rules on parental leave apply to state officials and public servants by way of legal analogy, as stated in Article 5 of the Law on Public Service³⁹ – in cases where the issue is not covered by a special regulation, the rules on labour legislation shall apply.

5.5.3 Scope of the transposing legislation

The rules on parental leave do not differ in relation to contracts of employment – they apply equally to the employment relationships of part-time workers, fixed-term contract workers or temporary workers.

5.5.4 Length of parental leave

The maximum length of the leave is the same for all sectors and is fixed until the child reaches the age of three years.

5.5.5 Age limits

Parents are entitled to parental leave until a child reaches the age of three years.

³⁹ *Valstybės žinios* 1999, No. 66-2130.

5.5.6 Individual nature of the right to parental leave

Leave is considered to be a family entitlement, but the legal status of a valid marriage is not required. In practice, this can amount to an individual right because there is no system to prevent both parents from taking parental leave, if only one of them applies for the social insurance allowance. There are no priority rules and the parents are free to decide who will take the parental leave, but the legislator stipulates that the parental leave is reserved to only one person at the same time.

According to Article 134 of the Labour Code, parental leave until a child reaches three years of age shall be granted, subject to the wishes of the family, to the mother (or adoptive mother), father (or adoptive father), grandmother, grandfather or any other relative who is actually raising the child, also to an employee who has been recognised as the guardian of the child. The leave may be taken as a single period or be split into several blocks. Employees entitled to this leave may take it in turn. Parents can take parental leave in turn, but they cannot transfer their right to social insurance allowance during the parental leave to the other parent.

5.5.7 Transferability of the right to parental leave

The law does not provide for a minimum non-transferable period of parental leave or adoption leave, as required by Clause 2 of Directive 2010/18/EC.

5.5.8 Form of parental leave

There is no flexibility in choosing the form of parental leave. It can only be taken full time, i.e. there is no option to have part-time parental leave (to work and to be on parental leave during the same working day). The legislator considers that a parent is on parental leave for a whole day, week or month, but allows a parent to return to work at any time (where both parents work) or to switch (i.e. one parent returns to work, the other then takes parental leave).

Other variations can be considered insofar as they concern social insurance allowances – those on parental leave may choose whether they want to work while receiving parental allowance. If the parent who receives the social allowance commences work for remuneration during the period before the child reaches the age of one year, his/her allowance will be reduced by the amount of salary received. After the child reaches the age of one year, the parent may work or have additional income from paid employment and will also receive the allowance in full.

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

The right to parental leave is in no way related to the period of service or the type of employment contract – every employee with an effective contract of employment may apply for parental leave and the employer is obliged to grant that leave. The only hypothetical exception could be a case where an employment contract ends before the notice period of 14 days expires. However, even in such cases the courts would most probably defend the employee's right to parental leave. This conclusion can be drawn from numerous cases decided by the courts in which they have held that the right of an employee to apply for parental leave has an absolute nature and the employer may neither revise nor oppose the will of an employee.⁴⁰

⁴⁰ For example, Supreme Court of the Republic of Lithuania, No. 3K-3-384/2011, 11 October 2011, available (in Lithuanian) at: <https://eteismai.lt/byla/123070811508396/3K-3-384/2011>.

5.5.10 Notice period

Pursuant to Article 134(3) of the Labour Code, an employee intending to make use of parental leave or to return to work before the end of the leave must give the employer written notice thereof at least 14 days in advance. A longer notice period may be established in a collective agreement.

5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

No stipulation has been consolidated with regard to postponement of parental leave.

5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

No special arrangements are provided for small firms.

5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

There are no special arrangements for parents of children with a disability or long-term illness.

5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

No special measures addressing the specific needs of adoptive parents are envisaged by Lithuanian legislation. These parents are entitled to adoption leave (see above).

5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

Taking parental leave can in no way constitute a lawful ground for treating an employee differently. Article 131(2) of the Labour Code states that an employee shall retain his or her job (position) during the period of any leave. There is a general prohibition on giving notice of termination of an employment contract and on summarily dismissing an employee during his or her leave (Article 65(6) of the Labour Code). A worker shall benefit from any improvement in working conditions during his/her absence because of parental leave to which he/she would have been entitled (Article 131(2) of the Labour Code). In addition, in the case of redundancies all workers who are raising children (or adopted children) under 14 years of age have a priority right to retain their jobs (Article 57(3) Paragraph 2 of the Labour Code) and priority to choose the time when annual leave is to be taken (Article 128(4) of the Labour Code).

5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

According to Article 131(2) of the Labour Code, during the period of this leave the employee shall retain his or her job (position). This means that dismissal of the employee on the initiative of an employer is prohibited.

5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

Rights acquired by a worker shall be maintained until the end of the parental leave. It seems that the new provision on limiting use of the right to paid annual leave (the acquired right to paid annual leave shall be exercised during the period of the following three years (Article 127(5) of the Labour Code) shall not be applicable in the case of parental leave. However, this provision has been applicable since 1 December 2015, and as yet there is no practice relating to its application.

5.5.18 Status of the employment contract or relationship during parental leave

The original employment contract will remain valid. The length of uninterrupted work for the employer continues to be counted, but the parental leave will not be taken into account when calculating the length of service for annual paid leave (Article 127(4) Paragraph 3 of the Labour Code). Employees on parental leave are considered to be members of staff (in accordance with Article 17 of the Labour Code). The only exceptions are related to collective law: the laws on transposition of European Directives 2009/38/EC, 2001/86/EC, 2003/72/EC exclude employees on parental leave from the total number of employees within an enterprise. Employees on parental leave are not taken into account when establishing the total number of employees for the establishment of a European works council or a European company works council or special negotiating committees. However, employees on parental leave are not excluded from participation in domestic works councils at company level.

5.5.19 Continuity of entitlement to social security benefits

There is full continuity of entitlement to social security benefits. According to Article 6(4) Paragraph 5 of the Law on Health Insurance,⁴¹ the state takes over payment of contributions for parents/adoptive parents raising a child under eight years of age, one of the guardians providing guardianship for a child under eight years of age in a family, one of the parents/adoptive parents raising two or more minor children, and one of the guardians/carers providing guardianship for/taking care of two or more minor children in a family.

5.5.20 Remuneration

The employer is not obliged to pay an employee's salary or other benefits during parental leave, except in cases foreseen by individual contracts, collective agreements or other normative acts. Financial support for those on parental leave is provided by the state social insurance scheme. According to the Law on Sickness and Maternity Social Security of 21 December 2000,⁴² during parental leave a worker is entitled to a state social security allowance paid by the State Social Insurance Fund.

5.5.21 Social security allowance

During parental leave a parental allowance is paid by the State Social Insurance Fund for a period of up to two years in both the public and private sectors. The amount of the allowance is subject to the length of the leave; a third year of leave is always unpaid.

According to Article 21 of the Law on Sickness and Maternity Social Insurance, the amount of a parental allowance (in Lithuanian – *vaiko priežiūros išmoka*) from the end of maternity leave until the child reaches the age of one year shall amount to 77.58 % of the allowance beneficiary's remuneration, if the insured person chooses to receive this allowance until the child reaches the age of one year. If the insured person chooses to receive a parental allowance until the child reaches the age of two years, the amount of the allowance from the end of a maternity leave until the child reaches the age of one year shall amount to 54.31 % of the allowance beneficiary's remuneration and thereafter, until the child reaches the age of two years, 31.03 % of the allowance beneficiary's remuneration. If the insured person chooses to receive a maternity (paternity) allowance until the child reaches the age of two years, he/she is allowed to work during the second year without losing payment of the allowance.

According to Article 6 of the Law on Sickness and Maternity Social Insurance, the maximum allowances may not exceed the sum of two national average monthly wages during the

⁴¹ *Valstybės žinios* 2002, No. 123-5512.

⁴² *Valstybės žinios* 2000, No. 111-3574.

six months prior to establishment of the right to an allowance. As at 1 January 2020, the cap is EUR 2 612 monthly. The minimum monthly allowance is EUR 234. The allowances are subject to deduction of income tax (15 %) and state health insurance (6 %).

The state social insurance record means the periods during which state social insurance contributions for sickness and maternity social insurance are paid or had to be paid as required by law, as well as the periods during which the insured person was in receipt of a state social insurance allowance (e.g. sickness, maternity, paternity or unemployment allowances). The social insurance record of self-employed persons or persons who receive an income from sport or performing activities or under copyright agreements shall be determined according to the social insurance contributions which have been paid. If contributions equal to the amount paid by an employee receiving the minimum monthly wage have been paid, a social insurance record of one month shall be acquired. In cases where the amount of such contributions is smaller or larger than that paid by an employee receiving the minimum monthly wage, the social insurance record shall be considered to be proportionally shorter or longer as the case may be.

5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

Although the Lithuanian Labour Code is heavily weighted in favour of family-friendly arrangements such as restrictions on redundancy, prolonged notification periods for employees who have children, employees having to consent to being sent on business trips and to being assigned to night work or overtime, there are no other guarantees related to parental leave except the right of employees to take additional unpaid leave of up to three months during the maternity leave or parental leave of their spouses (Article 137(1) Paragraph 3 of the Labour Code).

5.5.23 Case law

There is no relevant case law or decisions of the Ombudsperson so far.

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

Pursuant to Article 133 of the Labour Code, men shall be entitled to paternity leave for the period from the date of the birth of a child until the child reaches the age of one month. During the paternity leave an allowance is paid by the State Social Insurance Fund. The amount of paternity allowance shall be 100 % of the allowance beneficiary's remuneration, subject to minimum and maximum requirements. There are no preconditions for leave to be granted, but a state social insurance record of 12 months during the previous 24 months is necessary to qualify for an allowance. The maximum allowance may not exceed the sum of two national average monthly wages during the six months immediately before establishment of the right to an allowance. As at 31 September 2019, the cap is EUR 1 685 monthly. The minimum monthly allowance is EUR 228.

5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

There is a general prohibition on giving notice of termination of an employment contract and on dismissing an employee during his/her leave, except in the case of expiry of a contract (Article 61(3) of the Labour Code).

5.6.3 Case law

As yet there is no relevant case law or decisions of the Ombudsperson.

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

There is no notion of 'time off' for *force majeure* reasons in Lithuania. To some extent, equivalent provisions may be found under Article 137 of the Labour Code, which consolidates the right of employees to request unpaid time off in the following cases:

1. an employee raising a child under 14 years of age – for up to 14 calendar days (no particular reason shall be provided);
2. a disabled employee, as well as an employee raising a disabled child under 18 years of age or taking care of a disabled person where the necessity of continuous care has been prescribed – for up to 30 calendar days (no particular reason shall be provided);
3. a male employee, who is the father of the child, during the maternity leave or parental leave of the mother of his child – up to three months (no particular reason shall be provided);
4. a female employee, who is the mother of a child, during the paternity leave of the father of her child – up to three months (no particular reason shall be provided);
5. an employee taking care of a sick family member – for a period recommended by a health institution;
6. an employee in order to enter into marriage – up to three calendar days;
7. an employee in order to take part in the funeral of a deceased family member – up to three calendar days.

At the employee's request and with the employer's consent, during the working day (shift) the employee may be granted unpaid time off for the employee's personal needs. The parties may agree to move working time to another working day (shift) without violating the requirements for the maximum working time and the minimum rest period. In addition, unpaid leave exceeding one working day (shift) may be granted at the employee's request and with the employer's consent.

5.7.2 Case law

No significant cases have been registered so far.

5.8 Care leave

5.8.1 Existence of care (or carers') leave in national law

Lithuanian legislation provides for care leave in the case of illness of a member of an employee's family (his or her spouse, child, mother or father), regardless of the size of the employer's business or the nature of the employment.

The Law on Sickness and Maternity State Social Insurance provides for the right to a state social insurance allowance for those taking care leave. This leave can only be taken full time.

In the case of care leave, the state social insurance sickness allowance will be paid in accordance with the provisions of Article 10 of the Law on Sickness and Maternity State Social Insurance. The allowance will be paid for the first seven days. If an employee is taking care of a child up to 7 years of age who is hospitalised, or a member of the family takes care of a child with a severe illness who is under 18 years of age, the allowance will be paid for a maximum of 120 days in any calendar year.

5.8.2 Case law

There is no relevant case law so far.

5.9 Leave in relation to surrogacy

Parental leave is not granted in relation to surrogacy. A surrogate mother would be entitled to maternity leave. The law does not specifically stipulate whether a surrogate mother is entitled to parental leave, if the child has been transferred to commissioning parents. The most likely response to such a request would be negative, because the objective of parental leave is related to the need to take personal care of the child.

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

In accordance with Article 40(5) of the Labour Code, a reduction to part-time work is possible without the consent of an employer at the request of (inter alia):

- a) a pregnant woman;
- b) a woman who has recently given birth;
- c) a breastfeeding woman;
- d) an employee raising a child under three years of age;⁴³
- e) an employee who is alone and is raising a child under 14 years of age or a disabled child under 18 years of age.⁴⁴

There are no eligibility criteria or time limits set by law to requesting part-time work. This obligation is available to all employees. In addition, there is a right to return from part-time employment to full-time employment after 2 weeks' notice.

Part-time work means that an employee will be paid *pro rata temporis*. No state social insurance allowance to cover the shortfall in the salary is provided by the law. No incentives are provided for men to make use of the right to reduce their working time.

5.10.2 Right to adjust working time patterns

There is no right for employees with family responsibilities to adjust working time patterns. However, in accordance with Article 138(3) of the Labour Code, employees raising a disabled child under 18 years of age or two children under 12 years of age shall be granted an additional rest day per month (or have their working time shortened by two hours per week), and employees raising three or more children under 12 years of age shall be entitled to two additional rest days per month (or have their working time shortened accordingly by four hours per week) and be paid their average wage.

5.10.3 Right to work from home or remotely

Distance working and teleworking can only be arranged on the basis of a special mutual agreement between an employer and an employee (Article 52 of the Labour Code). No family-friendly special arrangements have so far been provided by the legislation.

5.10.4 Other legal rights to flexible working arrangements

Prolonged minimum annual paid leave of 25 working days (while the normal minimum paid leave is 20 working days) is granted to employees who, as single parents, are raising a child under the age of 14 years or a disabled child under the age of 18 years (Article 138(1) of the Labour Code).

Additional unpaid leave (Article 137(1) of the Labour Code) shall be granted at the request: a) of employees raising a child under 14 years of age, for up to 14 calendar

⁴³ This shall also apply to commissioning parents.

⁴⁴ This shall also apply to commissioning parents.

days; b) of employees raising a child with disabilities under 18 years, for up to 30 calendar days; c) of a father during the maternity leave and parental leave of a mother, as well as of a mother during the parental leave of a father, for up to 3 months.

In addition, the law provides a right to choose the exact time of annual leave (Article 128(4) of the Labour Code). Pregnant women and employees who are alone and are raising a child under the age of 14 years or a child with disabilities under the age of 18 have the right to choose the exact time of their annual leave after 6 months of uninterrupted work for an employer.

The Labour Code also contains a few other measures which are intended to increase family-related flexibility for workers: the right to unpaid time off for personal needs with the consent of the employer (Article 137(3)); the enhanced right to request distance working (Article 52(2) of the Labour Code); a job-sharing contract (Article 93(3) of the Labour Code) if the employee has children.

5.10.5 Case law

No significant case law can be identified in Lithuania.

5.11 Evaluation of implementation

Lithuanian labour law traditionally is heavily loaded with guarantees for pregnant women and workers raising children. The new Labour Code has significantly contributed to the family-related flexibility for workers. However, the rigidity of the system can be seen in the limitation of forms of parental leave and lack of supporting childcare infrastructure. It results in the full exemption of female workers from the labour market for two to three years, which, on the other hand, results in the degradation of skills and lower personal contribution to obligatory private (2nd pillar) and old-age state social insurance schemes.

5.12 Remaining issues

Transferability and non-transferability of leave is an unknown legal phenomenon in the Lithuanian legal system.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 General (legal) context

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

No surveys and/or reports that provide insights into difficulties that workers face in practice in relation to work-life balance have been published in Lithuania over the last five years.

6.1.2 Other issues related to gender equality and social security

No other issues related to gender equality and social security can be identified so far.

6.1.3 Political and societal debate and pending legislative proposals

There are no political and societal debate or pending legislative proposals with regard to changes in the occupational social security scheme because of the insignificance of the schemes for Lithuanian employees. In addition, there is also lack of knowledge and experience about possible gender related inequalities with regard to pension schemes in general.

6.2 Direct and indirect discrimination

Pursuant to Article 9(1) of the EOAWM, it shall be prohibited to discriminate against persons on grounds of sex when establishing and applying social security provisions, including those that amend or supplement the state social insurance system:

- 1) when establishing possibilities for participation and usage;
- 2) when establishing contributions and their amount;
- 3) when establishing benefits, including additional benefits, for spouses and dependent persons, as well as when establishing the duration of the right to benefits and their retention.

Discrimination is defined by the Article 2(1) of the EOAWM and encompasses both direct and indirect discrimination.

Discrimination shall be prohibited when establishing and applying social security provisions in regard to sickness, disability, old age, early retirement, accidents at work and occupational diseases or unemployment, and social security provisions that provide for any type of social benefits, including survivor's and orphan's pensions, benefits and material allowances.

6.3 Personal scope

Article 9(3) of the EOAWM provides that the prohibition of discrimination on grounds of sex shall apply for employed persons including self-employed persons, persons who have terminated their employment due to sickness, maternity, accident or involuntary unemployment, as well as jobseekers, pensioners, disabled employees and persons who are entitled to demand benefits on their behalf.

This means that public servants and other categories of state employees who are covered by the system of state pensions (officials and military personnel, academics and judges) are clearly covered by the principle of non-discrimination to this extent. The same is true for self-employed persons, who are not yet mentioned elsewhere in equality legislation.

6.4 Material scope

Occupational social security schemes in the private sector were introduced in 2006 but are still very rare in Lithuania. The pension and social security schemes for public servants form part of the general statutory scheme, accompanied by specific state pension schemes for officials and military personnel, academics and judges. Different pensionable ages in occupational pension schemes are expressly prohibited under the EOAWM.

In 2008 the EOAWM was supplemented to include new provisions on the prohibition of discrimination based on sex in social security schemes, including provisions that are intended to supplement or replace the state social security system. Exclusions related to the type of occupational social security scheme are not provided by the law. Article 9(2) of the EOAWM cites examples of prohibited actions: discrimination is prohibited in establishment of possibilities to participate in and enjoy social protection, in determination of contributions and their level, in determination of allowances, including those granted to spouses and dependants, as well as in determination of the duration of payment of allowances.

6.5 Exclusions

Exclusions related to the type of occupational social security scheme are not provided by the law.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

No case law has been identified so far. Occupational pension schemes are very rare in Lithuania.

6.7 Actuarial factors

To the knowledge of the author, sex is not used as an actuarial factor in Lithuania.

6.8 Difficulties

There are no specific difficulties, as occupational social security schemes are rarely used in Lithuania. However, public servants are covered by the general state social security scheme, which could also be seen as occupational. The state social security scheme entails different pensionable age rules which can raise questions of its compatibility with Directive 2006/54 insofar as it covers public servants.

6.9 Evaluation of implementation

The quality of implementation of the European legislation is relatively satisfactory. Despite the existence of certain rules establishing the general principle, women and men in public service, including those covered by special regimes (judges, prosecutors, internal security agents etc) are subject to regulations providing for different pensionable ages.

6.10 Remaining issues

There are no remaining issues to be discussed.

7 Statutory schemes of social security (Directive 79/7)

7.1 General (legal) context

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

No surveys on such practical difficulties have been carried out in Lithuania.

7.1.2 Other relevant issues

No additional information can yet be provided in relation to issues relating to statutory social security schemes.

7.1.3 Overview of national acts

The state social security legislation does not specifically address the principle of equality. The broadly formulated general norms on non-discrimination can be found only in EOA and EOAWM.

7.1.4 Political and societal debate and pending legislative proposals

There is no political debate on the issue so far.

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

The principle of equal treatment is consolidated in Articles 9 and 15 of the EOAWM and is applied equally to occupational and statutory social security schemes. All categories of employees, including public servants and higher officials, are covered by all types of state social security schemes, whilst the majority of self-employed persons are covered by fewer statutory pension schemes.

The EOAWM amendments of 2008 significantly broadened the scope of application of the equal treatment principle, which now applies to the state social security schemes in the same way and to the same extent as occupational pension schemes, the only exception being the difference in pensionable ages (see below).

7.3 Personal scope

The EOAWM simply establishes the principle of non-discrimination in state social security schemes – Article 9(3) of the EOAWM declares that the prohibition of discrimination on grounds of sex shall apply to employed persons, including self-employed persons, persons who have terminated their employment due to sickness, maternity, accident or forced unemployment, as well as jobseekers, pensioners, disabled employees and persons who are entitled to apply for benefits on their behalf. The scope of the national provision is the same as that of Article 2 of Directive 79/7.

7.4 Material scope

The principle of non-discrimination is applied to all statutory social security schemes, as Article 9(2) provides that discrimination shall be prohibited when establishing and applying social security provisions in regard to sickness, disability, old age, early retirement, accidents at work and occupational diseases, or unemployment and social security provisions that provide for any type of social benefits, including survivor's and orphan's pensions, benefits and material allowances.

7.5 Exclusions

Article 10(3) of the EOAWM provides for a temporary exception for different pensionable ages for women and men in the statutory pension schemes. For many years the pensionable ages for men and women were different: 60 years for women and 62.5 years for men. The pensionable age has been increased each year since 2012, by four months for women and by two months for men each year, and the retirement age for both men and women will thus reach 65 years in 2026. It should be kept in mind that in Lithuanian labour law some employees' guarantees (on notification periods or priority rights in retaining a position where dismissals are concerned) are related to the statutory pensionable age of the workers, which is still different for women and men.

7.6 Actuarial factors

There is no legislation or practice which would allow for different amounts of benefits for men and women because of the statistical difference in life expectancy between the sexes.

7.7 Difficulties

The state statutory pension scheme, based on the Law on the Pensions of State Social Insurance of 18 July 1994,⁴⁵ contains a temporary exception with regard to different pensionable ages for women and men. This exception is applied to both the private and public sectors, which means that the exception for public servants may not be in conformity with the principle of equal treatment.

First, all public servants are covered by the state statutory pension scheme in the same way as employees in the private sector. Therefore, access to an old-age pension differs for all women and men who are public employees.

Secondly, there is a direct link between the state statutory pension scheme based on the principle of social insurance (the Law on Pensions of State Social Insurance), and the system of state pensions based on the principle of merit or type of occupation. In accordance with the Law on State Pensions of 22 December 1994⁴⁶ there are also first- and second-degree state pensions, state pensions for victims of the soviet regime, state pensions for officials and military personnel, state pensions for academics and state pensions for judges. All these pensions (except the pension for officials of the internal security) are granted to persons who have reached the pensionable age established by the Law on the Pensions of State Social Insurance, which is in fact different for men and women.

7.8 Evaluation of implementation

Implementation of the EU legislation has not caused any difficulties so far. The difference in pensionable ages is allowed by the Directive, but the problem of the public servants remains – their affiliation to the general state social security scheme can be regarded as occupational pension scheme and no safeguards to ensure equality between the sexes are provided. The same is applicable to the state pensions.

In accordance with the Law on State Pensions, there are first- and second-degree state pensions of the Republic of Lithuania, state pensions for victims, state pensions for officials and servicemen, state pensions for scholars. These pensions (except pensions for policemen and officials of internal security), are granted upon reaching pensionable age in accordance with the general state social security scheme, i.e. at a different age for women and men.

⁴⁵ *Valstybės žinios* 1994, No. 59-1153.

⁴⁶ *Valstybės žinios* 1994, No. 101-2018.

It seems that the Lithuanian legislator and stakeholders believe that these categories of public servants do fall under the permitted exception in Article 7(1)(a) of the Directive 79/7/EEC.

7.9 Remaining issues

The application of the principle of equal treatment to public servants may cause problems of compatibility in the near future.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 General (legal) context

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

No surveys were conducted in Lithuania in relation to the specific difficulties of self-employed workers.

8.1.2 Other issues

No other issues on this matter can currently be identified.

8.1.3 Overview of national acts

There is no specific act regulating the equal treatment of self-employed persons. Directive 2010/41/EU is mentioned in the annexes to the EOA and the EOAWM. However, only one fragmental provision can be found in the EOAWM. Article 9(3) of the EOAWM reads: 'the prohibition of sex discrimination shall apply to employed persons, including *self-employed persons*, persons who have ceased work due to sickness, maternity, accident or involuntary unemployment, and persons seeking employment, retired persons, disabled workers or persons entitled to receive the pension on their behalf.'

8.1.4 Political and societal debate and pending legislative proposals

There has been no recent political debate on the issue.

8.2 Implementation of Directive 2010/41/EU

The transposition of Directive 2010/41/EU is minimal. The EOAWM was slightly amended in 2012 to include a formal obligation for state institutions to observe the principle of equal treatment.⁴⁷ The Annex to the EOAWM and, surprisingly, the Annex to the EOA were amended on 13 March 2012⁴⁸ to state that this amendment serves as the transposition of Directive 2010/14/EU. This insertion does not seem to change the existing legal attitude towards self-employed workers. In fact, the public institutions are already prohibited from discrimination on the ground of sex by virtue of the directly applicability of Article 29 of the Constitution. In addition, the preparation or adoption of discriminatory legislation has been explicitly prohibited by Article 3(1) of the EOAWM since 1998.

Thus, the Lithuanian legislator has chosen not to explicitly confer the relevant rights on self-employed persons and their spouses, with an exception for social security schemes (the corresponding provision on social security schemes had already been inserted in 2008). Article 4 of the EOAWM only obliges state and municipal institutions and agencies to 'respect equal rights for women and men when providing public and administrative services'. Self-employed persons are not specifically mentioned here.

8.3 Personal scope

8.3.1 Scope

The existing regulation covers self-employed persons, but the problem lies in the fact that neither the EOAWM nor the EOA address self-employed persons, except in the regulation related to state social security schemes. In other words, except for social insurance

⁴⁷ Article 4(1) No. 4 of the EOAWM reads 'State and municipal institutions shall (...) respect the equal rights of women and men in the provision of administrative or public services'.

⁴⁸ Valstybės žinios 2012, No. 36-1769.

schemes, the prohibition of discrimination against self-employed persons on the ground of sex is implemented by a general obligation for state and municipal institutions and agencies. The scope of application of the principle of equal treatment is limited to:

- state and municipal institutions and agencies; and
- issues related to public services and administrative services.

This means that equal treatment does not apply to self-employed workers in horizontal relationships between private parties. This is one of obvious transposition gaps, as Directive 2010/41/EU is meant to govern all relations between self-employed persons and their spouses with third parties. Lithuanian law fails to include relationships with state companies, public bodies or private persons (notaries) etc. within its scope.

8.3.2 Definitions

The legislator does not define the self-employed person in equality legislation. In fact, a unified definition of 'self-employed person' is lacking in Lithuanian legislation. Only the Law on State Social Insurance of 18 July 1994⁴⁹ provides a definition of 'self-employed persons' for social insurance purposes only. The following categories of persons are recognised as 'self-employed':

- owners of individual enterprises;
- members of small-sized partnerships and limited partnerships;
- persons engaged in registered individual economic activity.⁵⁰

However, in Lithuania there are also other types of economically active persons who can be considered as self-employed:

- persons engaged in economic activity with a business certificate or registered individual business activity;⁵¹
- farmers and their partners;
- sportsmen/women and artists.

In taxation-related cases, when interpreting the nature of work of persons engaged in independent and registered individual economic activity, the courts simply refer to work based on civil law contracts to engage in an independent activity with the aim of generating revenue or other economic benefits.⁵² Independence of the person means operation at one's own expense, i.e. purchase of work equipment, arrangements for a place of work and its maintenance, acting on his/her own will and discretion and receipt of income.⁵³

8.3.3 Categorisation and coverage

The categories of a self-employed persons (Lithuanian law perceives such persons to be owners of individual enterprises, members of partnerships, persons in a registered individual economic activity, persons with business certificates, farmers and their partners, sportsmen/women and artists) has not been developed under the Lithuanian regime.

⁴⁹ *Valstybės žinios* 1994, No. 59-1153.

⁵⁰ A very broad spectrum of activities is specified here (from lawyers, notaries to tradesmen or manufacturers).

⁵¹ A narrow spectrum of activities is specified here. The principal difference from 'persons engaged in registered individual economic activity' is the fact that the purchase of a business licence is a form of predefined taxation, whilst persons engaged in registered activity are subject to payment of taxes and social insurance contributions, the amount of which depends on their income.

⁵² See, for instance, Supreme Administrative Court of Lithuania, No. N-575-3332/2009, 16 January 2009, available at: <https://eteismai.lt/byla/269261942987063/N-575-557-11>.

⁵³ Supreme Administrative Court of Lithuania, No. A-502-2801/2011, 30 June 2011.

8.3.4 Recognition of life partners

Spouses of self-employed persons are not mentioned in national equality legislation. Life partners are not recognised under Lithuanian law.

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

The Lithuanian legislator has not laid down the principle of equal treatment of self-employed persons, except in the area of social security schemes (Article 9(3) of the EOAWM). In addition, it does not grant explicit rights not to be discriminated against on the ground of sex for spouses of self-employed persons. The novelty of the transposition act (amendment of 13 March 2012 of the EOAWM)⁵⁴ is significant only insofar as there was no similar stipulation in the EOAWM before this. There is nothing that could prove that protection for self-employed persons in access to self-employment or other areas of life has been increased with the entry into force of the act of transposition. However, reports on violations of the principle of equal treatment of self-employed persons are also lacking.

8.4.2 Material scope

The EOAWM introduced a new obligation for state and municipal authorities and institutions to prevent sex discrimination. The amendment of 13 March 2012 of the EOAWM added the briefly formulated new obligation for state and municipal authorities not to violate the equal rights of women and men when providing administrative or public services. This short provision is obviously not sufficient to transpose the obligations in Directive 2010/41/EU.

8.5 Positive action

Lithuania has not made use of the power to take or allow positive action. Moreover, the Lithuanian EOAWM even generally prohibits positive action, if this affirmative action is not regulated by special law. No such laws have been adopted in Lithuania since 1998, when the EOAWM was adopted, nor before then.

8.6 Social protection

The Lithuanian state social protection system is quite complicated in terms of its coverage, types of contributions and benefits. The rules on social protection of self-employed persons cannot be considered as a system – they are instead a mixture of different provisions of distinct types of social insurance or even taxation, which sometimes also cover self-employed persons. After crisis-related amendments to the social insurance system in 2008, many self-employed persons were covered for the first time by different types of social and health-related insurance on a mandatory basis. There are still considerable differences between persons under a contract of employment and those engaged in individual activity. Obviously, the benefits for self-employed persons are limited in terms of risk and types of allowances (not all risks are covered), as well as regarding the amount of the allowances (the contributions of self-employed persons to the social insurance scheme are predetermined or subject to upper limits, while the contributions of employees and public servants are not).

The majority of self-employed people are only covered by pension insurance (old-age, disability and widow's/widower's pensions). Spouses who assist in the work activities of other categories of self-employed persons and persons treated as such may participate in voluntary social insurance schemes. All these persons may be covered by pensions and

⁵⁴ *Valstybės žinios* 2003, No. 36-1769.

sickness and maternity state social insurance on a voluntary basis. In addition, there are national social schemes granting certain services and cash allowances to these persons, regardless of their social insurance status, financial situation or professional activity (e.g. birth grants).

The spouses of self-employed persons are not explicitly covered by social protection legislation. It can only be reported that spouses of farmers who assist in their work are covered by the mandatory health social insurance scheme only if they are registered as partners. Spouses of other categories of self-employed persons are not specifically mentioned in the legislation – they may be insured in certain areas (pension and maternity (or paternity) and parental allowances – see above) on a voluntary basis, like any other natural person legally residing in the territory of Lithuania. In addition, there are national social schemes granting certain services and cash allowances to these women, regardless of their social insurance status, financial situation or professional activity (e.g. birth grants).

However, strong protection against any attempts at discrimination in the area of social protection is provided by Articles 9 and 15 of EOAWM, which expressly prohibit discrimination against self-employed persons. Their family members are also mentioned there – the law requires that there should be no discrimination on the ground of sex when establishing the level of contributions, when establishing benefits including additional benefits for widows and dependent persons, as well as when establishing the duration of the right to benefits and their retention. However, there are no examples of the practical application of these provisions in the courts or by the Equal Opportunities Ombudsperson.

8.7 Maternity benefits

In Lithuania different groups of self-employed persons are covered differently by the rules on maternity benefits. Persons engaged in a registered economic activity and farmers and their partners, as well as sportsmen/sportswomen and artists are insured on a mandatory basis, whilst the other groups may be insured on a voluntary basis. The mandatorily insured categories of self-employed persons will receive allowances (subject to maximum limits) of 100 % of the insured salary (the salary which was the basis for the social insurance contributions) for a maximum of 126 days of leave, if they were insured for at least 12 months during the previous 24 months. Depending on the type of activities, the payment of contributions may be made by the client or by the self-employed person (either four times yearly or once yearly together with an annual declaration of income).

The level of maternity allowances depends on the insured salary – the level of income which was the basis for the calculation of maternity insurance contributions.

Comparison with the allowances awarded to a person in the case of sickness (Article 8(3)(a) of Directive 2010/41/EU) is not difficult to make, since the level of sickness-related allowance is lower than that of maternity allowances. However, if the person's income was lower than the minimum wage, the maternity allowances will be proportionately lower.

There is no legislation in Lithuania which provides for any payments for loss of income or profit, or any other family-related allowance (the allowances stipulated in Article 8(3)(b)-(c) of Directive 2010/41/EU). Temporary replacement services or similar national social services are not provided in Lithuania. Spouses of self-employed persons are not subject to the regulation on maternity allowances. Life partners are not recognised in Lithuania.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

There is no provision on occupational social security schemes for self-employed persons in Lithuania.

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

There are no exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54.

8.9 Prohibition of discrimination

Article 14(1)(a) of Directive 2006/54/EC, which prohibits discrimination of the ground of sex in access to self-employment has not been transposed in Lithuania.

8.10 Evaluation of implementation

The Lithuanian legislator holds that the situation in Lithuania sufficiently satisfies the requirements of the Directive; therefore, only slight legislative changes were introduced. In real terms, the adoption of the Directive has had almost no effect on the creation of a truly discrimination-free environment for the self-employed. Since the activities of self-employed persons are considered a matter of private law, imperative provisions are lacking. In addition, cases of discrimination on the ground of sex in self-employment are difficult to identify. The protection of spouses seems to be the major problem of implementation of the Directive in Lithuania, since they are not specifically mentioned and are thus only minimally protected against discriminatory treatment.

8.11 Remaining issues

The principle of non-discrimination with regard to employment, promotion and vocational training is not transposed in Lithuania.

Self-employed persons conclude various types of civil-law contracts and it is difficult to ascertain who is responsible for ensuring compliance with the gender equality requirements in Lithuanian legislation and/or EU directives. There is no practice or even deeper legal analysis on how the problem could be addressed at the national level. Clearly, this makes the implementation and the application of the Directive more difficult. In fact, this is probably a major obstacle to effectiveness of the Directive.

9 Goods and services (Directive 2004/113)⁵⁵

9.1 General (legal) context

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

No surveys addressing the difficulties linked to equal access to and supply of goods and services were carried out.

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

No relevant issues of discrimination in the online environment/digital market/collaborative economy have been raised so far.

9.1.3 Political and societal debate

No significant debates can be identified as regards equal access to and supply of goods and services.

9.2 Prohibition of direct and indirect discrimination

The EOAWM *prima facie* meets the requirements of Directive 2004/113/EC as it prohibits any discrimination in the area of 'consumer protection' (Article 7 of the EOAWM). The EOAWM only addresses relationships between consumers and salespersons, producers and service providers, as it states that salespersons, producers and service providers must apply equal payment terms or guarantees for products of the same or equal value, goods and services to all consumers irrespective of their sex. They also have to ensure that there will be no humiliation, restriction of rights or granting of privileges, or the forming of any public attitudes to the superiority of one sex over another when providing information on their products, goods and services or when advertising them. Furthermore, the EOAWM lists discriminatory acts such as granting different conditions of payment or guarantees for goods of the same or equal value, services or products or allowing different opportunities for selecting goods; presenting information about products, goods and services or advertisements publicly promoting the opinion that one sex is superior to another; discrimination against consumers on the ground of sex; and intimidation of a person who has complained about discrimination. There will be no direct discrimination if the sale of goods or the provision of services to persons of a certain sex or to the majority of persons of a certain sex is justified by a legitimate aim, provided that these restrictions are appropriate and necessary.

9.3 Material scope

The EOAWM does not clarify whether access to goods and services is covered to the full extent. The structural deficit lies in the fact that due to lack of consistency and deficits in transposition, the law defines differently the obligations of individuals (in Chapter II, entitled 'Implementation of Equal Rights for Men and Women') and the punishable breaches of the principle of equal treatment (in Chapter III, entitled 'Violation of Equal Rights of Women and Men').

Only actions listed in Article 13 of the EOAWM (Chapter III) but not in Article 7 (Chapter II) entail an administrative penalty. In addition, Article 7 of the EOAWM (Chapter II) does not prohibit situations where the refusal to supply goods or to provide services is based

⁵⁵ See e.g. Caracciolo di Torella, E. and McLellan, B. (2018), *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

on the consumer's sex (the payment conditions and guarantees are included in the scope of the principle of non-discrimination). The previously criticised inconsistency of the Lithuanian legislation in separating the enumerated obligations of employers (Article 6 of the EOAWM) and the (differently) enumerated administrative breaches of the principle of discrimination (Article 10 of the EOAWM) leads to different categorisation (and sanctioning) of discriminatory actions.

In addition, there is real uncertainty as to whether all relations in the area of provision of services would be covered. In Article 7 of the EOAWM, 'Implementation of Equal Opportunities for Women and Men in the Field of Consumer Protection', the term 'consumer' plays a central role. In accordance with Article 6.350 of the Civil Code, the consumer is always perceived as a natural person only. The supply of goods or the provision of services can in practice be denied to female entrepreneurs, female commercial agents and legal persons who are represented by natural persons of a certain sex.

9.4 Exceptions

The exceptions to the application of the principle of equality related to the media and education have not been implemented in the EOAWM, but the EOAWM is not applicable in the sphere of private and family life (Article 1(2) of the EOAWM).

9.5 Justification of differences in treatment

There is no other statutory regulation on an admissible difference in the treatment of both sexes when accessing goods and services. The Office of the Equal Opportunities Ombudsperson investigates individual complaints in the sphere of goods and services. For example, a woman on parental leave until her child reached three years of age was refused consumer credit for financing the purchase of domestic electrical appliances. Although the perpetrator's intent is not seen as a prerequisite to prove discrimination, the complaint was dismissed by the Equal Opportunities Ombudsperson on the ground that there was no evidence that the company intended to discriminate against women on parental leave.⁵⁶ The equal quotas for boys and girls in access to a Jesuit high school were also justified by the Equal Opportunities Ombudsperson, who considered that there was a 'praiseworthy' policy to ensure equal representation of both sexes, albeit that girls needed much higher scores to be accepted by the school.⁵⁷ The Equal Opportunities Ombudsperson also saw no violation of equal treatment in the activities of the 'pink taxi' company which was established to provide operational services for women only. To justify the legitimacy of the women-only taxis the Equal Opportunities Ombudsperson relied on Article 6 of Directive 2004/113/EC, thus recognising here a case of positive action. The legitimate aim here was the need to ensure the security of women, since women much more often become victims of violent crime in the public sphere and find themselves in crisis situations due to domestic violence.⁵⁸

9.6 Actuarial factors

Article 93(2) of the Law on Insurance⁵⁹ clearly states that, when calculating insurance premiums and insurance benefits, the insurer shall not take the gender of the insured person or the gender of a policy holder as a relevant risk factor. In addition, Article 93(3) prohibits the use of factors related to pregnancy and motherhood when calculating the risk to the insurer.

⁵⁶ Equal Opportunities Ombudsperson, Annual Report 2007, available at: <https://lygybe.lt/data/public/uploads/2015/12/lgkt-ataskaita-2007.pdf>.

⁵⁷ Annual Report 2006 of the Equal Opportunities Ombudsperson, available at: <https://www.lygybe.lt/data/public/uploads/2015/12/lgkt-ataskaita-2006.pdf>.

⁵⁸ Annual Report 2008 of the Equal Opportunities Ombudsperson, available at: <https://lygybe.lt/data/public/uploads/2015/12/lgkt-ataskaita-2008.pdf>.

⁵⁹ Valstybės žinios, 2003, No. 94-4246.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

Under the Law on Insurance, insurance companies were previously allowed to apply sex-differentiated contribution rates after a risk evaluation within the sphere of insurance. With the amendments of 2013,⁶⁰ Lithuanian law now complies with the CJEU ruling in *Test-Achats*.⁶¹ Article 93(2) of the Law on Insurance now reads: 'when calculating insurance premiums and insurance benefits, the insurer shall not take the gender of the insured person or the gender of the policy holder as a factor which is relevant to the risk of the insurance'. In addition, Article 93(3) prohibits the use of factors related to pregnancy and motherhood when calculating the risk to the insurer.

9.8 Positive action measures (Article 6 of Directive 2004/113)

No positive action measures have been adopted in relation to access to and supply of goods and services in Lithuania. It should be noted that, in general, the concept of positive action has not been developed in Lithuania. However, in one of its investigations, in the 'pink taxi' case (see Section 9.5 above), the Ombudsperson refused to classify the women-only taxi service as a violation of the principle of equal treatment on the ground that it could be considered as a positive measure. This reasoning conflicts with the definition of positive action measures under Article 2(9) of the EOA, which explicitly requires that such measures be introduced by way of the law and not by companies or employers themselves.

9.9 Specific problems related to pregnancy, maternity or parenthood

The lack of complaints and the absence of public debate indicate the difficulties in understanding the full scope of the possible discriminatory actions prohibited by the Directive and the EOAWM. The protection is not sufficiently clear and precise to allow individuals to understand their rights and for goods and services providers to understand their legal obligations as far as transgender people, pregnant women, and women who have recently given birth are concerned. For example, the national legislation remains silent on the question of whether the harassment or sexual harassment of an employee by third parties (such as clients or customers) constitutes a violation of the principle of non-discrimination. Legislation is also silent on whether employers are liable if they fail to take reasonably practicable steps to prevent such harassment.

9.10 Evaluation of implementation

The implementation of the Directive can be considered unsatisfactory. The dichotomy and inconsistency with regard to prohibited and sanctioned violations of the principle of equal treatment raises the question of the legal certainty of the legal regulations. On the other hand, the legislator's focus on the consumer significantly narrows the scope of application of the principle of equal treatment.

9.11 Remaining issues

The EOAWM does not explicitly address transgender people, pregnant women, or women who have recently given birth. An implicit protection by way of a broader interpretation could be provided instead, but there are no signs that the institutions and courts will necessarily use a broader interpretation to cover those categories.

⁶⁰ *Valstybės žinios* 2013, No. 46-2247.

⁶¹ Court of Justice of the European Union (CJEU), *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*, Case C-236/09, 1 March 2011.

10 Violence against women and domestic violence in relation to the Istanbul Convention

10.1 General (legal) context

10.1.1 Surveys and reports on issues of violence against women and domestic violence

There are no surveys concerning the issue.

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

The key legal act which aims to protect persons from domestic violence (which due to its harm to society is classified as an act of public interest), to react quickly to the threat, to take preventive measures, to apply protective measures and to provide appropriate assistance, is the Law of the Republic of Lithuania on Protection from Domestic Violence.⁶² This law defines the concept of domestic violence, defines the rights and responsibilities of those involved in domestic violence, the implementation of preventive measures, the provision of assistance in cases of domestic violence and the application of safeguards to a victim of violence.

Once the fact of domestic violence has been recorded, a pre-trial investigation is launched, whether or not the victim has received a complaint. Family members perpetrating domestic violence can be immediately detained for 48 hours. During this period, the court is asked to order further protection measures. The law imposes several obligations on the perpetrator: to temporarily move out of the place of residence or not to approach, victimise, or maintain contact with the victim. Where there is an obligation to leave the place of residence temporarily, the perpetrator must leave.

Domestic abusers are subject to criminal liability. The sanctions consolidated in Article 145 of the Criminal Code (Threatening to Kill or Seriously Disturb a Person's Health or Terrorising a Person), Article 140 of the Criminal Code (Causing Physical Pain or Minor Health Impairment), Article 138 of the Criminal Code (Slight Health Impairment) may be applied.

A perpetrator who has caused damage to human health, property, environment and non-pecuniary damage must compensate the person who has suffered the violence.

Where there is insufficient evidence to immediately initiate a pre-trial investigation and clarify the circumstances of the incident, the police officer involved shall, within 24 hours of receiving the report, conduct an assessment of the risks of domestic violence and impose protective interim measures. The following interim measures may be taken to ensure protection for the victim:

- (1) an obligation for the perpetrator to leave his/her place of residence temporarily if he/she is living with the person who has been the victim of violence;
- (2) an obligation for the perpetrator not to approach, interact or seek contact with the person who has suffered the violence.

10.1.3 National provisions on online violence and online harassment

No specific provisions can be mentioned.

⁶² Valstybės žinios 2011, No. 72-3475.

10.1.4 Political and societal debate

No political debate exists so far on this issue.

10.2 Ratification of the Istanbul Convention

The Istanbul Convention was signed by the Lithuanian Foreign Minister in 2013, but the process of ratification is still pending.

In 2018 the President of Lithuania, Dalia Grybauskaitė, submitted the Istanbul Convention to the Parliament for ratification, but the ruling political parties, backed by the Catholic Church, took a rather conservative approach. In 2019 encouragement to ratify the Istanbul Convention was expressed by liberal and social democrat politicians and NGOs.

There are no concerns with regard to any possible financial impact stemming from accession to the Istanbul Convention. The process of ratification has been halted for political reasons. A strong public debate has been triggered concerning the principal question of whether the mentioning of 'gender identity' in Article 4(3) of the Convention and the definition of 'gender', which encompasses socially constructed roles, in Article 3(c) of the Convention would lead to wider protection for LGBT persons in Lithuania. Conservative MPs, in particular female MPs, have expressed strong disagreement with ratification because of the fear that ratification will trigger the process of formal recognition of LGBT rights in Lithuania. Although the President of the Republic publicly has expressed her support for ratification,⁶³ the process of accession to the Convention has stalled since 2014.

⁶³ Press release, Paviloniene, A.M., Member of Parliament, 19 March 2013, available at: http://www.lrs.lt/sip/portal.show?p_r=15375&p_k=1&p_t=132796.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

No specific surveys and research have been conducted, despite the practical implementation of the principle of equal treatment causing major obstacles in fulfilling the obligations of the Directives.

11.1.2 Other issues related to the pursuit of a discrimination claim

No other issues can currently be identified. In general, the media and public opinion are favourably disposed to the victims; however, victims suffer from the lack of efficient legal assistance to bring their claims before the courts or the Labour Dispute Commission. The support of NGOs or trade unions is lacking, as are examples of good practice that could be brought to public attention and initiate new claims. As a result, victims are afraid to pursue their claims publicly or simply do not foresee personal success. Incentives to act individually for the greater common good or to support other victims are not widespread in post-soviet society in Lithuania.

11.1.3 Political and societal debate and pending legislative proposals

There is no debate on the issue.

11.2 Victimisation

Article 11 No. 4 of the EOAWM prohibits an employer from persecuting an employee, a representative of an employee or an employee who is testifying or providing explanations about a complaint or another legal procedure concerning discrimination on grounds of sex. Such actions by an employer shall be considered as a violation of equal rights and may be sanctioned with an administrative fine.

Administrative fines, ranging from EUR 28 to EUR 1 158, for a breach of the EOAWM (i.e. also in cases of a breach of the principle of equal pay) may be imposed by the Equal Opportunities Ombudsperson. These administrative fines do not seem to be deterrent, but even in cases of established violations of equality legislation the Ombudsperson restricts himself/herself to issuing a simple warning.⁶⁴ Theoretically, criminal sanctions may be imposed following a criminal offence. Discrimination on the grounds of (inter alia) sex with a serious outcome shall be punishable by a community service order, arrest or imprisonment for up to three years (Article 169 of the Criminal Code),⁶⁵ but there have been no cases so far.

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

Access to the courts for alleged victims of discrimination is generally safeguarded but is no longer directly laid down in the EOAWM (former Article 12 of the EOA). Cases on discrimination are still very rare. A person who has suffered discrimination on grounds of sex, sexual harassment or harassment shall have the right to demand that the guilty

⁶⁴ See the data on the outcomes of investigations, provided by the Office of Equal Opportunities Ombudsperson, available at: <https://www.lygybe.lt/en/activities/annual-reports/762>.

⁶⁵ *Valstybės žinios* 2000, No. 89-2741.

persons must reimburse any pecuniary and non-pecuniary damage in the manner prescribed by the Civil Code of the Republic of Lithuania (Article 18 of the EOAWM).

In the sphere of employment, the victim would be more likely to be encouraged to resort to labour law. Violation of the principle of equal treatment in employment relations may be investigated by the Labour Dispute Commission, which provides the possibility for quick, free-of-charge investigation of claims.

11.3.2 Availability of legal aid

There are no specific rules with regard to special legal aid. Legal aid other than the advice of the Equal Opportunities Ombudsperson (Article 12(1) of the EOAWM) is not provided by the state.

Since 2008, the EOAWM has allowed a victim to be represented in administrative procedures and court proceedings by organisations representing workers and employees and by other legal persons with a legitimate interest (Article 17(2) of the EOAWM). This right to defend the rights of victims was confirmed for NGOs by the Supreme Administrative Court.⁶⁶ However, the case concerned was related to other grounds of discrimination. Cases regarding discrimination on grounds of social origin, nationality or age continue to dominate in the poor landscape of discrimination-related case law.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

The horizontal effect of gender equality law in Lithuania is not known.

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

The doctrine of direct (horizontal) effects of fundamental rights has not been developed by the Constitutional Court or the Supreme Court of Lithuania. The *Bauer* judgment has not been widely discussed in legal doctrine and no significant implications of the Charter are yet in sight.

11.5 Burden of proof

Article 26(5) of the Labour Code and Article 3 of the EOAWM contain a provision on the reversal of the burden of proof when examining complaints or disputes between persons arising from discrimination on the ground of sex. This rule must be applied in the civil courts of general competence or in the Commissions on Individual Labour Disputes. If there is a dispute in the administrative courts involving public servants, the rule on the reversal of the burden of proof shall also be invoked. In its early case law the Supreme Administrative Court rejected the right of the Equal Opportunities Ombudsman to shift the burden of proof to the accused employer in a procedure investigating a complaint related to the sexual harassment.⁶⁷ In recent years the strict standard of the Court has been a bit softened – the decision of the Ombudsperson about the established fact of sexual harassment shall be denied by the perpetrator in the court 'because of the rule on reversal of the burden prove, consolidated in the EOAWM.'⁶⁸

⁶⁶ Supreme Administrative Court of Lithuania, No. A-492-2078/2013, 7 November 2013, available at: <http://www.efhr.eu/download/orzeczenie/orzeczenie.PDF>.

⁶⁷ Supreme Administrative Court of Lithuania, No. A-525-825-08, 29 May 2008.

⁶⁸ Supreme Administrative Court of Lithuania, No. A-988-624/2019, 10 April 2019.

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

In cases of a violation of the principle of non-discrimination, four different types of sanctions may be imposed. Criminal sanctions may be imposed following a criminal offence. Serious discrimination on the grounds of (inter alia) sex shall be punishable by a community service order, arrest or imprisonment for up to three years, but there have been no cases so far. Administrative fines ranging from EUR 40 to EUR 1 200 for a breach of the EOAWM may be imposed by the Equal Opportunities Ombudsperson, but in many cases the Ombudsperson issues a simple warning. A violation of equal opportunities for women and men or the sexual harassment of colleagues, subordinates or customers may result in (but does not necessarily result in – this is left to the individual employer to decide) disciplinary sanctions, e.g. dismissal, imposed on the relevant employee.

The rules on judicial enforcement of rights are no less favourable than those governing similar domestic actions. In cases of discriminatory refusal or dismissal, compensation may be awarded, but the court is free not to reinstate the employee. In the case of financial claims by an employee, the court may grant the employee payment of interest when the employer has breached financial duties, at the rate of 0.06 % interest per day of delay.

In addition, in all cases the court may award financial compensation for non-material damage caused by discrimination. The compensation for non-material damage has no maximum amount. However, the courts are reluctant to award a high amount of compensation for non-material damage. For example, for a discriminatory refusal to employ Roma women as waitresses in a bar, the employer concerned was obliged to pay compensation of approximately two-and-a-half times the minimum monthly wage for non-material damage instead of employment.⁶⁹

11.6.2 Effectiveness, proportionality and dissuasiveness

A system of sanctions for violation of the principle of equal treatment is in place but it is doubtful whether this ensures effective, proportionate and dissuasive sanctions. There is a lack of a critical number of cases and even in the few cases that are brought before the Equal Opportunities Ombudsperson and the courts, they are rather reluctant to impose more severe sanctions for breaches of equality legislation.

11.7 Equality body

The Office of the Equal Opportunities Ombudsperson (in Lithuanian – *Lygių galimybių kontrolieriaus tarnyba*)⁷⁰ is an independent state institution that supervises implementation of the principle of equal opportunities in the labour law of the European Union and in the EOAWM and the EOA in Lithuania. The Office investigates complaints, supervises implementation by public institutions and employers, hears cases of administrative offences and imposes administrative sanctions, consults victims of discrimination, assists public organisations and NGOs, collects, analyses and summarises data on equal opportunities in Lithuania, submits recommendations, etc. The Office has no right to initiate legal proceedings in the name of victims and has no standing in the courts. In accordance with the rules of civil procedure (Article 252 of the Code of Civil Procedure),⁷¹ the opinion of the Ombudsperson can be considered as an opinion of an *amicus curiae*.

⁶⁹ Vilnius Regional Court, No. 2A-1020-464/2008, 10 December 2008, available (in Lithuanian) at: <https://eteismai.lt/byla/1235195804729/2A-1020-464/2008>.

⁷⁰ The Office of the Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus įstaiga*), available at: http://www.lygybe.lt/lt/titulinis_10.html.

⁷¹ Valstybės žinios 2002, No. 36-1340.

The Lithuanian equality body was primarily established to combat gender discrimination. Since 2008 the competences of the Office have been extended to cover the grounds of race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. However, the drastic broadening of its competences was not accompanied by an increased budget, and the initial focus on gender equality was therefore significantly weakened.

11.8 Social partners

The impact of social partners in the promotion of gender equality is rather weak. Neither specific measures to fight inequalities, for instance in pay, nor policy measures such as gender mainstreaming strategies are on the agenda of the social partners.

In practice, the social partners do not attempt to explain or promote the principle of equality unless there is a focused initiative sponsored by European funds. This can be explained by the relative weakness of organisations representing employers and employees, which traditionally focus on a narrow spectrum of issues (the minimum wage, the work of third-country nationals, collective bargaining, etc.).

Collective agreements are binding, but the impact of collective bargaining in promoting equal opportunities is minimal. The inclusion of these issues on the agenda of collective bargaining is not strived for by either of the parties: for employees it is more desirable to have at least a collective agreement on wages or other working conditions than to consider gender equality issues which are, according to both parties, believed to be the task of the state authorities or to be irrelevant.

11.9 Other relevant bodies

No other bodies are involved in the issue.

11.10 Evaluation of implementation

National labour law provides employees with a favourable mechanism to protect their individual labour rights. Transposition of the EU equality directives has created additional possibilities for female employees but has not resulted in an increase in cases. On one hand, imperfect transposition creates uncertainty about whether national provisions impose certain obligations on employers. On the other hand, transposition on paper is not enough for effective implementation because the supporting institutional framework (equality body, social partners, NGOs) is still too weak to create an informed, well organised society to effectively fight inequality.

11.11 Remaining issues

The interest of the social partners and NGOs in assistance for the victims of possible discrimination is lacking. The requirement for gender mainstreaming was formally included in the law but in practice is insignificant and in addition does not merit much public attention.

12 Overall assessment

The following transposition problems were mentioned in this report:

1. Reluctance of victims to use available legal remedies for protection of infringed individual rights;
2. Lack of readiness of trade unions, NGOs and equality body to provide special legal aid to individual victims;
3. No deterrent sanctions for employers and perpetrators;
4. Social benefit and employment guarantees system which discourages women to return sooner to the active labour market;
5. Low impact of the equality body in setting up a political agenda and gender mainstreaming;
6. Lack of interest of the social partners in pursuing an active agenda of non-discrimination.

The principle of equal treatment is enshrined in the national legislation but has not dramatically changed the landscape of employment. Although the tools for individual protection are in place, potential victims are still reluctant to use these to engage in direct confrontation with an employer. The number of litigations is ridiculously low, as employees are reluctant to protect their rights through legal channels. Because of high demand on the labour market in Lithuania, employees simply refuse to continue their employment relationships with employers and easily migrate to new employment. The social partners and NGOs play no significant role in promoting the principle of equality in the workplace. The impact of the activities of the Equal Opportunities Ombudsperson is rather fragmental and limited.

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